



ANNUAL REPORT

2010-2011



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7 October 2011

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

Dear Minister

I have pleasure in submitting the thirty-fourth Commonwealth Ombudsman Annual Report for the year ended 30 June 2011, as required by s 19(1) of the *Ombudsman Act 1976*.

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

I certify that this report has been prepared in accordance with the Requirements for Annual Reports for 2010–11 as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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

Yours sincerely




Mr Allan Asher
Commonwealth Ombudsman

GUIDE TO THE REPORT

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

There are a number of target audiences for our report, including members of parliament, Australian Government departments and agencies, other ombudsman offices, the media, potential employees and consultants, and the general public. As some parts of the report will be of more interest to you than others, you can read this page to help work out which will be more useful. Each part is divided into sub-parts.

Overview

Includes the  **For you**, Chapter 1—*Ombudsman's review* and Chapter 2—*Organisation overview*. These chapters form an executive summary of the principal developments affecting the office's work during the year and its more significant achievements. The overview outlines the office's role, responsibilities, outcome structure and the organisation's structure.

Performance review

Chapter 3—*Performance report* and Chapter 4—*Management and accountability* detail performance against the Office's one outcome and office's management and accountability arrangements.

The Ombudsman at work

Chapter 5—*Agencies overview* focuses on particular issues that arose in investigating complaints about individual agencies, provides examples of the diversity of complaint issues about government, how the Ombudsman's office helped people to resolve their complaint issues, and general administrative problems across government agencies. Heads of departments and agencies are provided with an opportunity to comment on draft sections that relate to their organisation. The final content is a decision for the Ombudsman.

Chapter 6—*Helping people, improving government* looks at the sort of remedies the office recommended agencies provide to complainants, as well as various measures to improve administration, including registering of administrative deficiencies against

government agencies. Chapter 7—*Engagement* focuses on the ways in which the office engages with stakeholders (including agencies and the community) and works with our regional and international partners.

Appendices and references

The appendices include: freedom of information reporting; statistics on the number of approaches and complaints received about individual Australian Government agencies; a list of consultants engaged during the year; and financial statements. We also include a list of tables and figures contained in the body of the report, a list of acronyms and abbreviations, and the addresses for each of our offices.

Contacting the Commonwealth Ombudsman

Enquiries about this report should be directed to the Director of Public Affairs, Commonwealth Ombudsman (public.affairs@ombudsman.gov.au). If you would like to make a complaint, or obtain further information about the Ombudsman:

- Visit:** The Commonwealth Ombudsman has offices in Adelaide, Brisbane, Canberra (our national office), Darwin, Hobart, Melbourne, Perth and Sydney.
- Hours:** 9am–5pm (AEDT) Monday to Friday.
Addresses are available on our website and at the end of this report.
- Phone:** 1300 362 072 (9am–5pm (AEDT) Monday to Friday)—not a toll-free number. Calls from mobile phones are charged at mobile phone rates.
- Write to:** GPO Box 442, Canberra ACT 2601
- Fax:** 02 6276 0123
- Email:** ombudsman@ombudsman.gov.au
- Website:** www.ombudsman.gov.au (an online complaint form is available)
- SMS:** 0413 COM OMB (0413 266 662) (standard carrier rates apply)
- Twitter:** <http://twitter.com/#!/CwealthOmb>

The Commonwealth Ombudsman Annual Report 2010–2011 is available on our website.

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Overview

Foreword

FOREWORD

This is my first Annual Report since I became Ombudsman in August 2010.

It has been an exciting and challenging year. The number of approaches and complaints my office receives continues to grow, with almost 39,000 in 2010–11, a four per cent increase on the year before. In the quarter since 30 June there was an 11% increase on the same period last year.

In 2010–11, the Ombudsman's office received 2137 approaches and complaints on immigration matters – a 34% increase on the previous year. In May 2011, I noted that when my office took on oversight of the refugee status assessment process in 2008, it was anticipated that there would only be about 100 irregular maritime arrivals each year. There were more than 6000 people in immigration detention in May 2011.

However, while our workload and responsibilities increase, government revenue to my office is not keeping up. As an Australian Government agency we are not alone in having to tighten our belts, but any reduction in our funding has consequences. We exist to improve government administration and the better we are able to help agencies do their job the less taxpayers' money is wasted.

Less funding makes it harder to honour our commitments to vital work such as fostering and maintaining relationships with key stakeholders, in particular the community, business groups and the agencies whose conduct we investigate.

This is important because it is not my office but the agencies themselves that have the power to provide remedies, and it is always more effective and productive to work cooperatively with agencies in making that happen.

Fewer resources also makes it harder for my office to engage with socially excluded people who should be complaining to us but don't or even can't.

A recent public awareness survey we conducted showed that less than one-third of people under 35, and a similar number of people who speak a first language other than English, have heard of my office. A large number of those under-35s (around 14 per

cent) weren't even sure if they had ever been treated unfairly by a government agency.

Indeed, I suspect that for every complaint we get, there are maybe 10 we don't. The people we don't hear from are the people we should be hearing from most, because they are likely to be those members of our community who are the most marginalised and vulnerable.

This is illustrated by the fact that prior to the introduction of my office's Indigenous outreach program, virtually no Indigenous people complained to us – as far as we are aware – and it hardly needs saying that this is not because they had little to complain about.

How can we provide accurate feedback and recommendations to agencies, how can the agencies themselves get direct feedback, if we're not hearing from most of the people with real problems? That is why social inclusion will be one of three key themes dominating our work over the next four years.

Another key theme is strengthening the 'fourth arm of government', namely the integrity sector, which exists to guide the executive towards governance that is fair, ethical and transparent. There is great scope for my office, as well as other oversight agencies, to work more collaboratively with government agencies to form communities of interest to improve public administration. My office will be seeking to forge stronger, long-term partnerships with other integrity agencies to help better define our combined role and give us more bite.

The third area we will be focusing on is helping agencies deliver more customer-centric services. This means simplifying service delivery to make access to government services more convenient through automation, integration and better information sharing. It is easy for the good intentions of a program to get lost in the implementation, and it is hugely valuable to have someone standing to one side whose job it is to point out problems and propose solutions.

For instance, one area I have spoken about a great deal over the last year is the need to improve government communication. Complaints need to be seen as a resource not a curse, and agencies should



Allan Asher, Commonwealth Ombudsman

convey clear, targeted information with the needs of the end user firmly in mind.

A project I have been interested in for some time is a long-term, Government-wide plain language program. I am in discussion with the Plain English Foundation on what measures might be needed to make this happen, and I have written to the Prime Minister suggesting we meet to discuss the plan. Such a program would help change the public sector culture to one that recognises that good communication is integral to good service delivery.

These three issues: improving social inclusion; delivering customer-centred services; and innovation for good governance and public sector integrity will be the subject of further discussion at the Commonwealth Ombudsman National Conference on 8–9 November 2011. An opportunity to develop effective, ongoing solutions to real problems, the conference will be of immediate and lasting benefit both to the individuals who attend and the organisations they represent.

The Conference is intended to be the launching pad for our program of work in the years to come.

Meanwhile, our responsibilities continue to expand. My office took on the new Overseas Students Ombudsman role in April, we expect soon to become the Norfolk Island Ombudsman and we are likely to take on additional powers under proposed Commonwealth Public Interest Disclosure legislation. We will continue to scrutinise immigration detention. For instance, a report on our investigation into suicide and self-harm in immigration detention facilities will be issued later in the year.

A comprehensive report summarising the findings of nine team visits to Christmas Island Immigration Detention Centre and including a clear set of recommendations was one of 13 investigation reports published in 2010–11. Other significant reports addressed issues such as: how three Government agencies engaged with customers with a mental illness in the social security system; agencies' use of Indigenous language interpreters; and how promising

Indigenous programs in rural and remote communities risk failure due to complex and onerous government reporting requirements.

I am pleased to say that reports such as these have put us in the media spotlight recently and that is an essential part not only of raising awareness of our office but of holding agencies to account. It's a maxim of mine that we are ready and willing to work with any agency prepared to make a positive contribution to improving their service delivery.

Social media is also a useful tool in raising our profile. We are currently using Twitter and YouTube, and very soon we will establish Facebook sites for the Commonwealth and ACT Ombudsman roles.

The Office of the Commonwealth Ombudsman has taken great strides since its inception in 1977. I am the eighth person to fill the role and it is an honour to follow in the footsteps of people like my immediate predecessor Professor John McMillan and the inaugural Ombudsman, the late Professor Jack Richardson, whose life and enormous contribution we pay tribute to overleaf.

As an agency established by statute to be independent from both the Parliament and the executive, the office of the ombudsman faces unique challenges when it comes to its own accountability and relationship to the Parliament. A key role of the Ombudsman is to provide assurance to the Parliament and the public that government administration is fair, just and accountable. However, unlike some other integrity agencies, there is no Parliamentary accountability mechanism in place for this office. Unlike the Auditor-General, for example, the Ombudsman is not an Officer of the Parliament. Nor do I have a Parliamentary committee to which I must report, as is the case for the Australian Commission for Law Enforcement Integrity. I am accountable to the Parliament, yet I have only infrequent and limited opportunities to engage with the Parliament.

This is by no means a new issue. In a Parliamentary paper published in 1990, the then Ombudsman, Professor Dennis Pearce, noted that this office complements the work of the Parliament in that it is responsible for part of the task of overseeing the executive. He went on to suggest that for reasons of independence, oversight and financial stability, the Ombudsman should be more closely associated with the Parliament. Twenty-one years on, I think it is time

to recommence the conversation Ombudsman Pearce began with a view to achieving greater public sector integrity and good governance.

Allan Asher, Commonwealth Ombudsman



FEATURE

NATIONAL RECONCILIATION WEEK

We are beginning the work that is necessary to make our own services more accessible to indigenous Australians through development of an indigenous communication and engagement strategy, through developing a Reconciliation Action Plan led by the Social Inclusion Working Group, and through the ongoing direct outreach work.

During National Reconciliation Week, Ms Tracey Whetnall was invited to address staff in our Canberra office. Ms Whetnall is a local Indigenous woman and an active member of the

community who was recently appointed as an Official Visitor for the Alexander Maconochie Centre, under Ministerial appointment. Ms Whetnall works with corporations, government, Indigenous organisations, non-government organisations and educational institutions, to raise awareness of indigenous histories, cultures and peoples. Ms Whetnall also spoke of her new experiences as the Alexander Maconochie Centre's new Official Visitor.



Tracey Whetnall and Ombudsman Allan Asher

PROFESSOR JACK RICHARDSON AO (1920–2011)

The Ombudsman and his staff were saddened by the death of inaugural Commonwealth Ombudsman, Professor Jack Richardson who died on 13 June 2011 aged 90.

Professor Richardson served as Commonwealth Ombudsman for eight years from 1977. On 17 March of that year, Prime Minister Malcolm Fraser announced the appointment, describing Professor Richardson as “a distinguished academic of high Australian and international standing who will bring to this office the qualities and experience which are necessary to perform this challenging role”.

He established the office, overseeing the first critical years and guiding it through substantial changes and growth in jurisdiction and case load. He developed the office’s reputation for intellectual rigour and a robust approach to public administration.

Before the establishment of the office it was recognised that the existing avenues of redress for people having problems with administrative actions and decision were complex, expensive and difficult

to access for many Australians. The establishment of the Office of the Commonwealth Ombudsman was an important innovation in how governments dealt with concerns and grievances of individual citizens.

Professor Richardson improved accessibility to Ombudsman services through an effective oral complaints mechanism and opening offices in five state capitals. He also fostered effective working relationships with department heads, though he faced stiff opposition from a handful of prominent public servants.

With the cooperation of agencies, the office began conducting more informal complaint inquiries, to achieve faster resolution of less complex complaints.

During Professor Richardson’s tenure, his office took on the role of Defence Force Ombudsman, and began reviewing the Australian Federal Police’s internal investigation of complaints from the public. *The Freedom of Information Act 1982* allowed people to make complaints to the Ombudsman about the handling by agencies of FOI requests.

In a public statement released at the time of Professor Richardson’s death, Special Minister of State, Gary Gray said, “Towards the end of his time as Ombudsman, the total number of approaches to the office exceeded 20,000, demonstrating the strength of his public education efforts and the establishment of a reputation that exemplified independence and fairness.”

The current Ombudsman Allan Asher also paid tribute to Professor Richardson: “The Commonwealth Ombudsman is now a key national integrity agency, and while its functions and role have expanded, its core activities and value to the community have changed little, thanks in great part to the contribution made by Professor Richardson in its formative years.”

Professor Richardson was also a barrister and distinguished law academic. He joined The Australian National University’s Faculty of Law in 1960, became Dean the following year, and in 1977 was appointed Emeritus Professor. He published several books on trade practices law, air and space law, and Australian federalism.

Professor Richardson was awarded the Officer of the Order of Australia in 1984.



Cartoon by former Canberra Times cartoonist, Geoff Pryor, depicting Professor Richardson and Treasury Secretary John Stone (1979–1984) tied to the wheel. Reproduced courtesy of the artist.

After he retired as Ombudsman in 1985, Professor Richardson spent time in legal practice and set up the ombudsman's office in Samoa, where he was ombudsman from 1990 to 1992.

In 2002, the Commonwealth Ombudsman's office established the 'Jack Richardson Prize in Administrative Law' at the Australian National University in recognition of the contributions he made.

Professor Richardson's last participation in the constitutional affairs of Australia was as one of a

committee of three appointed in 2005 to put forward proposals for resolving deadlocks between the two houses of Federal Parliament. At the time of his death he had just completed working on a book on Australian federal government and constitutional law.

The Ombudsman and his staff acknowledge the huge contribution made by Professor Richardson and express their deep condolences to his family.

Professor Richardson when he was Ombudsman.





Overview

Chapter 1 Ombudsman's review

One of the primary functions of the Ombudsman's office is to handle complaints and enquiries from members of the public about government administrative action. The aim is to promote fairness and accountability by fostering integrity and legislative compliance in agency administration. The office also plays an important role in compliance auditing of law enforcement and other agencies concerning their use of statutory powers.

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

THE OMBUDSMAN AT WORK

Commonwealth Ombudsman

The bulk of the agencies this office receives complaints about fall under the Commonwealth Ombudsman jurisdiction. Chapter 5 looks at those agencies that gave rise to most of the complaints in 2010–11.

For instance, 25% (4954) of the approaches and complaints within jurisdiction received by this office were about Centrelink – more than any other agency. It should be noted that Centrelink is of course a major line agency and that complaints about it have been steadily declining since 2007–08.

Other agencies examined in that chapter include:

- Department of Education, Employment and Workplace Relations
- The Australian Customs and Border Protection Service
- Child Support Agency
- Comcare
- Department of Climate Change and Energy Efficiency, and the Department of Sustainability, Environment, Water, Population and Communities
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Health and Ageing (DoHA)
- The Office of the Fair Work Ombudsman
- Medicare Australia.

Many complaints to the Ombudsman require us to make enquiries of more than one agency. This is often the case where one agency is responsible for delivering a product or service, while another has responsibility for the relevant policy or law. Complaints about line agencies often relate to adequacy of coherent complaint handling, lack of advice about review rights; whereas those about policy agencies tend to relate to funding and policy issues.

The office's dedicated Indigenous Unit, whose focus is to oversight Indigenous programs in the Northern Territory, has continued to visit Indigenous communities, investigate complaints, address systemic issues and achieve remedies for individuals during this financial year.

The Ombudsman is also required by law to inspect the records of certain agencies in relation to their use of covert and coercive powers. We do this to determine compliance with legislative requirements governing the use of these powers. We also aim to help agencies improve their processes to comply with the various statutes.

In 2010–11 we received 146 complaints about freedom of information, although much of this work is now handled by the Office of the Australian Information Commissioner

Approaches and complaints

In 2010–11 we received 38,919 approaches and complaints about government agencies, 3.9% more than last year. With 19,821 (51%) of all approaches within the Ombudsman's jurisdiction, the highest number ever received, there is increased pressure on organisation resources. At the time of this report, first quarter trends for 2011–12 showed a further 11% increase over the same quarter last year.

From year to year work volumes may go up or down. However, trends emerge and across the whole office complaints and approaches have increased by 25% over the last five years while additional resources provided in that time have been dedicated to areas of new jurisdiction such as preparation for Public Interest Disclosure laws, the Overseas Student Ombudsman role and resources for new work on Norfolk Island.

Eight agencies accounted for 82% of complaints. These included Centrelink, Australia Post, Australian Taxation Office (ATO), Department of Immigration and Citizenship (DIAC), Child Support Agency (CSA),

the Departments of Defence and Veteran Affairs (and associated agencies), Department of Education, Employment and Workplace Relations (DEEWR), and the Australian Federal Police (AFP).

During the year we dealt with approaches and complaints about more than 160 Government agencies, up again on the previous year. Through our new role as Overseas Students Ombudsman, we also dealt with approaches and complaints about more than 50 education bodies.

We investigated 4,468 separate complaints, compared to 4,489 the previous year.

Seventy-five per cent of all approaches and complaints were dealt with within the first month, a two per cent decline from that achieved in 2009–10. In terms of finalising investigated complaints, only 20.5% were closed in the first month, down from 24% last year – with a similar decline for those closed within three months. These finalisation rates should be considered in the context of an increase in both complaints received and complexity of investigations. There was also an increase in the number of complaints carried forward at the end of 2009–10 – 1657 complaints up from 1553 at the end of 2008–09.

We identified some agency error or deficiency in six per cent of the complaints investigated. We also identified one or more remedies for complainants in 79% of the complaints investigated, 8% more than the previous year.

Compliance auditing

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

During 2010–11 the Ombudsman also audited the investigations conducted by the Australian Quarantine and Inspection Service (AQIS).

During 2010–11 we carried out 34 inspections, three more than in 2009–10. We inspected the records of 16 different agencies, the same as in 2009–10. This included seven inspections of the AFP, seven of the ACC, five of AQIS, three of the Victoria Police and one inspection each of 12 other agencies.

Promoting good administration

Apart from dealing with individual complaints and inspecting records for statutory compliance, the Ombudsman's office promotes good administration through a variety of other methods, including publishing reports, and making submissions to Parliamentary inquiries and reviews.

In 2010–11 we released 13 reports on own motion and major investigations, including 80 recommendations – 90% of which were accepted in full and 9% in part. These covered diverse range of programs and policy matters, including: the Chaplaincy program; the right to review by Centrelink customers; use of interpreters for Indigenous Australians; oversight of detention facilities on Christmas Island; administration of coercive powers in passenger processing by Customs officers; tax file number compromises; improving how agencies engage with people suffering from mental illness; and the review rights for people under income management.

During the year we launched the Taxation Ombudsman e-bulletin, with preparations made for the release of a new Overseas Students Ombudsman e-newsletter to highlight and educate the private education sector about our work. The latter described recent case studies of finalised complaints from which lessons could be drawn for a wider audience. We continued to promote our fact sheets and *Better practice guide to managing unreasonable complainant conduct*, with sustained interest across a diverse range of sectors for these resources.

We made eight submissions to Parliamentary inquiries and eleven other submissions to major reviews, contributing to review of a broad scope of legislation.

Defence Force Ombudsman

Each year, as the Commonwealth and Defence Force Ombudsman we receive, on average, between 550 and 750 approaches and complaints about Defence-related agencies. This year we received 632 approaches and complaints, of which 229 were about the Department of Defence and 182 about the Australian Defence Force. Significant issues arising from these complaints included:

- delay associated with the Redress of Grievance (ROG) process
- a lack of understanding about legislative and policy requirements for matters relating to recruitment, discharge, pay and conditions, entitlements and debt recovery
- transgression of Defence values (in particular, unacceptable behaviour).

Our office has received 34 complaints about delays associated with the Redress of Grievance (ROG) process. This is an increase of 14 from the previous year, indicating that the problem of delay remains as a significant systemic one.

During the year staff from our office travelled to several military establishments and spoke with commanders, administrators and general service members about the role and function of the Defence Force Ombudsman. We have also delivered presentations to service training courses.

During 2010–11 we received 172 approaches and complaints about the Department of Veterans' Affairs, four more than the previous year. Throughout 2010–11 we have monitored the success of the department's internal complaint handling process, established in 2010.

Immigration Ombudsman

In 2010–11 we focused our attention on two broad streams of complaints related to the Department of Immigration and Citizenship. One related to 'unauthorised arrivals by boat' and detention issues. The second stream of complaints related to other migration programs and activities, such as General Skilled Migration. It also included complaints about citizenship decision-making and processing.

During 2010–11 we saw a continued increase in the numbers of unauthorised arrivals by boat on Christmas Island and their placement in detention facilities located in both remote locations and metropolitan areas on the mainland. As a consequence we expanded our inspection program and faced new challenges in providing detention reviews for individual detainees.

Despite these challenges we continued our program of inspections of immigration detention facilities, own motion investigations into systemic issues, and ongoing engagement with the department through regular meetings, briefings and consultation on proposed initiatives. This preventive approach is intended to reduce the volume of complaints received about systemic issues and enable the department to quickly implement processes to address underlying problems.

Overall, we received 2,137 approaches and complaints in 2010–11, a 34% increase from the previous year. This increase is explained by the increased number of unauthorised arrivals by boat who complained to the office in the course of the year, particularly as a result of our active visits program where more than 90% of detention-related complaints were made.

Our office is required to review and report to the immigration Minister and the Parliament the circumstances of immigration detainees held for more than two years. In addition we have an arrangement with the government to undertake similar reviews for detainees after six, 12 and 18 months.

Funding provided to my office for our work in relation to Irregular Maritime Arrivals was agreed in 2008, at a time when they were at an expected 100 arrivals a year. Currently there are more than 4,700 irregular maritime arrivals in immigration detention. More than 3,200 detainees have been in immigration detention for more than six months, making a case-by-case assessment of such long-term detainees and impossible task.

The consequence of the large and rapid growth in Irregular Maritime Arrivals is that, in relation to the work of the Immigration Ombudsman and in the absence of substantial additional resources to my office, I am unable to provide overall assurance to the public and the Parliament that fair and accountable administrative action is being taken by responsible Australian Government agencies.

We are looking to implement a wider program of own motion and systemic investigations during the 2011–12 financial year. Following a visit to Christmas Island, in which I witnessed at first hand a significant increase in the incidence of self harm and attempted suicide by immigration detainees, I commenced an investigation into the increasing levels of suicide and self-harm in detention centres. Investigation should be complete by December 2011.

Law Enforcement Ombudsman

The Commonwealth Ombudsman is also the Law Enforcement Ombudsman and has a comprehensive role in oversight of Australian Government law enforcement agencies. The Ombudsman deals with complaints made about the:

- Australian Federal Police (AFP)
- Australian Commission for Law Enforcement Integrity
- Australian Crime Commission
- Attorney-General's Department
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- CrimTrac.

During 2010–11, we received 349 approaches and complaints relating to the work of the AFP at the ACT community policing (142), national (182) and international (25) levels. This is a slight reduction on the 389 received in 2009–10.

Key issues arising from law enforcement complaints to the Ombudsman's office included:

- there are still considerable delays in the AFP processing of some complaints, but in general there has been an improvement since last year
- law enforcement agencies should welcome complaints as a way of improving their administrative practices
- the AFP should aim to maintain regular contact with complainants and improve the quality of its letters by using plain language aimed at communicating a message, particularly about the decisions made from investigations
- agencies often provide limited information to complainants and cite the Privacy Act as a reason for taking this approach.

We noted that the AFP continues to make efforts to improve the quality and consistency of its complaint handling. In particular the standard of adjudications of complaints was high. However, we noted deteriorating timeliness in resolving complaints across all complaint categories. It was also noted that the AFP could better use the information provided by complainants to determine and address systemic problems. We have consistently found that complaints from members of the public have a low rate of being 'established' by the AFP.

Over the next year we will continue to focus our attention on working with the AFP to improve its timeliness in finalising complaint investigations. We would like to see the AFP further embrace complaints from members of the public as a resource for the AFP to improve their operations and interactions with the wider community.

Overseas Students Ombudsman

The Overseas Students Ombudsman began operation on 9 April 2011. Between then and 30 June 2011, it received 169 approaches and complaints.

It has three clear roles under the legislation:

- to investigate individual complaints
- to report on trends and systemic issues in the sector
- to work with providers to promote best practice complaint handling.

The largest proportion of complaints (almost one in four) relate to refunds of course fees.

A theme that appears to be emerging across complaint types is the confusion experienced by both providers and students in drafting, maintaining and interpreting clear policies in relation to refunds, progress and attendance.

As a whole, we are pleased to note that providers have been very quick to respond to requests for information from the Overseas Students Ombudsman and to act on recommendations made as a result of complaint investigations. This is an early but positive indicator of the willingness of the sector to accept the Ombudsman's role in working to improve outcomes for all stakeholders.

With the Overseas Students Ombudsman now in full operation, priorities for the year ahead include continued liaison with industry stakeholders – most particularly students – to ensure that the Ombudsman is accessible and his role understood.

Postal Industry Ombudsman

There continues to be a significant upward trend in complaints to us about Australia Post, with complaints more than doubling over the past six years. In 2010–11 we received 3,123 complaints about Australia Post, of which 2,932 were in jurisdiction. These represent 16% of the approaches and complaints within jurisdiction received by the office as a whole – the highest proportion after Centrelink – and a 22% increase on the 2,421 complaints we received in 2009–10.

It should be noted that the total number of complaints to our office remains small in comparison to the size of Australia Post's operations.

The main themes in complaints about Australia Post were: the Customer Contact Centre's quality of service or information (36%); recurrent mail problems (30%); single event mail problems (27%); post office services, including banking and retail (4%); and corporate, including unfair policy or legislation (3%).

In relation to the work of the Postal Industry Ombudsman, there is a recovery mechanism whereby investigation costs are recovered by the Government. The existing model is quite out of date and the Ombudsman's office has been severely stretched in attempting to keep up with this important area of work. Despite drawing the attention of the government to both the problem and the solution of updating the cost recovery mechanism, no progress has been made.

In 2010–11, we received 20 complaints about other postal operators

Taxation Ombudsman

The Commonwealth Ombudsman investigates complaints about the Australian Tax Office (ATO) and is assisted in this role by a small team who also investigate complaints about the Tax Practitioners

Board and the Insolvency and Trustee Service Australia.

In 2010–11 we received 2,589 approaches and complaints about the ATO, an increase of 43% from the 1,810 received in 2009–10. This was a continuing trend from the previous year and amounts to an 82% increase in the two years to 2010–11. It is the highest number of complaints about the ATO in five years. Complaints about the ATO represented 13% of all complaints received by the Ombudsman.

The ATO received a significant increase in complaints during tax-time 2010 and responded by diverting significant resources and energy to reduce the stockpile, issue refunds and correct the problems. Much work has already been undertaken by the ATO to ensure that the same issues are not present for the 2010–11 tax-time.

SOCIAL INCLUSION

The Australian Government has defined a socially inclusive society as one in which all Australians feel valued and have the opportunity to participate fully¹. This means ensuring that people who are currently marginalised become fully engaged – people such as newly arrived immigrants, the elderly, people with disabilities, mental illness or problems with addiction, many Indigenous people as well as whistleblowers, children, the illiterate, those who are impoverished, particularly the homeless, and many others.

The phrase 'social inclusion' is cropping up more often in government and public sector discussion, and in initiatives such as the National Compact², which seeks to strengthen relations between Government and the not-for-profit sector.

Social inclusion, or the lack of it, is a huge issue for this office. It is our view that the people we don't hear from are the people we should be hearing from most, because they are likely to be those members of our community who are the most marginalised and disadvantaged.

Connecting with the Indigenous community poses a unique set of challenges. Prior to the introduction of the office's Indigenous outreach program, virtually no

¹ *A Stronger, Fairer Australia*, summary brochure published by the Social Inclusion Unit, Department of the Prime Minister and Cabinet, 2009

² www.nationalcompact.gov.au

Indigenous people complained to us – as far as we are aware – and it hardly needs saying that this is not because they had little about which to complain.

A report³ based on research my office commissioned late last year revealed that Indigenous people are unlikely to complain because:

- they do not know it is possible or acceptable to complain, or to whom they can complain
- they believe they must accept their lot in life
- they fear reprisals
- they dislike confrontation
- there are language issues
- complaining brings with it a sense of shame
- they have poor self-esteem
- they believe that complaining in itself won't change anything.

The research also found that many Indigenous people prefer to use an intermediary whom they know to discuss problems or issues, preferably face-to-face in a familiar location, and only after they have come to trust the impartiality and effectiveness of the complaint-handling process. That is presumably why our outreach teams are effective in gathering complaints from Indigenous people.

It is our view that at the heart of any attempt to improve social inclusion is effective, two-way communication between agencies and all members of the community.

INDIGENOUS ISSUES

The Government has continued its significant investment in and program of reform of Indigenous programs in the Northern Territory (NT). Indigenous Australians in the NT are increasingly exposed to and impacted by a variety of government programs, services and policies. Increasingly, complaints, feedback and our observations highlight the complexities associated with the three levels of government working together to achieve objectives such as those in place under the National Partnership Agreement on Remote Indigenous Housing in the NT, and the Alice Springs Transformation Plan. This office is uniquely positioned to ensure that under such arrangements, governments remain focused on

delivering citizen-centric and seamless services and programs.

An Indigenous Communication and Engagement Strategy was started in early 2010 to support the office of the Commonwealth Ombudsman and the ACT Ombudsman in engaging more effectively with Indigenous people and communities in the Northern Territory, the Australian Capital Territory and across all States. This work has been informed by research among selected Indigenous communities in urban, regional and remote locations to gain a better understanding of attitudes, cultural influences, levels of awareness and the best ways to engage with the diversity of Indigenous communities.

The research was completed in late 2010 and is informing the development of more effective visual communication materials and messages. It has also contributed to the style of outreach undertaken by the office in the Northern Territory in its role regarding the Northern Territory Emergency Response and Closing the Gap programs. A report on the research will accompany a report on lessons learnt in engaging and dealing with complaints from Indigenous people, to be completed later in 2011.

The finding that there are many and significant barriers to Indigenous people making complaints has also confirmed the need for a culturally aware workforce and the value of developing a Reconciliation Action Plan, currently underway through the office's social inclusion working group, made up of staff from a number of investigation teams and State offices.

The office is also reviewing its own communication approach, in order to bring improved resources and approaches to our engagement with individuals and stakeholders involved in the development of policy and the delivery of services and programs to Indigenous communities.

Contacts have been made with representatives of the local ACT Indigenous community to promote greater access to Ombudsman services locally, although this work represents only a small part of what is required to more effectively engage with Indigenous people and communities in the wider Australian community. A significant challenge to this work remains appropriate levels of resourcing to the office.

³ *Improving the services of the Commonwealth Ombudsman to Australia's Indigenous peoples*, prepared by Winangali Indigenous Communications and Research, November 2010

STAKEHOLDER ENGAGEMENT, OUTREACH AND EDUCATION

Stakeholder engagement, community outreach and education are central to the Ombudsman's commitment to improving the accessibility and responsiveness of Australian Government services, including our own. Extending this engagement to collaboration with similar agencies in the Pacific is crucial to a shared understanding and capacity building of strong complaint-handling, oversight and anti-corruption systems across the Pacific.

Community engagement

A core objective of our engagement program continues to be to promote our work and reputation for rigour, fairness and independence. As with many agencies, we have had to make best use of diminishing resources, which is why we apply a social inclusion test to our community engagement activities. In 2010–11, our staff were involved in 120 outreach activities across all States and Territories, bringing us into direct contact with more than 13,000 people.

We collaborated with State-based Ombudsman offices, undertaking outreach and complaint clinics with a number of frontline service delivery centres to homeless people in Adelaide, Sydney and Brisbane, and also for women through the Australian Women's Information Service. Outreach work in support of our complaint-handling role in the Northern Territory Emergency Response was also a high priority, with numerous visits to remote communities, and participation more broadly in the Garma Festival and NAIDOC week activities.

Regional engagement

Our engagement with regional ombudsmen and partners continued to strengthen this year. This work is funded by AusAID, and we were pleased that the success of our engagement has been supported through continued AusAID funding in two main areas:

- a four-year funding agreement for activities to support the consolidation of the Pacific Ombudsman Alliance, which was launched in 2008.

- a two-year agreement for our twinning program with the Ombudsman Commission of Papua New Guinea, guaranteeing our activities with the Commission until the end of 2011.

We continued our active engagement with the Pacific Ombudsman, with the Commonwealth Ombudsman elected as Chair of the Pacific Ombudsman Alliance. (See further information in Chapter 7—*Engagement*).

Social market research surveys

The Ombudsman office conducts triennial periodic surveys measuring: client satisfaction with our complaint-handling services; public awareness of the role and services of our office; and the experiences of our counterparts in Australian and ACT government agencies in their dealings with our office; as well as Commonwealth Members of Parliament and Senators, and members of the ACT Legislative Assembly. Despite concert efforts and ongoing relationship with electorate officers in complaint handling, the survey of elected members elicited very limited responses. In 2010–11 our office engaged an independent social research consultancy to conduct the surveys.

Public awareness survey

The public awareness survey sampled 2487 people living in metropolitan, regional, rural and remote areas in all States and Territories. The survey was designed to test their awareness of, and attitudes to, the work of the Ombudsman's office. The field work was conducted in June 2011 through telephone interviews, online surveys and intensive one-on-one discussions with senior representatives of third-sector organisations active as advocates or frontline service providers for vulnerable and disadvantaged individuals and communities. The findings suggest that three sections of the Australian community are disadvantaged in their access to our services:

- women of all ages, but especially in age groups younger than 55 years
- young people aged 18 to 24 years and young adults aged 25 to 34 years
- people from culturally and linguistically diverse backgrounds, especially newly emerging migrant communities.

The research identified three factors: (1) lower awareness of the role and services of the ACT

Ombudsman and ombudsman services generally; (2) greater uncertainty about their rights as citizens and what might constitute unfair treatment by a government agency, and (3) greater reluctance to complain when they feel they have been treated unfairly or unjustly, or that the decision by a government agency was wrong, unlawful or discriminatory.

The office of the Commonwealth Ombudsman is actively developing strategic collaborations with community service agencies operating across the fields of youth, women and culturally and linguistically diverse communities to advance our vision of equitable, fair and just access to services regardless of age, gender or ethnicity.

Australian and ACT government agency survey

Our second survey of the year sought to identify the attitudes and perceptions of ACT Government agencies in their dealings with the ACT Ombudsman's office, including their satisfaction levels with those dealings. The research was part of a larger survey that sampled all Commonwealth and ACT government departments and agencies about which the Ombudsman's office had received five complaints or more from the public in the preceding financial year. Seventy-three federal government departments and agencies met this criterion.

Through anonymous online surveys of the complaint-handling and stakeholder engagement sections in these agencies, supplemented by intensive one-one interviews with senior executive staff, the research identified:

- a high level of understanding of the roles, powers and authority of the Ombudsman's office
- a high level of satisfaction with the Ombudsman's staff and our procedures in complaint-handling case management and attendant negotiations
- wide-spread respect and recognition of the Ombudsman's independence and impartiality
- a keen interest for the Ombudsman's office to provide training and seminars on best practice in complaint handling and administrative law
- a desire for closer liaison with the Ombudsman's office on complaint and complainant issues and trends through roundtables and feedback forums.

The Ombudsman's office is encouraged by this research to further fund its commitment to initiate dialogue and training on better citizen-centric and socially inclusive practices by government.

COMMUNICATION AND PLAIN LANGUAGE

The office has embraced the Government's drive for agencies to use social media and emerging Web 2.0 platforms to more effectively and constructively engage with the community. At the time of reporting final preparations were underway to launch Facebook sites for the Commonwealth and ACT Ombudsman roles, as well as an Ombudsman YouTube channel. The office already makes regular use of Twitter, with considerable growth in our following over the past year, to promote and inform the public about the work of the office.

Many of the complaints we receive about government agencies arise from poor communication. One of the forms this takes is writing in bureaucratese rather than plain language, and using jargon, acronyms and abbreviations

We have held discussions with the Plain English Foundation on what measures might be required to introduce a long-term, Government-wide plain language program.

The benefits of plain language to all concerned are clear. The time and money saved from the agency's point of view, and the improved accessibility for users, can be significant.

According to a briefing paper prepared for the NSW Premier in 2009, NSW agencies that adopted plain English enjoyed the following benefits:

- a reduction in drafting time of roughly half
- a reduction in management editing time of around 40 per cent
- an increase in client satisfaction to a 92 per cent rating.

International case studies also reveal startling savings. For instance, the US Navy has saved \$350 million by moving to plain English memos.

The Foundation also looked at how to evaluate plain language programs. They measured: an organisation's writing; perceptions about writing; and actual

outcomes of writing. In one instance they used the rate of follow-up correspondence as an evaluation measure and found that the number of complaints halved.

Many government agencies introduce such programs, but only 40 per cent reach completion and therefore have a lasting effect.

So our office intends to work with Government to promote the benefits of a program would involve the creation of clear standards, strong and consistent support from the Prime Minister down, an effective training and auditing program, and even legislation.

GOVERNANCE AND PUBLIC SECTOR INTEGRITY

The Australian Government is often regarded as free of significant corruption. Reasons offered include higher standards of conduct, the modern nature of their administration, lower involvement in service delivery compared to the States, and sophisticated financial controls. Unfortunately, many of these assumptions are simply not valid, nor are they backed by substantive evidence. In fact, there is little to suggest that Australian Government agencies are any more immune to corruption than their State counterparts, which continue to identify and deal with systemic corruption issues.

That does not necessarily mean that the solution arrived at by the State governments is the right solution for the Australian Government. We are not facing the same crises that NSW and Queensland faced in the early 1990s, which, with the concerns surrounding the independence of law enforcement agencies, warranted the establishment of large multi-purpose anti-corruption agencies.

It is generally agreed that a multi-agency approach is the better option for the Australian Government. However, we tend to look at the corruption problem as being limited to fraud or as an aspect of organised crime, and focus our efforts on prosecution of individual offenders. If the Australian Government is to successfully prevent corruption, it needs to deal with corruption at an institutional level. For that to happen there needs to be far greater coherence, coordination and leadership in the integrity sector.

With the Government's announcement that it will introduce a new public interest disclosure scheme (with the Ombudsman to oversight), the need to address coherence, coordination and leadership within the integrity sector has become paramount. The Government will be introducing a scheme that will encourage the disclosure of serious problems, including corruption, yet no agency has a broad anti-corruption mandate and there is insufficient expertise and guidance to properly address such matters.

It is for this reason that the Ombudsman has entered the corruption debate during the last 12 months and will continue to play an important role in the development of policy related to public sector anti-corruption and integrity, including the development of the National Anti-Corruption Plan recently announced by the Minister for Home Affairs and Justice.

During the past year, we twice made submissions to and appeared before the Parliamentary Committee for the Australian Law Enforcement Integrity Commission. In the first of these we recommended that a move to create a broader anti-corruption function within Government must be comprehensive, co-ordinated, and evidence based and should only follow a comprehensive study. In relation to the second matter, we raised our concerns that integrity testing focused on 'catching bad apples' but did not address institutional problems.

We also made a submission as part of the consultation on Victoria's anti-corruption commission. Our position was built around the need to look at institutional issues and address institutional problems as a primary responsibility of an anti-corruption agency. Further, and relying on many years of experience oversighting the use of coercive and covert powers, we drew attention to the difficulties and occasional misuse of such powers, and ways to minimise potential for such misuse.

In the absence of any across-Government efforts to measure, monitor and mitigate the risks of systemic corruption, it can be predicted that damaging and expensive incidents of corruption will come to light in the Commonwealth service. The prudent approach would be to establish a proper measurement mechanism.

INTERNAL MANAGEMENT

During 2010–11 we continued to refine our work practices, with ongoing reference to lessons learnt from the previous client satisfaction survey and using detailed analyses conducted by our business improvement team. A number of internal working groups were also established to explore ways to improve complaint handling, better internal communication, and systems for complaint reviews.

Some of the continued initiatives were:

- use of our five category complaint-handling structure and administrative deficiency workflow
- ongoing activity by the quality assurance audit panel to complement other quality assurance processes
- review of and improvements to our approach to handling requests for reviews of our decisions
- ongoing monitoring of office workflows to assist in learning and development opportunities for staff and the evaluation of business practices.

Following a review of organisational objectives and forward priorities, final arrangements were agreed to restructure the organisation to comprise branches, including the creation of a new strategic policy and projects branch to assist with improved coordination of work priorities. This organisational change was planned for implementation early in 2011–12.

An interim enterprise agreement was implemented for the period 25 November 2010 to 30 June 2011, following the lapse of the existing agreement on 1 October 2010. Discussions on a new enterprise agreement were commenced before the end of the financial year.

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

In 2010–11 the office's operating revenue was \$21.666 million and operating expenses were \$21.400 million, resulting in a surplus of \$0.226 million. The office received an unqualified audit opinion on its 2010–11

financial statements. Whilst the office was able to manage within its budget for the current financial year, major stresses of matching available resources to growing workloads will emerge in the coming years.

THE YEAR AHEAD— OUTLOOK 2011–12

The office faces challenges in the coming year with a continuing increase in approaches and complaints, putting pressure on limited resources to ensure a quality complaint-handling service for the community.

Last year, in April 2010, the Council of Australian Governments (COAG) agreed that as part of the National International Student Strategy, international students would have access to an independent statutory complaints body. In the instance of a complaint or education provider (for example, a private education provider) not being covered by a State's statutorily independent complaint mechanism, the Commonwealth Ombudsman will act as the external complaint mechanism.

In April 2011, this reform was implemented with the Ombudsman becoming the Overseas Students Ombudsman. In 2011–12, we anticipated continued growth in our work and engagement with private education providers and regulators.

In the past year, the *Territories Law Reform Act 2010* introduced a range of reforms to strengthen the governance arrangements for Norfolk Island, including applying Commonwealth administrative law accountability and oversight mechanisms. In this coming year, it is anticipated reciprocal legislation will be passed by the Norfolk Island Government that will see the establishment of the role of Norfolk Island Ombudsman.

The Government response to the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs on a whistle-blower protection scheme for the Australian public sector agreed to the Commonwealth Ombudsman undertaking integrity and oversight functions for the scheme. Legislation to give effect to the Government response has not yet been introduced into Parliament.



Overview

Chapter 2

Organisation review

ORGANISATION OVERVIEW

Role and functions

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

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

The complaint and own motion investigation roles of the Ombudsman are the more traditional ombudsman roles and make up most of the work of the office. The guiding principle in an Ombudsman investigation is to examine whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient, or otherwise wrong. At the conclusion of the investigation, the Ombudsman can recommend that corrective action be taken by an agency. This may occur either specifically in an individual case or more generally by a change to relevant legislation, administrative policies or procedures.

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

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

We cannot override the decisions of the agencies we deal with, nor issue directions to their staff. Instead, we resolve disputes through consultation and negotiation, and if necessary, by making formal recommendations to the most senior levels of government.

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

In addition, the Ombudsman has six specialist roles:

- **Defence Force Ombudsman**—handling complaints by serving and former members of the Australian Defence Force relating to their service
- **Immigration Ombudsman**—dealing with matters relating to immigration
- **Law Enforcement Ombudsman**—handling complaints about the conduct and practices of the AFP and its members
- **Overseas Students Ombudsman**—investigates complaints about problems that overseas students have with private education and training in Australia.
- **Postal Industry Ombudsman**—handling complaints about Australia Post and private postal operators registered with the Postal Industry Ombudsman scheme
- **Taxation Ombudsman**—dealing with matters relating to the Australian Taxation Office.

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

Organisation and structure

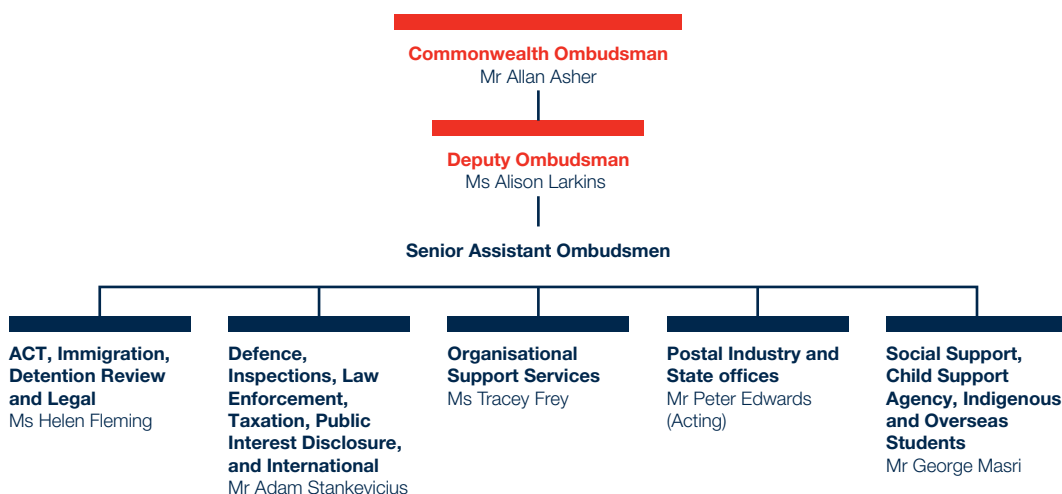
The national office of the Commonwealth Ombudsman and the office of the ACT Ombudsman are co-located in Canberra. The Commonwealth Ombudsman also has offices in Adelaide, Alice Springs, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

The Ombudsman and Deputy Ombudsman are statutory officers appointed under the

Ombudsman Act 1976. Ombudsman office staff are employed under the *Public Service Act 1999*. Senior Assistant Ombudsmen are Senior Executive Service Band 1 staff.

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

Figure 2.1: Commonwealth Ombudsman organisational structure and senior executive at 30 June 2011



More information is available on the Commonwealth Ombudsman website: www.ombudsman.gov.au

History

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

However, it wasn't until 1809 that Sweden became the first country to create an ombudsman in the modern sense, namely an independent arbiter of disputes between the citizen and government, enshrined in law and in the context of the nation-state. More than a century passed before the next ombudsman was created in Finland.

Ombudsman functions expanded around the world following World War II. This was due in part to a greater international focus on the protection of

human rights and freedoms as well a move towards independence and democracy in many developing nations. The growth of the welfare state also meant that government activities began to reach into citizens' daily lives in new ways.

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

New Zealand became the first English-speaking country to set up an ombudsman in 1962.

Other regions established ombudsman offices in the mid to late 1960s, including nations in Africa, Latin America and the Pacific as well as the United Kingdom, Canada and the USA.

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

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

The ombudsman role has been adopted by countries that are newly independent, moving to democracy, or that have had a long tradition of stable government.

The focus and role of ombudsman offices will vary, in line with the form of government and the specific characteristics of the country. In some countries the ombudsman office plays a strong role in the protection of human rights, while in other countries, such as Australia, a separate body (the Australian Human Rights Commission) performs that role.

The ombudsman in Australia

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

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

Since 1977, the statutory responsibilities of the Commonwealth Ombudsman have expanded as follows:

- 1981—handling complaints about the Australian Federal Police (AFP)
- 1982—handling complaints about freedom of information
- 1983—Defence Force Ombudsman
- 1988—compliance auditing of Australian Federal Police (AFP) and the National Crime Authority (now the Australian Crime Commission (ACC)) telecommunications interception records, with added responsibilities of monitoring controlled operations in 2001 and auditing of surveillance device records in 2004
- 1989—Australian Capital Territory Ombudsman

- 1993—Telecommunications Industry Ombudsman (since transferred to a private sector Industry Ombudsman)
- 1995—Taxation Ombudsman
- 2005—assessing and reporting on the detention of long-term (two years or more) immigration detainees
- 2005—Immigration Ombudsman
- 2005—handling complaints about Commonwealth service providers
- 2006—Postal Industry Ombudsman
- 2006—compliance auditing of access to stored communications by the AFP, ACC, Australian Commission for Law Enforcement Integrity and other enforcement agencies (such as the Australian Customs and Border Protection Service), and the use of surveillance devices by State law enforcement agencies under Commonwealth legislation
- 2006—Law Enforcement Ombudsman, with a specific responsibility to review the adequacy and comprehensiveness of the AFP complaint-handling system.
- 2010—The Office of the Australian Information Commissioner assumes responsibility for investigating actions taken by Australian Government agencies under the *Freedom of Information Act 1982* as of 1 November.
- 2011—Overseas Students Ombudsman.

Similar organisations

The Commonwealth Ombudsman is a 'parliamentary ombudsman', in that it is appointed and funded by government to handle complaints about the administrative actions of government agencies.

Each State and Territory in Australia has a parliamentary ombudsman that handles complaints about actions or decisions made by the government of that jurisdiction.

In addition, Australia has various industry-sponsored ombudsmen that are distinct from parliamentary ombudsmen. They handle complaints for services such as: financial services, employment, public utilities like electricity and water, health insurance, public

transport, superannuation, and telecommunications. These operate variously at the State and national level. Companies in these industries are required by law or operating licence to sign up to the relevant scheme, which charges them for the complaints it handles.

While the Office of the Commonwealth Ombudsman works cooperatively with industry-based ombudsmen and State and Territory parliamentary ombudsmen, it has no jurisdiction over them.

The office is one of a number of integrity agencies at the national level. These include the Office of the Australian Information Commissioner and the Australian Human Rights Commission, as well as complaint-handling bodies such as the Administrative Appeals Tribunal.

Outcome structure

The Portfolio Budget Statements for 2010–11 defined one outcome for the office.

The outcome was:

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

This annual report describes our performance against this outcome.



Performance review

Chapter 3 Performance report

PERFORMANCE REPORT

This chapter summarises the office's performance based on the outcomes and outputs structure set out in the Portfolio Budget Statements and Portfolio Additional Estimates Statements 2010–11.

An overview of human resource and financial management for the office is provided in Chapter 4—*Management and accountability*. Further financial information is available in Appendix 5—*Consultancy services, advertising and market research*, Appendix 6—*Agency resource statement and resources for outcomes* and Appendix 7—*Financial statements*.

The following chapters give a more comprehensive view of our work:

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

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

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

Funding from other sources

The office receives funding from other sources for two functions.

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

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

Table 3.1: Summary of program objective and deliverable performance, 2010–11

Outcome 1: Fair and accountable administrative action by Australian Government agencies	
Objective: To continue the current high standards of timeliness and quality in complaint handling. The office will ensure that its response to new areas of complaints and the increase in approaches to the office, without allowing current turnaround times for responses to increase.	
Deliverable	Outcome
The number of complaints requiring long periods for resolution will decrease.	<p>The office maintained a high standard of complaint handling and through its quality assurance program has enhanced service delivery, with an overall increase in the number of complaints finalised.</p> <p>There was an overall increase in the period of time take to finalise complaints, a reflection of increased complaint volume and the number of complex and difficult complaints.</p>
Objective: To continue to deliver reports on the inspections functions (reporting on intrusive law enforcement powers such as telephone interception) within required time frames and at high quality, despite increasing use of these powers.	
Deliverable	Outcome
<p>Compliance with legal requirements by agencies in the use of intrusive law enforcement powers.</p> <p>Inspection reports will identify areas for improvement.</p>	Despite the increase in the use of intrusive powers by law enforcement agencies the office has maintained its high standards in delivering constructive and timely reports on its inspections of the records relating to the use of these powers.
Objective: To reduce the staff turnover rate and enhance staff training to ensure quality standards for complaint handling and records are maintained. The office will also ensure the continued timely and effective resolution of complaints through sound working relationships with Australian Government agencies.	
Deliverable	Outcome
<p>There will be improved public satisfaction with the quality of services provided by the office.</p> <p>The quality and timeliness of services of the office will improve through better front line service, clearer policies, more consistent processes, improved recording and better utilisation of staff skills.</p>	<p>Staff turnover rates remained consistent with the previous year, resulting in better returns on investments in recruitment, training and corporate knowledge of staff. Continued effort was focused on improving staff satisfaction and enhancing learning and development opportunities in support of sustaining quality standards in our complaint-handling and records practices.</p> <p>The office has engaged in regular liaison, meetings and training of agencies. Support has been enhanced through the greater use of fact sheets and guides, consultation and submissions.</p> <p>The office published its Work Practice Manual on 1 May on Ombudsman websites in accordance with new Freedom of Information requirements.</p> <p>The office continued efforts to improve public access to information about the office's services, with further development of the four Ombudsman websites and integration of online SmartForms.</p>

Outcome 1: Fair and accountable administrative action by Australian Government agencies

The office undertook key surveys that assessed the level of public awareness which included feedback from Australian and ACT Government agencies, Commonwealth Members and Senators, and ACT Members of the Legislative Assembly about our services. Although useful information was received from the first two surveys, very limited responses from elected members were received for the third survey. This information is being used to better target community information and efforts to improve stakeholder engagement, outreach and education activities.

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

Deliverable

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

Outcome

The office continued an active program of stakeholder engagement, outreach and education, both with agencies and more broadly with the community. We produced reports, submissions, presentations and commenced planning for the inaugural annual national conference to bring together a broad representation of agencies and stakeholders.

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

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

Deliverable

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

Outcome

The delivery of own motion reports, and submissions to parliamentary inquiries and other major reviews has continued our contribution to improved fair, transparent and accountable public administration. The 13 published reports included the following, which examined systemic administrative problems occurring across areas of government:

- Report 04/2011—*Centrelink: Right to review—having choices, making choices* identified 'systemic weaknesses' in Centrelink's review processes, including a lack of transparency and insufficient education about available options to customers, often leading to delays and inaction – and the complexity of Centrelink's review model contributes to administrative drift and breakdown.
- Report 13/2010—*Falling through the cracks—Centrelink, DEEWR and FaHSCIA: Engaging with customers with a mental illness in the social security system* examined the difficulties people with a mental illness have when they interact with our social security system, making several recommendations for improvements.

Outcome 1: Fair and accountable administrative action by Australian Government agencies

- Report 12/2010—*Australian Taxation Office: Resolving Tax File Number compromise* highlighted concerns about the way the Australian Tax Office handled complaints about compromised Tax File Numbers (TFNs).
- Report 10/2010—*FaHCSIA and Centrelink: Review rights for Income managed people in the Northern Territory* concerned an investigation into a failure to provide rights of review to the Social Security Appeals Tribunal (SSAT) and Administrative Appeals Tribunal (AAT) for individuals subject to Income Management as part of the intervention in the Northern Territory.
- The office engaged in numerous parliamentary inquiries and government agency reviews, providing submissions on a broad variety of policy and program matters, in particular to a series of discussion papers on Family Violence and Commonwealth Laws released by the Australian Law Reform Commission for comment.

The office also undertook surveys of Australian and ACT Government agencies, as well as Commonwealth Members of Parliament and Senators, and members of the ACT Legislative Assembly. Despite concerted efforts and an ongoing relationship with electorate officers in complaint handling, the survey of elected members elicited very limited responses. The results of these surveys will assist the office to better tailor its services and engagement with these important stakeholders.

PROGRAM KEY PERFORMANCE INDICATORS

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

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

The Office continues to undertake and produce investigation and own motion reports across a range of portfolios. Departments and agencies adopted the vast majority of Ombudsman report recommendations, leading to improvements in policy and program development, program delivery, as well as administrative and complaint-handling practices. The Office continued to contribute strongly to parliamentary and agency inquiries and review of programs, with many submissions made across a diverse range of policy and program areas.

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

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

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

In accordance with relevant Acts, the Ombudsman continues to oversight agencies that use intrusive law enforcement powers. The office produced inspection reports in 2010–11, that made recommendations to improve compliance in a number of areas, including accurate record keeping and securing appropriate authorisations. The office has complied with its reporting obligations to the Parliament.

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

Outcome 1

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

Our 2010–11 targets for this key performance indicator were:

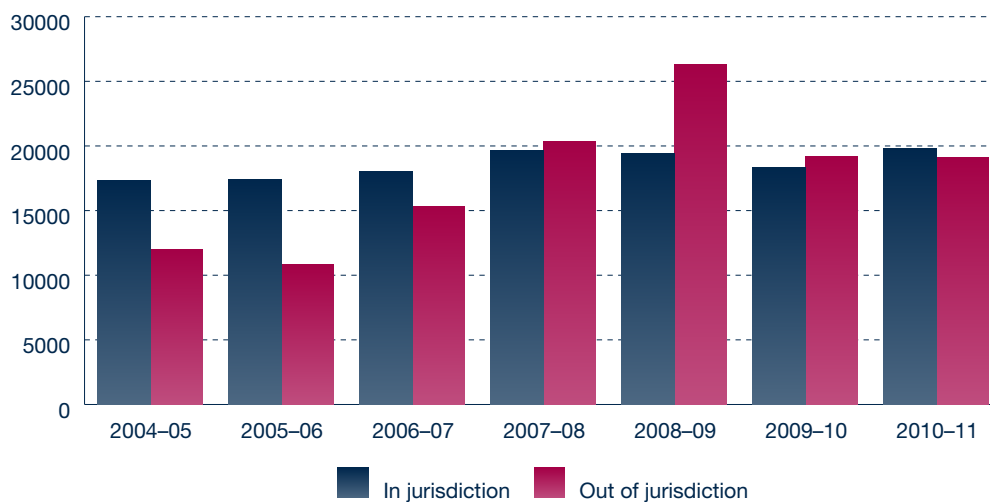
- efficiently close all approaches and complaints
- improvement in the achievement of our client service standards for all incoming approaches to the office and management of all complaints.

Approaches and complaints received

In 2010–11 we received 38,919 approaches and complaints, 3.9% more than in 2009–10. Of these, 19,821 were about agencies within the Ombudsman's jurisdiction, compared to 18,313 the previous year (a 2% increase as a proportion of those received – continuing a trend from the previous year of greater in-jurisdiction complaints). These are complaints for which the office is directly responsible to consider for investigation and possible remedy.

Consistent with the office's 'no-wrong door' policy, the Public Contact Team directed the balance of approaches or complaints back to the agency of complaint origin for review, or another appropriate agency or tribunal.

There was a further 2% decrease in the number of complaints about matters outside jurisdiction and requests for information, following a dramatic reduction of 27% in the previous year. The Ombudsman's office continues to promote its services and information about other Ombudsman and complaint-handling agencies, which is a potential factor in the continued reduction in out-of-jurisdiction enquiries. Figure 3.1 shows the trend in approaches and complaints over the past seven years.

Figure 3.1: Approach and complaint trends, 2004–05 to 2010–11**Table 3.2: Approaches and complaints, by method received, 2003–04 to 2010–11**

Year	Telephone	Written	In Person	Electronic	AFP	Total
2010–11	29,090	1,891	1,015	6,923		38,919
	75%	5%	3%	18%	0%	
2009–10	28,447	2,210	1,005	5,803	3	37,468
	76%	6%	3%	15%	0%	
2008–09	35,738	2,654	875	6,452	-	45,719
	78%	6%	2%	14%	0%	
2007–08	30,568	2,861	1,194	5,306	5	39,934
	77%	7%	3%	13%	0%	
2006–07	26,081	2,626	812	3,539	264	33,322
	78%	8%	2%	11%	1%	
2005–06	22,897	2,383	528	2,046	373	28,227
	81.1%	8.4%	1.9%	7.2%	1.3%	
2004–05	24,561	2,323	623	1,429	387	29,323
	84%	8%	2%	5%	1%	
2003–04	21,681	2,638	460	1,343	410	26,532
	81.7%	9.9%	1.7%	5.1%	1.5%	

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

- a need to gain access to agency records by a formal statutory notice
- the complexity or seriousness of the issue under investigation
- the nature of the allegations made by a complainant
- the time taken by an agency to respond to our requests for information
- the likely effect on other people of the issues raised by the complainant.

The number of complaints and approaches received electronically increased again in 2010–11. Over the past seven years, the percentage of approaches received electronically has increased from 5% to 18% of the total (up a further 3% in the past financial year), as Table 3.2 shows.

The office is working to further integrate the use of SmartForms with its complaint management system, so that complaint details are populated automatically, negating the need for double-handling. This will improve assessment times.

Of the 19,821 approaches and complaints received within the Ombudsman's jurisdiction, 16,250 (82%) were about eight agencies – Centrelink, Australia Post, Australian Taxation Office (ATO), Department of Immigration and Citizenship (DIAC), Child Support Agency (CSA), the Departments of Defence and Veteran Affairs (and associated agencies), Department of Education, Employment and Workplace Relations (DEEWR), and the Australian Federal Police.

Approaches and complaints finalised and investigated

We finalised 38,957 approaches and complaints, up from 37,434 the previous year. Of these, 19,903 were about agencies within the Ombudsman's jurisdiction (compared to 18,284 in 2010–10). We investigated 4,468 separate complaints compared to 4,489 in 2009–10 (22.4% of complaints finalised compared

to 25% in 2009–10). Of the complaints investigated, almost 21% required more substantial investigation, sometimes involving a high level of involvement by senior management and the use of formal powers (categories 4 and 5 in our five category classification system). This figure is comparable to the previous year.

Some agency error or deficiency was identified in 6% of complaints investigated, down from 10% last year. This followed an increase from 2007–08, generally reflecting revised internal procedures and training aimed at ensuring that we record all cases of administrative deficiency we identify. In the past some agency errors have not been recorded to avoid delays in finalising a case, but this in turn may deny agencies valuable feedback.

The most common type of deficiency noted in such cases was unreasonable delay (31% up from 20%), procedural deficiency (26% the same as last year), followed by unreasonable delay (20%), inadequate advice, explanation or reasons (15% up from 11%), flawed administrative process or systems (14% the same as last year), and human error (8% down marginally from 9%). The balance of deficiencies were very small in number, and included legal error, unreasonable action, resource limitations and Government policy.

Causes of complaint

The majority (72%) of complaint issues finalised were about the correctness, propriety or timeliness of agency decisions or actions, down from 77% in 2009–10. The remainder of the complaint issues involved other matters, such as the accuracy or completeness of advice given by agencies (17% up from 13%), the application of policy or legislation to the complainant's circumstances (3.75% up from 3%), the conduct of officers in agencies (5% up from 3%) or unfair legislation (2.5% up marginally from 2%).

Complaints carried forward

The number of complaints carried forward (past 30 June 2010) was 1,657 compared to 1,553 at 30 June 2010. This continued an increasing trend of cases being carried forward. A backlog will always exist as some complaints are received late in the reporting period, and some complaints are complex and take longer to investigate. In this instance the further overall increase in the number of complaints received during

the year may also have contributed to the increase in numbers being carried forward.

Analysis of achievement

Overall we received 3.9% more approaches and complaints in 2010–11 than in the previous year. There was an increase in percentage terms of the number of approaches and complaints about agencies received within jurisdiction, with more than 51% in-jurisdiction. This was the first time since 2006–07 that we received more in-jurisdiction than out-of-jurisdiction complaints. It was also the highest number of in-jurisdiction complaints we have ever received. (In-jurisdiction complaints are those that are directly the office's responsibility to investigate). There was only a very small decrease in the overall number of complaints investigated. As in previous years, around one fifth of cases require non-substantive investigation. Overall, we finalised 1,523 more cases in 2010–11 than the previous year. We met this objective.

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

Our 2010–11 targets for this objective were:

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

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

During 2010–11, all inspections and reports were completed according to statutory requirements. We carried out 33 inspections of 16 different agencies.

Detailed reporting on our monitoring and inspections work is contained in Chapter 5—*Agencies overview*.

Telecommunications records

Under the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the Ombudsman is

required to inspect the records of the AFP, the ACC and ACLEI to ensure telecommunications interception activities are in accordance with the provisions of the TIA Act. In 2010–11 we carried out two inspections each of the AFP and the ACC and one inspection of ACLEI.

The Ombudsman is also required under the TIA Act to inspect the records of these and other agencies that access stored communications (for example SMS messages), to ensure their activities are in accordance with the Act. In 2010–11 we carried out one inspection each of the Australian Customs and Border Protection Service (Customs), the AFP, the ACC, the Australian Securities and Investment Commission (ASIC), New South Wales Crime Commission, New South Wales Police, Northern Territory Police, Queensland Police, Crime and Misconduct Commission, South Australia Police, Tasmania Police, Victoria Police, Office of Police Integrity and the Western Australia Police.

The TIA Act requires the Ombudsman to report to the Attorney-General in writing before 30 September each year on the results of the inspection of each agency under telecommunication interception provisions and the stored communication access provisions during the preceding financial year. In accordance with this obligation, reports about telecommunications interceptions undertaken by the AFP, the ACC and ACLEI; and about access to stored communications by the AFP, ACC, Customs, ASIC and the 10 State and Territory law enforcement and anti-corruption agencies; were provided to the minister.

Surveillance devices

Under the *Surveillance Devices Act 2004* (SD Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI, and those state law enforcement agencies that have utilised powers under the SD Act, to ensure that the use of surveillance devices is in accordance with the Act. We carried out two inspections each of the records of the AFP and the ACC and one inspection of the Victoria Police (ACLEI advised that it had not used the provisions of the SD Act).

The SD Act requires the Ombudsman to report to the Attorney-General bi-annually on the results of the inspection of each agency. A report was provided to the Attorney-General in November 2010 in respect of inspections finalised in the period 1 January to 30 June

2010. The report was then tabled in the Parliament in March 2011 in accordance with our statutory obligation. A second report was provided to the Attorney-General in March 2011 in respect of finalised inspections in the period 1 July to 31 December 2010, which was tabled in the Parliament in May 2011.

Controlled operations

Under the *Crimes Act 1914* (Crimes Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure compliance with Part 1AB of the Crimes Act (outlining the provisions relating to controlled operations). In 2010–11 we inspected the controlled operations records of the AFP and the ACC twice (ACLEI advised that it did not use the provisions of Part 1AB of the Crimes Act). (A controlled operation is a covert operation carried out by law enforcement officers under the Crimes Act for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence.)

Part 1AB of the Crimes Act also requires the Ombudsman to report to the Minister for Home Affairs on the inspections carried out in the previous financial year. An annual report for 2009–10 was provided to the Minister in November 2010 and presented to the Parliament in March 2011.

Biosecurity

During 2010–11, we undertook a series of audits of the investigations conducted by the Compliance Branch, Biosecurity Services Group, Department of Agriculture, Fisheries and Forestry (DAFF) under the Ombudsman's own motion powers. Audits were conducted in the Brisbane, Melbourne, Adelaide, Perth and Sydney offices of the Compliance Branch. The Compliance Branch undertakes investigations of possible breaches of legislation administered by DAFF (for example, the *Quarantine Act 1908*), and provide briefs of evidence to the Commonwealth Director of Public Prosecutions to consider criminal prosecution in certain cases. There are no statutory obligations attached to this function.

Analysis of achievement

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

All recommendations were accepted in principle by all agencies in respect of our inspections.

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

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

Our office continues to focus efforts on improving staff satisfaction and enhancing options for learning and development activities in support of sustaining quality standards in our complaint-handling and records practices. Our turnover rate for 2010–11 was 20%, marginally down from that achieved in 2009–10 (20.5%) We continue to focus on training options, with a current suite of 11 training modules in place, designed specifically to develop core competency and skills in investigations, inspections, writing, administrative law, office practices and record keeping. In addition, through the 2010–11 Enterprise Agreement employees have been provided with a number of health initiatives to support their wellbeing in the workplace.

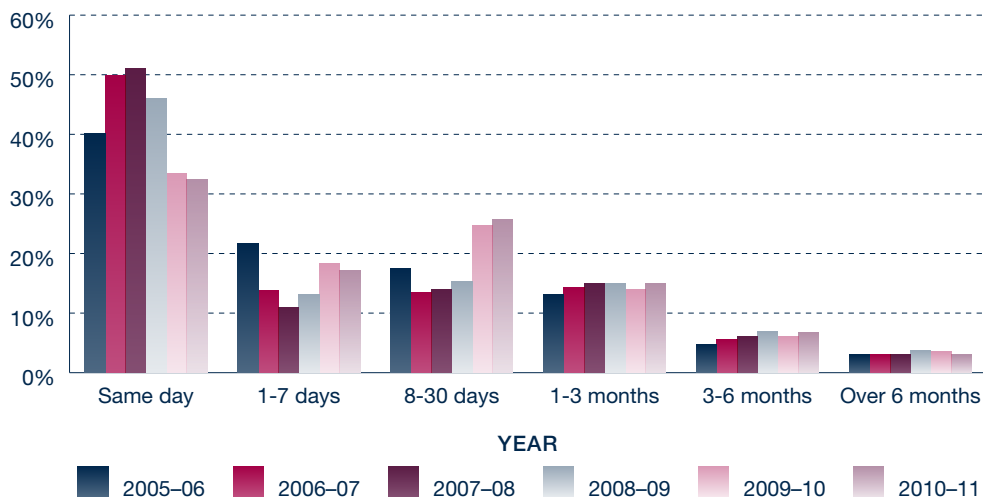
Our service charter outlines the service that complainants can expect from the office, ways to provide feedback and steps that can be taken if standards are not met. As discussed in more detail later in this chapter, we periodically undertake major surveys of clients to help gauge our effectiveness and identify areas for improvement. The most recent survey of complainants was undertaken at the end of 2007–08 and many of the findings have been incorporated into operational improvements in the subsequent years. At the time of reporting, planning had commenced for next complainant satisfaction survey. As reported last year, key bi-annual surveys were commissioned; they researched public awareness of the Ombudsman and the views of Commonwealth and ACT Government agencies. In addition a survey of the members of the Commonwealth House of Representatives and Senate, and members of the Legislative Assembly was underway at the time of reporting. Despite concert efforts and ongoing relationship with electorate officers in complaint handling, the survey of elected members elicited very limited responses. The results of these surveys will contribute to ongoing efforts to improve

our services and engagement with complainants and agencies.

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

In 2010–11, we finalised 75% of all approaches and complaints within one month of receipt, down from 77% in 2009–10. Figure 3.2 shows the time taken to finalise all approaches and complaints for the periods 2001–05 to 2010–11, reflecting increased complaint numbers.

Figure 3.2: Time taken to finalise all approaches and complaints, 2005–06 to 2010–11



In 2010–11, 20.5% of investigated complaints were finalised in one month (down from 24%) and 59.7% were finalised in three months (down from almost 64%). This compares with 23% and almost 63% respectively in 2008–09, reversing an improvement in

2009–10, a likely outcome of increased approaches and complaints. Table 3.3 shows some of the variation in the time it takes to finalise investigated complaints about different agencies.

Table 3.3: Time to finalise investigated issues for selected agencies, 2010–11 (2009–10)

Agency	Number investigated	% finalised within one month	% finalised within three months
Australia Post	871 (730)	19 (37)	87 (90)
ATO	708 (365)	10 (17)	47 (59)
Centrelink	1,269 (1,351)	44 (39)	79 (74)
CSA	751 (920)	30 (29)	68 (70)
Defence agencies	162 (213)	4 (5)	31 (53)
DEEWR	150 (186)	9 (7)	59 (51)
DIAC	373 (649)	4 (12)	40 (61)
AFP	104	0	60

There has been decline in timeliness for closing all approaches and complaints, and for all investigated complaints. We continue to review the way we deal with incoming approaches, in part to identify ways to improve our timeliness.

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

We recommended one or more remedies in more than 79% of the complaints investigated (compared to 71% for 2009–10, 74% in 2008–09, 75% in 2007–08, 67% in 2006–07, 54% in 2005–06 and around 68% in the previous two years). This represents the highest incidence of remedy outcomes for complainants in the past eight years. A breakdown of remedies is provided in Appendix 3—Statistics.

The most common remedy for complainants was an explanation of the circumstances by the Ombudsman's office (51%). Other remedies included a financial remedy (11.5%), an agency action being expedited (9.5%), an apology being offered by an agency (8%), an agency decision being changed or reconsidered (7%), an alternate financial remedy (6%) or disciplinary action (1.5%).

Chapter 6—*Helping people, improving government* provides explanation of the types of remedies achieved for individuals, and system remedies or identification of administrative deficiencies for agencies, during the year

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

The Ombudsman Act gives the office a range of discretionary powers to not investigate matters in particular circumstances. The most common reason for not investigating a complaint is that the person has not first raised the complaint with the agency involved. There are advantages for both the complainant and the agency if an issue is first raised at the source of the problem and an attempt made to resolve it before external intervention. In 2010–11 we advised the complainant to take the matter up with the relevant agency in the first instance in 51% of the matters within the Ombudsman's jurisdiction (51% in 2009–10).

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

Analysis of achievement

With a slight improvement in staff turnover rates, there was overall an improvement in the achievement of our client service standards for all incoming approaches to the office and management, although there has been a decrease in timeliness reflecting the increased complaint numbers.

Objective – Maintain sound working relationships with Australian Government agencies.

Our experience in preparing own motion investigation reports, and finalising individual complaint investigations, is that agencies generally accept the recommendations made. Of the 80 recommendations made in published reports during 2010–11, 90% were accepted in full and 9% in part. The remaining was not accepted or there was no formal response from the agency, often because of other work occurring in the agency, or because the recommendation required either joint action with another agency or a response from government. We now request updates or have incorporated collaborative action plans with agencies on the implementation of recommendations. The individual agency sections in Chapter 5—*Agencies overview* show many areas of public administration where our feedback and recommendations have resulted in improvements.

During the year, teams increased the level of stakeholder engagement – roundtable forums, case conferences, new advisory panels and forums with Police, Tax and Defence representatives – to improve understanding and collaboration. Initiatives such as trialling assisted-transfer of complaints to the Australian Tax Office is an example of efforts to improve complaint outcomes through partnerships with agencies.

Analysis of achievement

We met this objective.

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

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

As mentioned previously in this chapter, at the time of reporting, the results of two significant surveys in the 2010–11 year had been received; these explored public awareness of the roles and work of the Commonwealth Ombudsman and the results of our dealings with Commonwealth and ACT Government agencies. A analysis of the findings can be found in Chapter 1—*Ombudsman’s overview*.

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

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

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

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

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

At the time of reporting, planning was underway for the next complainant satisfaction survey.

The office also established a number of internal working groups, including on Social Inclusion, improving international communication, review of use of Administrative Deficiency and in particular one that explored ways to achieve better complaint-handling outcomes for the public. The working group identified a number of improvements including to: the operations of the Public Contact Team and information made available to the team in their frontline management of complaints; better information on the website; streamlining the use of SmartForms; integration of SmartForms with the office’s complaint management system, and more options for implementing assisted-transfer of complaints to agencies. At the time of reporting an interim report had been prepared for senior management.

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

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

In 2010–11 we received 251 requests for internal review, marginally more than in 2009–10 (236). We

declined to conduct a review in 36 cases for reasons including that the matter was out of jurisdiction, the matter had been reviewed already, the complainant did not provide any information that gave grounds for a review; or the complainant had not taken up our previous advice to raise the matter with the relevant agency in the first instance.

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

Complainant's reason for seeking review	Outcome Affirmed	Outcome Varied	Further Investigation	Review Withdrawn	Grand Total
Advice	1		3		4
Fail to Provide	1		1		2
Inadequate/Unclear			2		2
Decision/Action	187	3	23	11	224
Failed to Address Issue	46	1	5	2	54
Misunderstood Issue	7			1	8
Other	9	1	4	2	16
Wrong	125	1	14	6	146
Practice and Procedures	2				2
Unreasonable	2				2
Grand Total	190	3	26	11	230

We finalised 230 reviews during the year, with some carried over from 2009–10 (Table 3.4). Of the finalised reviews, the original outcome was affirmed in 190 reviews (82%). This was more than in 2009–10 (77%). The office decided to investigate or investigate further 26 reviews (22 in 2009–10) and to change its decision on the original complaint in three reviews (one in 2009–10). Eleven reviews were withdrawn by the complainant.

Of the 104 reviews finalised, 97% related to decisions or actions of the investigation officer, up from 88% in 2000–10. The main reasons expressed by complainants for seeking a review were that they believed the decision we made was wrong or that we failed to address or misunderstood the complaint issue.

A centralised team considers first whether a review should be undertaken, and then conducts the review if required. In some cases, discussion with the person

seeking a review may indicate that the person needs a clearer explanation of information we have already provided, or has misunderstood our role, and further investigation is not necessary.

One important factor we take into account in deciding whether we should investigate further is whether there is any reasonable prospect of getting a better outcome for a person. This helps ensure that the office's resources are directed to the areas of highest priority. If, as a result of a review, an investigation or further investigation is required, the review team allocates the complaint to a senior staff member who decides who should undertake the work.

Analysis of achievement

The survey results and the continuing high number of approaches to the office indicate there is a good degree of public satisfaction with the office. We

continue to review our processes and measures to further improve our services.

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

The Commonwealth Ombudsman continued to actively contribute to debates on key administrative law, accountability and integrity issues in government, making submissions to 8 parliamentary inquiries:

- Inquiry into Cybercrime Legislation Amendment Bill 2011
- Inquiry into the Public Service Amendment (Payments in Special Circumstances) Bill 2011
- Inquiry into the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011
- Inquiry into Biosecurity and Quarantine Arrangements
- Inquiry into the Education Services for Overseas Students Legislation Amendment Bill 2010
- Inquiry into the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010
- Inquiry into Caring for Older Australians
- Inquiry into the Reform of Australian Government Administration.

In addition the Ombudsman made submissions on the:

- Joint Select Committee on Australia's Immigration Detention Network
- SuperStream working group – Tax File Numbers and account consolidation
- Consultation on Victoria's Anti-Corruption Commission
- Response to the Australian Law Reform Commission Issues Paper 39 – Family Violence and Commonwealth Laws: Social Security
- Response to the Australian Law Reform Commission Issues Paper 38 – Family Violence and Commonwealth Laws: Child Support and Family Assistance
- Response to the Australian Law Reform Commission Issues Paper 36 – Family Violence

and Commonwealth Laws: Employment and Superannuation

- Consultation on Work Related Expenses – Propose Standard Deduction
- Consultation on Designing a New Tax Advisory Board
- Consultation on Exposure Draft for Stronger Super using Tax File Number
- ACT Public Sector Review
- Discussion paper on Reforms to the Lobbyist Code of Conduct and Register.

The Ombudsman released public reports on 13 own motion and major investigations in 2010–11. The reports related to a number of agencies, including the AFP, ACC, Australia Post, ATO, Centrelink, DAFF, CSA and DIAC. The Ombudsman also released inspection reports on Controlled operations and use of surveillance devices by law enforcement agencies, and Activities under Part V of the AFT Act. Further details on individual reports are contained in the relevant sections of Chapter 5—*Agencies overview*. Chapter 6—*Helping people, improving government* provides a list of the reports and outlines some of the different types of recommendations made in the reports.

In 2010–11 we continued to receive high numbers of requests to distribute a key better practice guide, first published in 2009 – the *Better practice guide to managing unreasonable complainant conduct*. This guide was prepared to assist staff in government agencies when dealing with the small proportion of complainants whose conduct is especially challenging.

Analysis of achievement

The breadth of our submissions, investigation and own motion reports, and publications highlights the importance placed on our contribution to improving public administration and how we met this objective.



Performance review

Chapter 4 Management and accountability

CORPORATE GOVERNANCE

Senior executive and responsibilities

Mr Ron Brent acted as Commonwealth Ombudsman from 8 March to 29 August 2010 after taking over from the departing Professor John McMillan AO, who was Ombudsman from March 2003.

Mr Allan Asher took up the role of Ombudsman from 30 August 2010. Mr Asher's appointment is for five years.

Ron Brent was Deputy Ombudsman from 1 October 2009 to 31 July 2010. Until Ms Alison Larkins filled the position from 17 March 2011 the following Senior Assistant Ombudsmen acted in the role:

- Mr George Masri – 1 August to 15 August 2010
- Ms Diane Merryfull – 16 August to 16 October 2010
- Mr Adam Stankevicius – 17 October to 17 December 2010 (and from 31 May to 24 June 2011)
- Mr George Masri – 20 December 2010 to 23 March 2011

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

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

At 30 June 2011, the office's senior management team and their areas of responsibility were:

- **Tracey Frey** – Senior Assistant Ombudsman; Chief Financial Officer

Organisational Support Services: Finance, Information Services, Public Contact, Public Affairs, Human Resources and Records Sentencing

- office support and corporate services comprising security, property, human resources, records management and governance

- financial operations, risk management and business planning
- work practices and procedures
- Public Contact Team, which provides a national point of contact for all approaches to the office made by telephone, email or online
- information technology and communications infrastructure
- public affairs and outreach, including management of the office's intranet and internet sites

- **Peter Edwards** – Acting Senior Assistant Ombudsman

Postal Industry and State Offices

- specialised advice and complaint handling relating to Australia Post and registered postal operators of the Postal Industry Ombudsman scheme
- specialised advice and complaint handling relating to more than 40 Australian Government agencies with low complaint numbers
- management and oversight of our State offices in Adelaide, Brisbane, Melbourne, Perth and Sydney – all of which handle complaints and undertake specialist work.

- **George Masri** – Senior Assistant Ombudsman

Social Support, Child Support Agency, Indigenous and Overseas Students

- specialised advice and complaint handling relating to the Department of Human Services and relevant policy departments (which includes Centrelink, Child Support Agency and Medicare)
- the office's Indigenous Unit, with staff located in Canberra and Darwin, specialising in issues involving Indigenous people



(From left) George Masri, Ombudsman Allan Asher, Tracey Frey, Adam Stankevicius, Deputy Ombudsman Alison Larkins, Helen Fleming, Peter Edwards (inset)

- development of a new Ombudsman function to provide a complaints avenue for overseas students of private education and training providers.
- **Helen Fleming** – Senior Assistant Ombudsman
ACT, Immigration, Detention Review and Legal
 - complaint handling relating to the ACT Ombudsman function
 - specialised advice and complaint handling relating to the Department of Immigration and Citizenship
 - review cases of detainees who have been held in immigration detention for six months or more
 - in-house legal advice and policy service to support staff in performing their functions.
- **Adam Stankevicius** – Senior Assistant Ombudsman
Defence, Inspections, Law Enforcement, Taxation, Public Interest Disclosure and International

- specialised advice and complaint handling relating to the Australian Defence Force, the Department of Defence, Defence Housing Australia and the Department of Veterans' Affairs
- complaint handling and investigating law enforcement activities relating to Australian Government law enforcement agencies
- inspect the records of enforcement agencies for statutory compliance, adequacy and comprehensiveness
- specialised advice and complaint handling relating to the Australian Taxation Office.
- management of the office's International Program and related AusAID projects.

Corporate planning and review

In 2011–12 the office will continue to:

- work with key stakeholders to address issues and trends identified through our complaint investigations

- provide and promote accessible ways for people to complain or seek redress;
- investigate complaints impartially and effectively
- carry out statutory oversight and conduct compliance activities
- partner for and promote good administration.

The strategic priorities for the office in the coming year include:

- social inclusion, including ensuring access to complaint handling for particularly vulnerable people
- improving agency communication through use of plain language and simple explanations
- assisting agencies to improve their complaint-handling processes
- integrity and corruption prevention.

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

The senior management team considers reports on finance, human resources, operations and information technology on a monthly basis. Business plan reporting and ongoing risk assessment was conducted on a quarterly basis throughout the year.

Management committees

Management committees are set up to assist the Executive and Senior Management team with decision making in key areas. The committees make recommendations to the Senior Management Board, which meet fortnightly.

Senior Management Board

The Senior Management Board which comprises the Ombudsman, Deputy Ombudsman, Senior Assistant Ombudsman, Executive Officer to the Ombudsman and Director of Public Affairs, or their representatives, meet fortnightly to discuss a broad range of issues relating to the work of the office.

Information Management Committee

The Information Management Committee ensures that the development of the information communication technology, work practices and governance align with a whole-of-office approach to information management. The committee also provides strategic guidance to information management and technology investment decisions. It meets every two months and is chaired by the Senior Assistant Ombudsman (Organisational Support Services) and has representatives from relevant areas in the office, including the State offices and specialist investigation areas. It met three times in 2010–11.

Internal Audit Committee

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

At 30 June 2011 the Audit Committee is chaired by the Deputy Ombudsman. In addition to the chair, membership comprises three Senior Executive Service officers and two external independent members. Observers include representatives from the Australian National Audit Office (ANAO), PricewaterhouseCoopers (the office's internal auditors) and the Chief Financial Officer.

During 2010–11 PricewaterhouseCoopers conducted three internal audits. The office is implementing the recommendations from the audits and the Audit Committee monitors progress against each action item at its meetings.

Occupational Health and Safety Committee

The office's Occupational Health and Safety (OH&S) Committee is made up of elected representatives from each state office and is chaired by the Manager, Human Resources who represents management.

Workplace Relations Committee

A Deputy Ombudsman chairs the Workplace Relations Committee. It comprises employee, management and union representatives, and is the main consultative body on workplace conditions within the office.

The committee met five times during the year and considered matters such as staff survey action items, recruitment and selection guidelines, learning and development, accommodation and environmental management.

A separate negotiation committee was established comprising union, staff and management representatives, for the purposes of negotiating the new Enterprise Agreement.

Corporate governance practices

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

During 2010–11, the office conducted risk management information sessions for staff in Brisbane and Adelaide to discuss the office's strategic risks.

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

Business continuity planning

The purpose of our Business Continuity Plan is to ensure that the most critical work of the office can continue with minimal disruption, or be quickly resumed, in the event of a disaster. The plan utilises the strengths of a national office structure to respond to a potential problem with one or more of the office's seven sites. We successfully activated the plan during the Brisbane floods and have reviewed lessons learned from this experience as a consequence.

Fraud prevention and control

The office regularly reports against its fraud control plan and fraud risk assessment. The risk of fraud remains low for the office. The Internal Audit Committee oversees the implementation of the fraud control plan.

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



Allan Asher
Commonwealth Ombudsman

Ethical standards

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

Complaint management

As reported in the previous annual report, the office established an internal complaint and review process, which allows complaints about the office's decisions and service quality to be resolved quickly, fairly and informally. During this reporting period, we commenced a process to again evaluate our practices against our Better Practice Guide to Complaint Handling and national standards on complaint-handling, with a view to identifying further improvements in the way we accept and monitor complaints in our service delivery. This work was ongoing at the time of reporting. The office's

complaints and grievances mechanism is set out in our service charter and detailed reporting is provided in Chapter 3—*Performance report*.

Service provider

In developing and maintaining our web presence, we endeavour to adhere to the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0, to Level AA. Relevant activities have included testing colour contrast for the vision impaired, simplifying navigation, separating document formatting from content with style sheets, providing text equivalents for non-text elements, and improving metadata.

Improving accessibility of web content is a journey not a destination. As we continue to develop our website and foray into the use of hosted platforms such as Twitter, YouTube and Facebook, we remain committed to maintaining a focus on web content accessibility while balancing this issue with real world practicalities.

Environmental matters

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

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

The Ombudsmen office's estimated energy consumption per person per year increased by 6.3% from 2008–09 to 2009–10. This followed a decrease of 2.7% in the previous year. Data for 2010–11 was not available at the time of preparation of this report.

All our offices are shared with other tenants. When an office needs to move location, one factor we try to take into account in selecting a new location is the environmental credentials of alternative locations.

EXTERNAL SCRUTINY

Privacy

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

Tribunal litigation

The office was the Respondent in the Administrative Appeals Tribunal in one matter. The Tribunal dismissed the application at hearing after deciding that it had no jurisdiction to hear the application.

Reports to the Auditor-General and Parliamentary committee enquiries

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

PEOPLE MANAGEMENT

Human resources

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

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

- Australian Public Service Commission 'State of the Service' Report 2009–10
- the recommendations in 'Ahead of the Game: Blueprint for Reform of Australian Government Administration'.

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

Workplace relations

The Office of the Commonwealth Ombudsman Enterprise Agreement reached its nominal expiry on 30 June 2011.

The Enterprise Agreement focused on people, remuneration and employment arrangements, working environment and lifestyle, learning and development and performance management and improvement.

A total of 175 employees were covered under the Enterprise Agreement. Conditions are provided for the office's five Senior Executive Service (SES) staff under s.24(1) of the *Public Service Act 1999*. No staff were employed under Australian workplace agreements or common law contracts.

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

(A new Enterprise Agreement became effective as of 27 July 2011. It will reach its nominal expiry date on 30 June 2014.)

Staffing profile

At 30 June 2011 the actual number of employees was 182, including the Ombudsman and a Deputy Ombudsman. Full-time employees numbered 155 with 27 employees (17.4% of employees) part-time, and

of these, 24 were ongoing. The full-time equivalent number of employees for the year was 173.63.

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

During the year, 54 employees were engaged on an ongoing basis and 38 ongoing employees left the office, equating to a turnover rate of 20% (compared to 20.5% in the previous year). There were 48 separations including ongoing and non-ongoing employees.

TABLE 4.1: Staffing profile by level, gender and salary range at 30 June 2011

	At 30 June 2011 (at 30 June 2010)					
APS classification and salary range	Men		Women		Total	
	Ongoing	Non-ongoing	Ongoing	Non-ongoing	Ongoing	Non-ongoing
APS1 \$39,621 - \$43,794	-	-	-	-	- (-)	- (-)
APS2 \$44,841 - \$49,725	-	-	2	1	2 (-)	1 (-)
APS3 \$51,076 - \$55,127	-	-	2	1	2 (2)	1 (-)
APS4 \$56,925 - \$61,806	12	1	22	-	34 (25)	1 (2)
APS5 \$63,491 - \$67,325	7	2	17	1	24 (24)	3 (1)
APS6 \$68,576 - \$79,136	15	2	25	-	40 (35)	2 (1)
EL1 \$87,910 - \$109,723	16	-	30	-	46 (40)	- (1)
EL2 \$101,394 - \$118,529	6	-	13	-	19 (19)	- (-)
SES \$164,622 - \$168,987	2	-	3	-	5 (5)	- (-)
Statutory officers	1	-	1	-	2 (4)	- (-)
TOTAL	59	5	115	3	174 (154)	8 (5)

Note: under the enterprise agreement, employees moving to the office from a higher salary range may be maintained at that salary until increments in the Ombudsman's office salary range exceed the salary differential.

Note: 'EL' is 'Executive Level'.

TABLE 4.2: Staffing profile by location at 30 June 2011

Location	Men	Women	Total
ACT	49	86	135
NSW	2	10	12
NT	-	-	-
QLD	3	9	12
SA	3	4	7
TAS	-	-	-
VIC	5	8	13
WA	2	1	3
TOTAL	64	118	182

TABLE 4.3: Staffing profile showing part-time employees by location at 30 June 2011

Location	Men	Women	Total
ACT	3	18	21
NSW	-	2	2
NT	-	-	-
QLD	-	2	2
SA	-	1	1
TAS	-	-	-
VIC	-	1	1
WA	-	-	-
TOTAL	3	24	27

TABLE 4.4: Staffing profile showing part-time employees by classification at 30 June 2011

Classification	Men	Women	Total
APS1	-	-	-
APS2	-	-	-
APS3	-	2	2
APS4	-	3	3
APS5	-	6	6
APS6	1	4	5
EL1	2	5	7
EL2	-	4	4
SES	-	-	-
TOTAL	3	24	27

TABLE 4.5: Staffing profile showing staff separations by classification at 30 June 2011

Classification	Ongoing	Non-ongoing	Total
APS1	-	-	-
APS2	-	1	1
APS3	-	-	-
APS4	5	3	8
APS5	5	2	7
APS6	11	-	11
EL1	10	3	13
EL2	4	1	5
SES	1	-	1
Statutory Office Holders	2	-	2
TOTAL	38	10	48

Career development and training

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

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

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

An electronic scheduling system identifies learning and development opportunities, provides online booking facilities and records the training history for each employee.

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

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

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

In line with the new enterprise agreement, the next financial year will see a focus on learning and development strategies. A new learning and development framework will be developed to enhance employees' performance and skill levels.

Occupational health and safety

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

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

Occupational health and safety committee and representatives

A health and safety representative is located at each office site. The representatives manage OH&S matters either through the OH&S Committee, regular staff meetings or by seeking assistance from the OH&S officer.

Health and safety initiatives

During 2010–11 the office:

- arranged health assessments, where necessary
- conducted individual workplace assessments
- facilitated eye examinations, where necessary
- made first aid facilities and supplies available, and provided first aid training to First Aid Officers (refresher and senior first aid for new officers)
- provided OH&S training to representatives
- conducted regular simulated fire evacuations
- targeted individual health awareness through health management initiatives such as providing flu vaccinations to employees free-of-charge and holding trauma workshops.

The current enterprise agreement includes a 'lifestyle contribution' allowance. This is available to all staff as a reimbursement for health-related lifestyle expenses. Flu vaccinations are also provided for under the current enterprise agreement.

Harassment and bullying awareness workshops are being provided in the future for all staff.

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

These measures contribute to the maintenance of the very low rate of accidents and compensable injuries in the workplace.

FINANCIAL MANAGEMENT

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

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

The most significant items that had an impact on the office's financial results this year were the change in appropriation funding for depreciation expense, the revaluation of the property, plant and equipment assets and the recognition of the Department of Climate Change taking over the office's old Canberra accommodation.

Financial performance

The surplus of \$0.266 million for the year ending 30 June 2011 compared to the \$1.120 million deficit in 2009–10 is due to a 7% increase in revenue.

Total expenses for the office of \$21.400 million were comparable to the previous year. Reduced staff costs were offset by the write-down of the assets associated with the previous Canberra office space.

Appropriation revenue in 2010–11 was \$19.516 million, \$0.721 million greater than in 2009–10. This was due to the office receiving funding for the overseas students, Christmas Island and public interest disclosure oversight measures.

Financial position

The office's total equity has increased by \$1.559 million due mainly to the departmental capital budget injection (\$0.797 million) and the revaluation of fixed assets (\$0.491 million).

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

The office's total assets increased to \$10.933 million in 2010–11 from \$9.884 million in 2009–10. The office's assets by category at 30 June 2011 were:

- receivables (amounts due to be paid to the office – 62% of total assets)
- property, plant and equipment (27%)
- other financial assets (relating to lease incentives – 4%)
- intangibles (non-physical assets such as software – 3%)
- cash (2%)
- other non-financial assets (relating to prepayments – 2%).

The balance sheet shows cash holdings of \$0.213 million (\$0.368 million in 2009–10). The office's appropriation receivable increased by \$2.262 million, from \$4.535 million in 2009–10 to \$6.797 million in 2010–11.

The office's non-financial assets decreased by \$0.134 million to \$3.532 million in 2010–11 (\$3.666 million in 2009–10), primarily due to the disposal of furniture and fit-out pertaining to the old Canberra accommodation.

Total liabilities decreased by \$0.510 million to \$7.111 million in 2010–11 (\$7.621 million in 2009–10). The change in liabilities was primarily due to the removal of the restoration provision for the old Canberra accommodation and a decrease in unearned revenue.

Procurement and grants

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

The office published its Annual Procurement Plan on the AusTender website (as required under the Commonwealth Procurement Guidelines) to facilitate early procurement planning and to draw to the attention of businesses our planned procurement for the 2010–11 financial year.

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

During 2010–11 the office entered into seven new consultancy contracts involving total actual expenditure of \$185,691 (inclusive of GST). See Appendix 5—*Consultancy services, advertising and market research* for details of new consultancy contracts.

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

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

TABLE 4.6: Expenditure on consultancy contracts, 2008–09 to 2010–11

Year	Number of consultancy contracts	Total actual expenditure
2008–09	6	\$236,295
2009–10	4	\$154,400
2010–11	7	\$185,691

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

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

The office did not administer any grant programs during 2010–11.

Information Communication Technology (ICT)

In 2010–11 we continued to improve our use and management of ICT to support the performance of Commonwealth Ombudsman functions. We are mindful of the increasing reliance on information technology for both internal purposes and as a form of communication with the public.

The majority of ICT services including service desk are delivered in-house. Corporate application support is provided for Resolve (complaint handling) and Objective (document record management). External service providers are used to manage Wide Area Network, Secure Internet Gateway services. Inter-agency arrangements are in place for provision of HR systems.

ICT governance, work practices and system changes are continuously reviewed as part of our information management practices. The aim is to deliver improved timeliness, efficiency and effectiveness in systems and tools to support the agency in managing complaints, conducting inspections and generating reports.

Completed projects during 2010–11 include:

- Desktop and Laptop replacement, including implementation of Microsoft Windows 7 and Microsoft Office 2010.
- Server environment improvements, including hardware upgrades, rollout of Microsoft Windows Server 2008, and virtualisation in the state offices
- Replacement of the office's call management system with QMaster, and the replacement of the Canberra and Sydney PABX systems.
- Improvements in the storage of sensitive information both physically and electronically.
- Implementation of additional functionality to support the new Overseas Student Ombudsman role
- Recording and tracking of public events for comparison against the volume of related complaints.

ICT security is being improved to give better information protection, along with enhancing interoperability with other agencies. We are looking into improvements to work practices and IT systems that will assist in the reporting and monitoring of issues of interest and automating the transfer of complaints to other agencies. Additionally, we will expand our project management capability to enhance project performance and benefits realisation.

The Ombudsman at work

Chapter 5 Agencies overview

AGENCIES OVERVIEW

Most of the approaches and complaints received by the Ombudsman's office within its jurisdiction (51%) related to the following individual Australian Government agencies:

1. Centrelink (4954)
2. Australia Post (3123)
3. Australian Taxation Office (2589)
4. Department of Immigration and Citizenship (2137)
5. Child Support Agency (2121)
6. ACT Government (742)¹
7. Defence agencies (638)
8. Department of Education, Employment and Workplace Relations (481)
9. Australian Federal Police (207)
10. Overseas Students Ombudsman (95).

A further 2734 complaints and approaches were received about other Australian Government agencies.

Figure 5.1 represents the above figures in percentage terms.

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

broader issues during 2010–11. It also discusses the monitoring and inspection work we undertake and the way agencies deal with freedom of information requests.

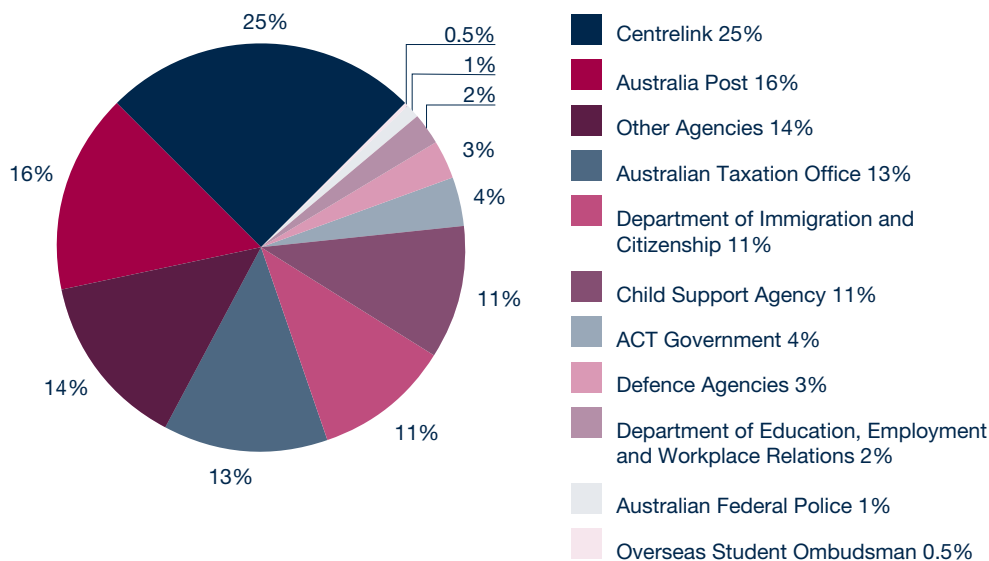
The chapter is divided into seven sections dealing with the Ombudsman's jurisdictions at the Commonwealth level. Jurisdictional feature pages that look at how the Ombudsman's office engages with stakeholders appear throughout this report.

These jurisdictions are:

- Commonwealth Ombudsman
- Defence Force Ombudsman
- Immigration Ombudsman
- Law Enforcement Ombudsman
- Overseas Students Ombudsman
- Postal Industry Ombudsman
- Taxation Ombudsman.

More detailed information by portfolio and agency is provided in Appendix 3—*Statistics*.

Figure 5.1: Proportion of approaches and complaints received within jurisdiction 2010–11



¹ Figures that relate to the ACT Ombudsman jurisdiction have been included in this annual report to provide an indication of workflow. A separate ACT Ombudsman Annual Report has also been prepared for the ACT Parliament.



AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

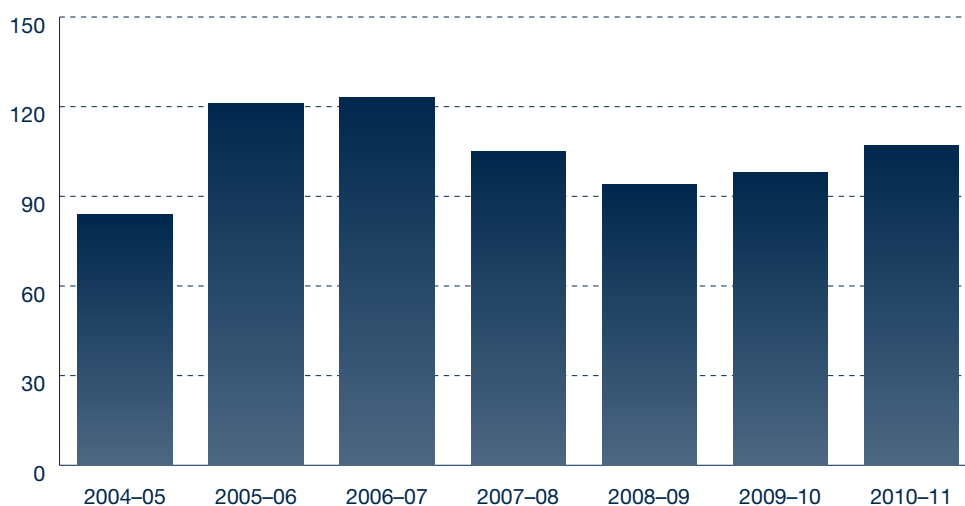
Overview

The Australian Customs and Border Protection Service (Customs and Border Protection) regulates the security and integrity of Australia's borders. This year our work has focused on:

- the publication of an own motion report into the use of coercive powers in passenger processing
- the investigation of individual complaints
- scrutiny of and liaison regarding the implementation of new passenger screening legislation.

The Commonwealth Ombudsman received 107 approaches and complaints about Customs and Border Protection this financial year. This was a slight increase on the 2009–10 financial year, in which we received 99 complaints. There was a decrease in passenger processing complaints from last year.

Figure 5.2: Customs and Border Protection approach and complaint trends 2004–5 to 2010–11



Complaint themes

Our office receives complaints about a diverse range of issues in this area, the most common themes this year being the importation of goods (relating to seizure decisions in particular), complaint handling issues and the exercise of Customs and Border Protection's powers in the processing of international air passengers.

Related to this focus on passenger processing, we have noted significant media interest in the proposed introduction of new screening technologies and processes affecting international air passengers. We expect this to be an area of continued public interest and possible complaint to our office, and will monitor this in the year ahead.

Customs and Border Protection has a robust complaints system and is currently reviewing that system for airports, following the identification of gaps in that system within the airport environment. Our investigation of a complaint finalised this year provided insight into some of the aspects of complaint handling at airports that need improvement. In that busy and often pressured environment, where strong powers are exercised, it is important that complaints are encouraged and properly handled. The gaps we identified related to the translation between good complaints processes that work in an office environment to the airport, the use of ad hoc measures to fill the gap and the lack of visibility of complaints mechanisms.

Systemic issues

Our investigation into the exercise of Customs and Border Protection's coercive powers identified issues with the information provided to people whose possessions Customs retains to check whether they are prohibited. Typically complaints about this have related to the retention of mobile phones, laptops and other electronic storage devices, which require forensic examination by Customs before a seizure decision can be made. Changes are currently being implemented by Customs and Border Protection to address issues to do with the adequacy of information provided to the person and timeliness of return (if the item is not seized). Complaints to our office since the own motion investigation have not indicated that this continues to be a prevalent issue – we will continue

to monitor the situation to determine whether further action is required.

Cross-agency issues

Legal processes involving the movement of people and goods across the border are complex and involve multiple government agencies. Staff of the Ombudsman's office visited Christmas Island this year, where Commonwealth Government agencies involved in the interception, transfer and processing of asylum seekers include Customs and Border Protection and the multi-agency authority Border Protection Command (comprising officers from both Customs and Border Protection and the Department of Defence), the Department of Immigration and Citizenship and the Australian Federal Police.

A complaint to our office highlighted this complexity when something as simple as the receipting of property is involved. A complainant's wallet, which it is alleged had contained currency, was handled by officers from a number of agencies and various levels of responsibility before the complainant realised the money was missing, making it difficult to track it down.

Cross-agency issues also arise at the airports, where the Department of Immigration and Citizenship, the Australian Quarantine and Inspection Service, the Australian Federal Police, and Customs and Border Protection all operate. The same is true of the processing of inbound international mail, where Australia Post and Customs and Border Protection functions cross over.

Feedback from agencies indicates that they have taken steps to address the level of confusion for people, although from the perspective of complainants to our office it is often difficult to know who is responsible and who to complain to when something goes wrong.

Reports or submissions released Looking ahead

In December 2010 the Commonwealth Ombudsman released an own motion report on the administration of coercive powers in passenger processing. The report was well received by Customs and Border Protection and most of the recommendations made were accepted. The purpose of the report was to provide external scrutiny of the use of strong coercive powers (for example to question, examine baggage, copy documents and retain possessions for further examination) and to ensure proper checks and balances are in place.

Our recommendations were substantially implemented by the end of the financial year. The outcomes of that process can be seen in improvements to internal training, policies and procedures used by officers exercising strong coercive powers in the processing of international air passengers. We will continue to monitor complaints and liaise with Customs and Border Protection to assess the outcomes of the own motion report and any further areas for improvement.

Update from last year

In the 2009–10 annual report we referred to our own motion report (see previous section), which has now been released and the recommendations largely implemented.

Stakeholder engagement, outreach and education activities

This year we engaged in numerous liaison activities, for example with Border Protection Command regarding its role in the interception and transfer of asylum seekers on Christmas Island. Recent liaison activities have concerned the new airport screening processes relating to internal examination of travellers suspected of internally concealing prohibited substances. We have developed our role as a resource for Customs and Border Protection in the introduction of new processes to support change in the airport environment, and presented to the Enforcement & Investigations Division to highlight and explain our role.

Passenger screening will be a priority for the year ahead. In particular we will liaise with Customs and Border Protection regarding the trial of new screening technology and the development of policies and procedures around that. We will monitor passenger complaints and media on this topic and assess the need for further scrutiny by our office as 2011–12 progresses.

As we see it, a challenge for Customs and Border Protection in the year ahead will be to: ensure that complaints are seen as a valuable source of intelligence that can lead to better outcomes for individuals; improve public perceptions; and make overall improvements in administration. Customs and Border Protection should be able to look at issues arising from complaints, even in difficult cases, to give complainants the best response it can.

We will be monitoring the way that Customs and Border Protection deals with and responds to complaints, and assess the need for further action on this issue. One priority will be appropriateness of responses to complaints, in terms of the remedies offered, level of explanation provided and plain language expression used.

We will continue to:

- investigate individual complaints to ensure that members of the public are able to have their concerns addressed
- raise complaint issues with Customs and Border Protection to ensure that information that can be used as impetus for improvement is not missed
- be a resource for Customs and Border Protection in developing new policies and procedures that represent best practice in administration.

CENTRELINK

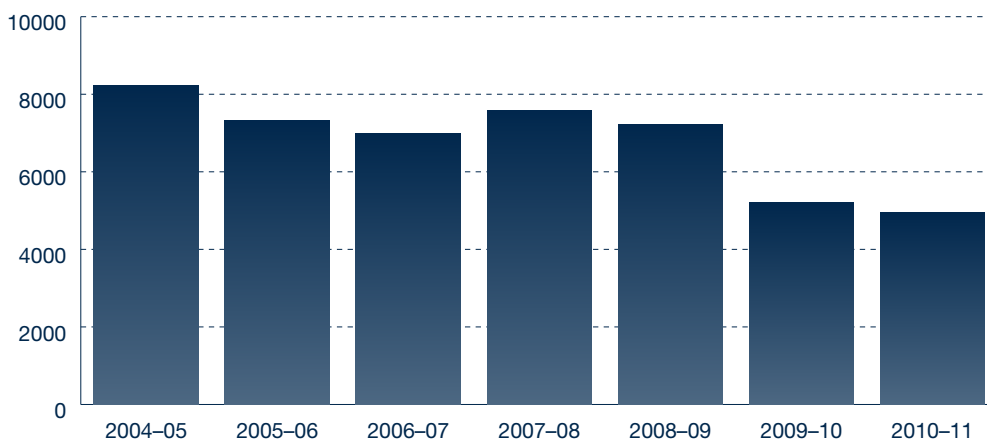
Overview

In 2010–11 the Ombudsman’s office received 4,954 approaches and complaints about Centrelink compared to 5,199 in 2009–10. This represents a 4.7% decrease over the previous year and is the lowest number in 11 years. The figure also includes 50 approaches relating to ‘Closing the Gap in the Northern Territory’ initiatives. Despite the decrease, Centrelink remains the agency about which the Ombudsman receives the highest number of complaints. This outcome is not unexpected given the volume, complexity and diversity of Centrelink’s workload. Figure 5.3 shows the trend in approaches and complaints over the past seven years. Although a number of factors may have contributed to the downward trend in Centrelink complaints, the absence of any bonus payments or significant new initiatives in 2010–11 appears to have contributed to the continued reduction.

During 2010–11 the office investigated 1098, or approximately 22.4%, of the 4,910 approaches closed during the period. Consistent with previous years, the payments most commonly complained about in 2010–11 were Disability Support Pension, Newstart Allowance, Age Pension, Family Tax Benefit and Youth Allowance. The most common complaint reasons were problems with claims for payment, debt raising and recovery, delays, and suspension or cancellation of payments.

Centrelink’s programs impact upon some of the most marginalised members of the Australian community, so the need for Centrelink to be accessible, transparent and accountable in the delivery of payments and services has been a particular focus for the Ombudsman this year. The case study below provides an example of the types of difficulties vulnerable customers can experience and how greater flexibility can ensure a better outcome.

Figure 5.3: Centrelink approach and complaint trends 2004–5 to 2010–11



Debt raising

We received a complaint from Mrs A on behalf of her son Mr A, that Centrelink had raised a debt against him for overpayment of Youth Allowance. Mrs A told us that Mr A had a medical condition which made it difficult for him to communicate with Centrelink without assistance. She said that the condition had prevented Mr A from continuing with his studies and had resulted in the debt being raised against him. Mrs A stated she had contacted Centrelink when Mr A ceased studying but Centrelink did not cancel his Youth Allowance.

We asked Centrelink to reconsider the decision to raise the debt and the Authorised Review Officer to consider if all or part of the debt could be waived in special circumstances. We highlighted Mr A's likely eligibility for another payment instead of Youth Allowance during the debt period, his lack of awareness of the overpayment, the difficulties he had managing his affairs and Centrelink's error in failing to cancel the Youth Allowance payment. The Authorised Review Officer acted quickly to waive recovery of the debt in full and initiated a compensation claim under the Compensation for Detriment caused by Deficient Administration scheme for a possible underpayment of a more favourable benefit.

Complaint themes

Quality of advice

The Ombudsman's office has received many complaints from members of the public who complain that Centrelink has not provided them with correct and complete advice about their possible entitlement to social security programs and payments.

The social security program is complex and in navigating the system, members of the public rely on Centrelink staff to provide accurate and timely advice about their entitlements to social security at various times of life. The following case study highlights the importance of staff awareness and training in the social security system as well as the consequences of not providing a customer with complete advice about their entitlements.

Providing complex information to customers

Mr B complained to this office that his wife, Mrs B, had not been informed of the pension bonus scheme (PBS) when she asked Centrelink for information about age pension in 2004. As a result, Mrs B claimed Age Pension and between 2004 and 2007 received less than she would have if registered for the Pension Bonus Scheme. Centrelink then declined to pay compensation under the Compensation for Detriment caused by Deficient Administration (CDDA) scheme. This office investigated and identified that Mrs B had been incorrectly permitted to lodge an abridged version of the Age Pension claim form, which did not include information about the Pension Bonus Scheme. We recommended to Centrelink that the CDDA decision be reconsidered as proper procedures had not been followed. The CDDA reconsideration resulted in compensation being paid to Mrs B.

Systemic issues

Over the years, the Ombudsman's office has received complaints that involve 'computer system errors' and/or 'technical glitches' that have impacted on a customer's payment. The complaints have demonstrated the frustration and delays customer's experience in having such problems rectified. In some

cases, the Ombudsman's office has observed that Centrelink will put in place manual work-arounds until system reform can be carried out. This can result in the potential for error, accidents and omissions which can be difficult for both Centrelink and the customer to identify.

Computer system errors

Mrs C approached this office as her husband, Mr C, was having difficulty reporting his fortnightly employment income to Centrelink in relation to his Newstart allowance and Mrs C's Age Pension. Centrelink required Mr C to contact them by telephone or in person to report even though his preferred method of reporting was online. Due to a systems problem, the calculation of the Age Pension rate paid to Mrs C to reflect the work bonus rules needed to be done manually by a Centrelink officer. Following investigation by this office Centrelink implemented a manual system in which two Centrelink officers were notified by reminder email to manually process the income information each fortnight and Mr C could resume reporting the information online. We remained concerned that this arrangement was open to human error and other Centrelink customers may be in a similar situation.

Following further investigation we were informed by Centrelink that the problem arose from an error in its pension computer system. Centrelink identified approximately 1,800 affected customers and, in May 2011, it identified that around 800 had been underpaid. In June 2011 Centrelink implemented a system fix and paid arrears to approximately 800 customers whose entitlements had been under-paid.

Internal Centrelink reviews

Complaints about Centrelink review processes are regularly received by the office. As discussed below, an own motion investigation and report was released on this issue earlier this year and Centrelink is trialling a new internal review framework which aims to address some of the issues raised in the report such as timely access to review.

Debt raising and recovery

Debt has continued to be a common issue of complaint to our office in 2010–11. In particular, we have received a number of complaints from customers who believe that Centrelink has raised a debt against them on the basis of incorrect information and without giving them an opportunity to correct the information. We have also received many complaints about Centrelink's debt recovery methods, including automatic referrals to private collection agents and initiation of garnishees¹ and legal action even while a repayment arrangement is being adhered to. These issues may be explored in more detail in 2011–12.

Systemic issues

The office also pursues systemic issues in addition to the investigation of individual complaints about Centrelink services and payments. Systemic issues this year included the following matters:

Australian Government Disaster Recovery Payment

Earlier this year, the Australian Government activated the Australian Government Disaster Recovery Payment (AGDRP) in relation to the Queensland, New South Wales, Victorian and Western Australian floods, Cyclone Yasi and Western Australia fires. This resulted in an increase in AGDRP applications to Centrelink and a modest increase in complaints to this office about Centrelink in the three months following the disasters. In the main, we were able to refer complainants back to Centrelink to obtain information about seeking review of a decision to refuse a claim for the AGDRP.

Our office also received a number of complaints about delays in processing AGDRP claims for Cyclone Yasi, which we were advised by Centrelink occurred as a result of the need for it to seek policy clarification from the Attorney-General's Department (AGD), as the policy department, about one of the eligibility criteria. We intend to discuss these delays with the department shortly, and will also be seeking further information from it about the AGDRP policy as it relates to claims from 'non principal carers' who had a child in their care at the time of the disaster.

Implementation of tribunal decisions

The Ombudsman's office continues to have concerns about Centrelink's processes for scrutinising and

¹ A garnishee is a notice issued to a third party requiring them to deduct money held on behalf of or given to a customer and forward it to Centrelink, with or without the customer's consent, to repay a debt.

responding to tribunal decisions that have broader implications for the policies and procedures as instructed by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of Education, Employment and Workplace Relations (DEEWR).

This issue arose in the Ombudsman's report *Review rights for Income Managed people in the Northern Territory* (10|2010) where our investigation of a complaint identified a Social Security Appeals Tribunal decision on the Tribunal's lack of jurisdiction to consider reviews about Income Management exemptions. The Tribunal's decision went unnoticed by FaHCSIA and Centrelink, but should have prompted the two agencies to assess the decision and consider the need for appeal, legislative amendment or a change to administrative processes. The specific issue of this report became redundant when the new Income Management arrangements were rolled out in mid-2010, but we are continuing to follow up on the broader issue of timely analysis and action for significant Tribunal decisions.

The Ombudsman's office has observed other complaints where the Administrative Appeals Tribunal has made decisions that impact upon the interpretation and administration of social security law and have implications for other customers. However, Centrelink and the policy departments do not appear to have responded promptly to clarify the policy guidelines, creating an ongoing inconsistency between how Centrelink and the tribunal interpret the law. Our office is currently pursuing with Centrelink, FaHCSIA and DEEWR the decision-making processes around the review of tribunal decisions, particularly where they relate to key definitions in the law.

Customers in crisis

In recent years the Ombudsman's office has received complaints from people in crisis who have been advised by Centrelink that they are not eligible for financial assistance. In many of these complaints the advice provided by Centrelink has been correct and the customers do not meet the legislative or policy requirements to receive a crisis, urgent or advance payment. However, our investigation of these complaints has led us to query whether the current arrangements for providing crisis or emergency payments are too narrow and unreasonably prevent some needy customers from accessing support. Some

of these issues were raised in our submission to the Australian Law Reform Commission's inquiry into the treatment of family violence in Commonwealth laws. This issue may be further explored in 2011–12.

Cross-agency issues

Many complaints to the Ombudsman require us to make enquiries of more than one agency. This is often the case where one agency is responsible for delivering a product or service, while another has responsibility for the relevant policy or law. As the largest government service delivery agency and portal for a variety of government payments and services, this is often a factor in Centrelink complaints.

Child care payments – Centrelink and DEEWR

The intersection between Centrelink and the Department of Education, Employment and Workplace Relations (DEEWR) in the delivery of child care payments has been a source of complaints to our office over a number of years. In August 2010, a 'contact once' model was implemented to simplify complaint handling about child care issues by placing a responsibility on the agency with which the customer makes contact to liaise with the other agency to resolve the problem and provide a response directly to the customer. Although this has improved the resolution of complaints between Centrelink and DEEWR there remain problems as highlighted in the example below.

Alignment of care – Centrelink and the Child Support Agency

From 1 July 2010 changes were made to family assistance and child support law to allow either the Family Assistance Office or the Child Support Agency (CSA) to determine the percentage of care a person has of their children. This single assessment is then used by both agencies in assessing family assistance entitlements and child support amounts. The administration of this 'alignment of care' initiative has been the source of a number of complaints to the Ombudsman over the past year and will continue to be of interest to our office in 2011–12. It is also discussed at page 64 of the Child Support Agency overview.

Reasonable maintenance action data transfer – Centrelink and CSA

Over the past twelve months our office has been working with Centrelink and the CSA to investigate their respective roles in administering the ‘reasonable maintenance action test’ for Family Tax Benefit. Specifically, we have been trying to find out why some customers have incurred substantial Family Tax Benefit debts as a result of Centrelink finding out some years later, via an electronic data transfer from the CSA, that the customer has not had a child in their

care for a period. Centrelink’s processes rely upon the transfer of computer data as the basis for making a complex decision about whether a person has taken reasonable maintenance action. We do not consider that this is an appropriate use of computer-assisted decision making.

This is also discussed in the Child Support Agency overview on page 64, and will continue to be an area of focus for our office over the coming year.

Cross-agency issues

Mr D claimed Child Care Benefit, to enable him to receive Child Care Rebate through Centrelink in November 2010 in relation to his son’s child care attendance. Centrelink told Mr D that due to a computer system problem his child care provider had been unable to submit child care usage details via the DEEWR Child Care Management System, which in turn prevented payment of the rebate by Centrelink. Mr D complained to this office after making numerous complaints to Centrelink.

This office investigated the complaint with Centrelink and DEEWR. Centrelink provided us with email correspondence between itself and DEEWR which indicated DEEWR was not responding to Centrelink about the issue. DEEWR advised this office that it had made an error in trying to obtain child care attendance figures from the wrong child care provider and had also attempted to apply approval for the incorrect dates. As a result DEEWR was able to correct the errors and Centrelink paid Mr D Child Care Rebate in April 2011.

We are continuing to follow up with Centrelink and DEEWR to ensure customer complaints that involve multiple government agencies are resolved seamlessly.

Reports released

The Ombudsman released the following reports in 2010–11 relating to Centrelink:

- The report *Falling through the cracks—Centrelink, DEEWR and FaHCSIA: Engaging with customers with a mental illness in the social security system* (Report 13|2010) was published in October 2010. Centrelink was one of three agencies investigated regarding service delivery to customers suffering from a mental illness. The report made a range of recommendations designed to improve engagement with, and services to customers with mental health issues and disabilities. Subsequent to the report Centrelink has established an Interagency Working Group, comprising representatives of Centrelink, the Department of Human Services, Department of Education, Employment and
- Workplace Relations (DEEWR) and Department of Families, Housing, Community Services and Indigenous Affairs to progress the Ombudsman’s recommendations, particularly in relation to training needs and updating policy guidelines. Centrelink has also convened a Working Party consisting of agency representatives and a number of welfare, disability, advocacy and carer organisations to guide implementation of the more complex recommendations. Our office will continue to monitor implementation of the report recommendations. DEEWR has also provided an update on the implementation of the recommendations relevant to its areas of policy responsibility including Job Services Australia providers. Information about DEEWR’s progress in implementing the recommendations can be found at page 69 of the DEEWR chapter.
- The report *Centrelink: Right to review—having choices, making choices* (Report 04|2011) investigated Centrelink’s internal review processes and was published in March 2011. The report highlighted problems with

the existing review processes and made a number of recommendations including that Centrelink improve the timeliness of reviews, limit the negative consequences of incorrect decisions pending review, improve the quality of original decisions and work with relevant policy departments to ensure that legislation and policy guides align to support improvements to the review system. Centrelink accepted the recommendations and advised that it had commenced a trial of an enhanced internal review process. The Ombudsman's office accepted Centrelink's offer to provide input to the design and review of the new framework and meets regularly with Centrelink. We expect to release a follow-up report on the progress of the report recommendations once the new framework has been implemented.

- Centrelink was one of two agencies investigated as a result of a complaint about the Income Management regime in the Northern Territory. The report *Department of Families, Housing, Community Services and Indigenous Affairs and Centrelink: Review rights for Income managed people in the Northern Territory* (Report 10|2010) was published in August 2010 highlighting significant failure in the provision of review rights to people affected by the former income management regime. Further information is included in the Indigenous overview on page 92.
- Centrelink was also included in a report titled *Talking in Language: Indigenous language interpreters and government communication* (Report 05|2011), published in April 2011. Centrelink was responsive to this report and participated in a workshop with the other agencies included in the report to discuss implementation of the recommendations. Further information is included in the Indigenous overview on page 92.
- Submissions were made to the Australian Law Reform Commission's inquiry into the treatment of family violence in Commonwealth laws, regarding Issues papers 38 (child support and family payments) and 39 (social security). Staff from the Ombudsman's office also participated in the Commission's expert roundtable to discuss proposals regarding social security law.

Update from last year

Transfer to age pension

In our last annual report, we discussed a complaint that highlighted a systemic problem with the way that some customers were transferred to Age Pension when they reached Age Pension age. At that time we had sought information from Centrelink about its processes for assessing the claims of affected customers and determining whether they were entitled to backdated payments. We have since been advised that the 1,800 affected customers were contacted by Centrelink and, where appropriate, arrears of Age Pension were paid to the date they first became eligible for an increased rate of payment.

Review of circumstances leading to a fraud conviction

In May 2010 the Ombudsman's office released an investigation report into the handling of a fraud matter by Centrelink and the Commonwealth Department of Public Prosecutions. That report recommended that both agencies revisit their handling of the case and provide advice to the customer about appealing the recorded fraud conviction. In 2010–11 our office was advised that, following an appeal by the customer, the conviction was set aside and a verdict of acquittal recorded. The Department also provided an assurance to the customer that it did not intend to further pursue the matter.

Stakeholder engagement, outreach and education activities

The office has increased its outreach and community engagement in an effort to be more accessible and to gain a better understanding of the issues faced by the people in the community. Community roundtables focused on social welfare issues were conducted with non-government organisations in capital cities last year. More recently roundtables have been held in Brisbane, Canberra and Melbourne with further round table meetings to be convened in the latter part of 2011.

Further information about the office's involvement in stakeholder engagement and outreach can be found in Chapter 7—*Engagement*.

Looking ahead

Department of Human Services – Service Delivery Reform

As the Department of Human Services continues to progress its Service Delivery Reform agenda, our office will be closely observing the impact of any changes on Centrelink customers. We are particularly interested in the issues of accessibility, information sharing and the standardisation of procedures and policies across the portfolio. We will be seeking regular updates on the work in these areas, and will participate in working groups and consultative forums where appropriate.

Changes to payments and services

The 2011–12 Federal Budget flagged a number of substantial changes to some payments and services delivered by Centrelink. Of particular interest to our office are the changes to eligibility requirements for Disability Support Pension, and the rolling out of Income Management and increased compliance activity initiatives in target areas. We will continue to seek updates from Centrelink as it implements these reforms, and highlight relevant issues of concern that may arise from complaints to our office.

Debt raising and recovery

Over a number of years the Ombudsman has received complaints about Centrelink's practices in raising and recovery of social security and family assistance debts.

As mentioned in the 'Complaint Themes' section, particular areas of focus have included procedural fairness in decision making, the quality of information provided to customers about the reasons for a debt, and the willingness of staff to adapt debt recovery arrangements to the customer's circumstances.

This will be a continued area of attention in the coming year.

Income management decision making

Our office is currently conducting an audit of Centrelink's decisions to apply Income Management (IM) to a person because they are assessed as being a Vulnerable Welfare Payment Recipient, and its decisions not to exempt a person because Centrelink has determined there are indicators of Financial Vulnerability. The Ombudsman will release a public report in 2011–12 regarding the results of this audit.

CHILD SUPPORT AGENCY

Overview

The Child Support Agency (the Agency) is part of the Commonwealth Department of Human Services¹, and is responsible for the assessment and transfer of child support payments between separated parents.

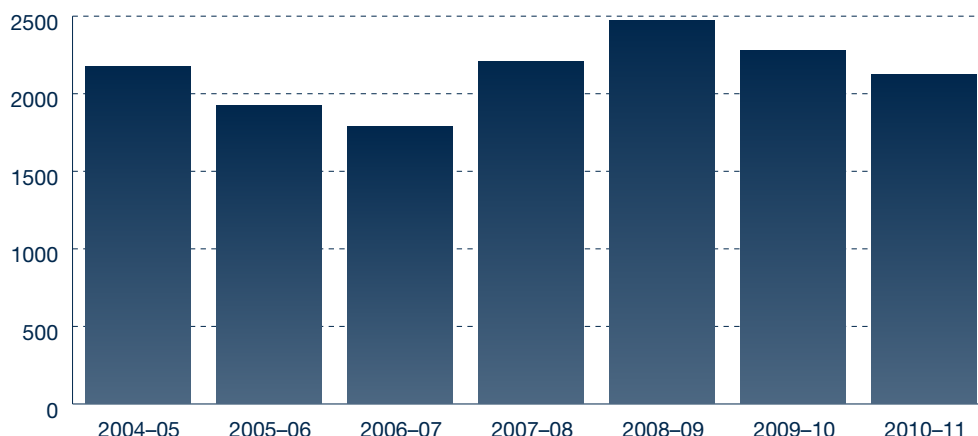
Complaints about the Agency still make up a considerable proportion of the Commonwealth Ombudsman's workload. However, the actual number of complaints received by our office has dropped slightly (2,121 complaints in 2010–11 compared to 2,280 in 2009–10). This continues a downward trend since 2008–09, when we received 2,471 complaints about the Agency – a 'spike' largely attributable to the Agency's implementation of a new child support formula. Interestingly, the Agency also fell from third to fifth most complained about agency in 2010–11, although this is attributable to more complaints about other Commonwealth agencies, rather than fewer complaints about the Agency.

We investigated approximately 28% of the complaints that we finalised in 2010–11. The other 72% either

raised issues that we considered did not warrant investigation, or which the complainant could readily or more appropriately pursue through other avenues. Those other avenues include using the Agency's internal complaints or objection process; appealing to the Social Security Appeals Tribunal; or applying to a court. Whenever we decline to investigate a person's complaint about the Agency, we explain our reasons for doing so, and provide information about the other ways the person can address their complaint issue. We also record information about the issues raised by each complaint to assist us in monitoring trends in the Agency's administration.

There have been some significant policy and service delivery changes affecting the Agency this year. As we discuss below, those changes have generally improved aspects of the Child Support Scheme, but there have been some teething problems.

Figure 5.4: Child Support Agency approach and complaint trends 2004–5 to 2010–11



¹ The Human Services Legislation Amendment Act 2011 integrated the services of Medicare Australia, Centrelink and CRS Australia on 1 July 2011 into the Department of Human Services. From 1 July 2011, the Child Support Program is identified as Child Support.

Complaint themes

Which Child Support Agency customers complain to the Ombudsman?

The Agency's customers fall into two quite distinct groups: people (usually parents) who are entitled to receive child support payments ('payees'); and those parents who are liable to pay child support ('payers'). From 1 July 2010, we started recording whether our complainants were payees or payers. We hoped this data would help us to better analyse the underlying

causes of Agency complaints. In 2010–11, slightly more than two-thirds of the people who complained to us about the Agency were payers. At this stage we do not possess data to indicate the reasons for this discrepancy so it is not clear to us whether this means that payers are generally less satisfied with the Agency's administration than payees. We will however be doing more to ensure that all Agency customers are aware of the Ombudsman's services and their right to complain to us if they are dissatisfied with the Agency's administration.

Right to know

Mr E is entitled to receive child support from his former wife, Ms F. Mr E complained to us about the Agency's failure to keep him informed of its attempts to collect arrears of child support from Ms F. However, Ms F had recently left her job and this had made it more difficult for the Agency to collect. Mr E told the Agency that Ms F intended travelling overseas in the near future and had asked it to consider making a Departure Prohibition Order (DPO) to prevent her leaving Australia without paying her child support debt. The Agency refused to tell him whether it had done so.

When we contacted the Agency office administering Mr E's case, it advised us that the *Privacy Act 1988* prevented it from telling Mr E any personal information about Ms F. The Agency believed that this meant that it could not tell Mr E whether it had issued a DPO against Ms F. We wrote to the Agency's national office and expressed our view that Parliament actually included a specific provision in the child support legislation to allow the Agency to provide reports to a payee about collection actions, and this meant that the Agency could disclose limited amounts of personal information to keep the payee informed. The Agency agreed, clarified the position for its staff and apologised to Mr E.

Debt enforcement

A perennial issue in complaints from Agency payees is that they are unhappy with the Agency's action to collect child support from the payer. These complainants frequently also say that the Agency has failed to provide any meaningful report about the efforts that it has made, or will make in the future. Often the Agency will tell the payee that it is not allowed to provide this sort of information to them because it would breach the payer's privacy. However, as the following case study shows, this is not strictly true. We believe the Agency needs to recognise that it is important to be accountable to the payee for the actions that it takes in its efforts to collect child support for them.

We have also advised the Agency of our concern that its usual procedures for gathering information to assist it to collect child support do not include requiring the debtor to attend an interview to answer questions

about their finances. We consider this would be a cost effective measure that would complement the other inquiries that the Agency makes via third parties, particularly in cases where the debtor's lifestyle is not consistent with his or her known income or assets.

Overseas cases

The Agency can make (or continue) a child support assessment in a case where the payer or payee lives overseas. It can also register and collect spousal or child maintenance payable under a court order or administrative assessment made in a 'reciprocating jurisdiction'. We have noticed, however, that the Agency's administration of some of these 'overseas cases' can be hampered by a failure to set reasonable customer expectations, communication problems, delays, or general lack of responsiveness. The following case study illustrates all of these themes.

So far away

Mrs G lives in the UK, where she obtained a court order for child and spousal maintenance from Mr H, who lives in Australia. The UK authorities sent the order to the Agency in Australia for registration and collection. Mrs G complained to us that the Agency had only registered the child maintenance component of the order. Mrs G sent the Agency a series of emails about this problem over a six month period, but the Agency had not responded to many of them. She felt the Agency was ignoring her and she had no faith that it would address her concerns.

When we contacted the Agency we found that it was confused about the wording of Mrs G's order. It had acted promptly to register the part of the order about child maintenance, but although it could legally collect spousal maintenance, it did not understand the wording of the order about the period over which those payments were to be made. The Agency had written to the UK authorities for clarification, but it had not received a response, or followed this up. The Agency also advised us that it may have made a mistake when it worked out how much child maintenance Mr H had to pay under the order. The Agency had also not answered Mr H's queries about his debt to the Agency, which he disputed.

We persuaded the Agency to deal with all of Mrs G and Mr H's concerns as objections to the details entered into the child support register. This meant that a single Agency officer reconsidered all the information, made a decision about the correct amounts of child and spousal maintenance payable under the UK order, amended the Agency's records accordingly and provided written decisions to Mr H and Mrs G. This resolved the impasse and gave them the option of appealing to the Social Security Appeals Tribunal if they disagree with the Agency's decisions.

Systemic issues

Garnishee notices to collect child support debts

The Agency can serve an administrative garnishee notice upon a person who holds, or is likely to hold in the future, money on account of a child support debtor². A person who fails to comply with the notice may be subject to penalties, which might include being

required to pay the debt out of their own funds. This can be a very effective way for the Agency to collect child support from a reluctant payer. However, it is important that the Agency monitor whether the third party actually complies with the notice.

My boss stole my money!

Mr J complained to us that the Agency was chasing him to pay around \$8,000 in child support arrears. He said he had paid off this debt years ago, through deductions from his contract payments. Mr J said the Agency should get the money from Mr J's former employer, who had gone into liquidation.

We investigated Mr J's complaint and found that the Agency instructed Mr J's employer to deduct 30% from every payment they made to Mr J, and send that money to the Agency. The employer made the deductions, but failed to transfer all the money to the Agency. When the Agency's efforts to encourage the employer to comply did not succeed, it failed to refer the employer's case for prosecution. Even more worryingly, it decided to leave the arrangement in place, so more deductions were made from Mr J's payments. When the Agency

² A garnishee is a notice issued to a third party requiring it to deduct money held on behalf of or due to a customer (such as wages or bank account funds) and forward it to the Agency, with or without the customer's consent, to repay a debt to the Agency.

My boss stole my money! (continued)

learned that the employer had gone into liquidation, it told Mr J that this was now a matter between Mr J and his former employer.

During our investigation, the Agency accepted that it had failed to take decisive and appropriate action in Mr J's case and that this had caused Mr J to lose a substantial sum of money. It offered Mr J compensation equivalent to the sum that his employer had retained. The Agency proposed to Mr J that it would apply that compensation to his child support debt, and that this money would then be transferred to his former partner for the support of their children.

The Agency has advised us that it is planning a range of procedural and computer system improvements, plus staff training, to address the systemic problems exposed by Mr J's complaint. It is also in discussion with its policy department (of Families, Housing, Community Services and Indigenous Affairs) about the possibility of legislative changes to ensure that the Commonwealth, rather than Agency customers, bear the financial risk in cases like Mr J's.

In another case, the Agency failed to withdraw a garnishee notice after the person's child support debt had been paid off. The officers who refunded the overpaid money to the payer failed to make sure that the employer was instructed not to make further deductions, so they continued to deduct and send money to the Agency. We intend working with the Agency in the coming year to highlight areas where it can improve its administration of garnishee notices.

Child Support Overpayments

We have received a small but steady stream of complaints from both payers and payees since at least 2007 about the Agency's approach to overpaid child support. The payees' issues include the Agency's failure to clearly explain the reason for the overpayment and how it was calculated, the fairness of requiring them to repay a debt received in good faith, that their child support payments were stopped without warning when the Agency decided they had been overpaid, and the Agency's refusal to allow them to repay the overpayment by withholdings from future child support payments. The payer complaint issues include the Agency's refusal to refund the overpaid amount until it has been recovered from the payee, to recover it fast enough, or its failure to recover the overpayment at all.

We acknowledge that child support overpayments are a difficult problem, requiring the Agency to carefully balance the interests of both parents, the children and the Commonwealth. The Agency has advised us that it is well advanced in developing a new approach to recovering overpayments. It has undertaken to provide us with a briefing about that new approach in advance of implementing it. We will be carefully monitoring complaints about child support overpayments in future to see whether the new approach is an improvement.

Cross-agency issues

The Agency needs to work closely with a range of other Commonwealth agencies to administer the Child Support Scheme. Most notably, the Agency routinely has interactions with the Australian Taxation Office (ATO) and Centrelink, as set out below, the Agency:

- relies upon the ATO for details of parents' incomes
- instructs the ATO to deduct child support payments from debtors' tax refunds
- and Centrelink exchange information about the proportion of time that children spend in each parent's care, for the purposes of working out child support and family tax benefit entitlements
- tells Centrelink whether a person has applied for a child support assessment, so Centrelink can work out that person's family tax benefit entitlement
- instructs Centrelink to deduct child support payments from benefits paid to Centrelink customers, and Centrelink transfers those payments to the Agency, which in turn pays them to the payee.

Many of these interactions are automated, but problems with those automated processes can prove difficult to resolve. The following case study shows

how difficult it can be for an Agency customer to get two agencies to work together to fix a problem.

Australian Tax Office / Child Support Agency

Getting the run-around

Ms K, an Agency payee, complained to us that the Agency and the ATO were refusing to take responsibility for a mistake that had led to her missing out on child support payments. She said that both agencies had ‘missed the point of her complaint’. The payer, Mr L, was behind with his child support payments and ordinarily the Agency would intercept his tax refund to apply it to his child support debt. Ms K was distressed to discover that Mr L had received his tax refund and she had missed out.

Ms K complained to the Agency. The Agency said that it had asked the ATO for the refund, but the ATO didn’t send it. The Agency said that Ms K would have to take it up with the ATO. The ATO told Ms K that, due to privacy issues, it was unable to act on her complaint or provide further information as she was not an authorised contact on Mr L’s account and referred her back to the Agency.

We investigated Ms K’s complaint about both agencies. We found that a human error in the ATO had resulted in Mr L’s tax refund being released to him instead of being sent to the Agency. The ATO has now apologised to Ms K for its mistake. We are continuing to investigate Ms K’s complaint and we have asked the Agency and the ATO to devise a much better system to work together to investigate and resolve complaints when things go wrong between the agencies. The ATO has advised that it and the Agency are jointly considering how they might look at the issue of compensation in the event that Ms K makes an application.

Centrelink / Child Support Agency

We have also been working closely with Centrelink and the Agency for more than a year on a project about their interaction to administer the ‘reasonable maintenance action test’ for family tax benefit. We have been trying to find out the underlying reasons for certain mutual customers acquiring large family tax benefit debts when Centrelink belatedly discovers that the Agency has not for some time had a current child support case for one of the children in their care. This is discussed further in the Centrelink overview on page 52.

Social Security Appeals Tribunal/ Child Support Agency

The Agency also needs to work with the Social Security Appeals Tribunal (the Tribunal), which has jurisdiction to review the Agency’s objection decisions. The Agency is responsible for copying and sending the relevant documents from its file to the Tribunal and to the parties to a review. The Agency must also implement the Tribunal’s decision if the Tribunal changes the Agency’s decision.

We have received two complaints alleging an error in the Agency’s implementation of the Tribunal’s decision, or alternatively an error in the Tribunal’s decision. We have had some success in resolving these complaints by investigating them with the Agency. However, we decided that it would not be efficient to contact the Tribunal to seek to clarify the intended effect of its decisions, because of the difficulties we experienced in investigating another unrelated complaint.

The Principal Member of the Tribunal has discontinued her predecessor’s arrangements which allowed us to contact the relevant Tribunal registry to clarify a complaint, or conduct simple investigations. She has also asserted that the Ombudsman has no power to investigate decisions made by Tribunal Members in relation to a review. This is something we will seek to resolve in the future through continued contact with the Tribunal and seeking the advice of the responsible policy Department, regarding the intent of the relevant legislation.

Reports or submissions released

The Ombudsman made the following reports and submissions about the Agency in 2010–11:

- Report 11|2010 — *Child Support Agency, Department of Human Services: Investigation of a parent's 'capacity to pay'*, published August 2010. The Agency responded positively to the report and we are monitoring its implementation of the recommendations.
- Report 14|2010 — *Department of Human Services, Child Support Agency: Unreasonable Customer Conduct and 'Write Only' policy*, published November 2010. The Agency has developed new procedures in the light of this report and it has reviewed all of the cases where it had previously restricted customers to 'write only'. In the coming year we will be examining the Agency's records of those reviews and providing feedback on the Agency's new policy and procedures for managing unreasonable customer conduct.
- Submission to the Australian Law Reform Commission's inquiry into the treatment of family violence in Commonwealth laws, Issues papers 38 (child support and family payments) and 39 (social security). Staff from the Ombudsman's office participated in the ALRC's expert roundtable to discuss proposals regarding child support and family assistance.

Update from last year

In our 2009–10 report we mentioned changes to the child support legislation that would commence from 1 July 2010 about 'care percentage' decisions and income estimates.

The amended legislation about 'care percentage' decisions was part of a broader service delivery reform that aligned the rules applied by the Child Support Agency and Centrelink for working out a care percentage, and enables either agency to make a decision that applies across both agencies. Centrelink and the Agency have provided us with regular briefings about the implementation of the alignment of care initiative. We have investigated a small number of complaints about delays or failures in the automated transfer of care percentage data between the two agencies. We will continue to monitor this issue.

In 2010–11 we have not seen any increase in complaints about the Agency's administration of income estimates under the new rules. At the same time, we are receiving fewer complaints about delays in the Agency's reconciliation of old income estimates.

Stakeholder engagement, outreach and education activities

We maintain a close working relationship with the Agency, meeting regularly with senior staff, and participating in a range of stakeholder groups and working parties convened by the Agency and its policy department FaHCSIA. These include: the Child Support National Stakeholder Engagement Group; various State Stakeholder Engagement Groups; and the NSW Legal Liaison Group. We keep in contact with many of the community groups involved in those meetings between sessions.

We participated in the Agency's Domestic Violence working party, and an Agency stakeholder consultation on its project to simplify child support assessment notices; we provided feedback on the Agency's proposed new account statements for payers; and we met with a consultant conducting a review of the Agency's privacy practices.

We held successful community round table meetings in Sydney and Adelaide in late 2010 to talk about the Ombudsman's work in relation to the Agency. We also gave a presentation at a conference of the NSW Women's Refuge Movement about the assistance that the Ombudsman can provide to people having problems with Centrelink or the Agency regarding homelessness, family breakdown or family violence.

In June 2011, we conducted outreach to the Central Coast of New South Wales, where we had talks with the electorate staff of a Federal MP, a community legal centre specialising in domestic violence and a non-government agency that provides free meals, support and referrals to homeless people.

Our regular and open communication with stakeholders has enriched our understanding of the experiences of those who deal with the Agency and alerted us to issues that are not readily apparent from the complaints we receive. We have also been able to put some of our contacts in touch with each other so they can share information and strategies for dealing with child support matters.

DNA tests for single mothers

In late 2010, when we attended a child support stakeholder meeting, a community legal centre staff member told us the centre was unable to get Legal Aid funding for DNA tests for single mothers wanting to claim child support. Not only did this mean that these women could not receive child support, they were also at risk of Centrelink deciding they were not 'taking reasonable maintenance action' and cutting their Family Tax Benefit payments. Knowing such funding is available in other States, we arranged for one of our contacts in a Legal Aid office to contact the community legal centre, which has now secured Legal Aid funding for DNA tests.

Looking ahead

Although we encourage and in many cases expect Agency customers to use the Agency's complaints service to resolve their problems, we are concerned that some people approach our office first, or do not wish to approach the Agency at all. We are also not confident that the people we advise to complain to the Agency first actually act on our advice. We intend developing a process, in consultation with the Agency, to directly transfer some complaints to its complaints service for resolution. This will occur only with the complainant's consent. The person will be invited to come back to us if they remain dissatisfied with the Agency's response.

In the coming year, the Agency's customers will see further changes as the Department of Human Services reforms service delivery by integrating Centrelink, Medicare and Child Support into the one agency. We intend to monitor the Agency's processes as it becomes part of the integrated department and will seek to influence and improve the service delivery model, particularly for vulnerable customers. We are especially keen to ensure that the Department of Human Services minimises the barriers to people using its complaints and internal and external review processes, reducing the need for them to approach the Commonwealth Ombudsman.

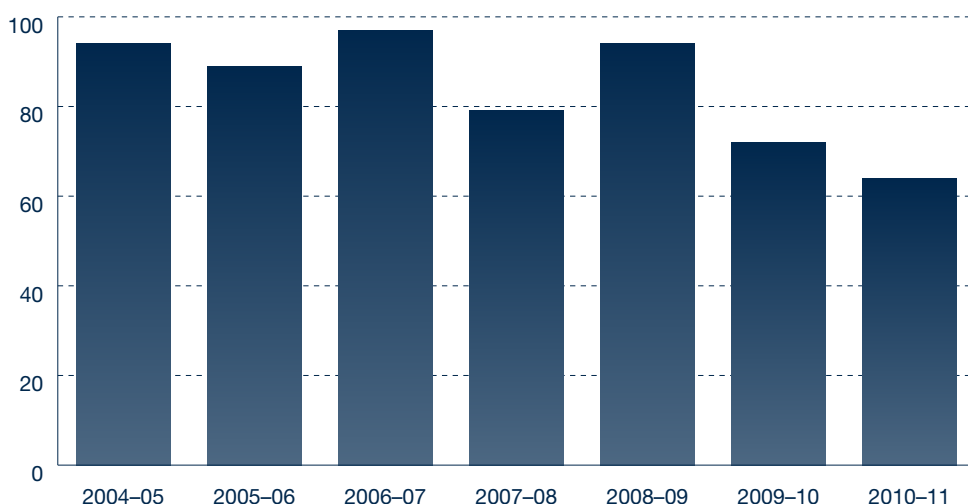
COMCARE

Overview

In 2010–11 we received 64 approaches and complaints about Comcare, compared to 72 during 2009–10. Although this is not a significant change

in the number of complaints received, it continues a downward trend in complaint numbers over the last three years.

Figure 5.5: Agency approach and complaint trends 2004–5 to 2010–11



Complaint themes

In 2010–11 we investigated 16 complaints, as compared to 31 complaints in the previous period. Key complaint themes continue, as in previous years, to concern the rejection of claims for compensation, delays in the assessment of claims, and overall treatment of clients by Comcare and claim managers.

Comcare's improved internal complaint-handling procedures may have assisted in reducing the number of complaints needing to be investigated by our office. Of note is that the number of remedies recorded by our office to 'expedite action' has halved, suggesting greater effort by Comcare to deal with timeliness issues.

Comcare. If a complainant is unhappy with a decision, there is a formal two-tier review process available. The first step involves an internal Comcare review by someone not involved in the original decision. If still unhappy, the complainant can appeal to the Administrative Appeals Tribunal.

Although cases are often settled at the Administrative Appeals Tribunal pre-hearing, it can be a lengthy process to get to that point and some complainants question whether it is necessary for matters to have progressed that far before getting a more favourable decision.

Cross-agency issues

There were no significant issues identified.

Systemic issues

While the Ombudsman can investigate those complaints mentioned in the previous section, we cannot overturn individual decisions made by

Reports released

There were no reports issued this financial year.

Update from last year

As stated in last year's annual report, Comcare provided an undertaking in response to *Comcare and Department of Finance and Deregulation: Discretionary Payments of Compensation* (Report 04/2010) that it would work to develop a compensation scheme similar to the Compensation for Detriment caused by Defective Administration (CDDA) scheme. Progress has been made. In June 2011 Comcare told this office that it is continuing its consultation with the Department of Education, Employment and Workplace Relations and the Department of Finance and Deregulation in relation to the option of establishing a scheme, similar in nature to the CDDA scheme, within the *Safety, Rehabilitation and Compensation Act 1988*.

The recommendations of Report 04/2010 were considered by the Finance and Public Administration Legislation Committee, which examined the lack of a proper compensation scheme for claimants who have been disadvantaged as a result of administrative errors by Government agencies not included under the CDDA Scheme. It recommended that the limit for payment in special circumstances provided for by the Public Service Act 1999 and the Parliamentary Service Act 1999 be increased from \$100,000 to \$250,000, thereby expanding an avenue for compensating some claimants affected by defective administration.

While we welcome the above recommendation, unfortunately it will not fully address the current inequities in compensation across different agency types. It is our firm position that people should have a mechanism to claim compensation where they have suffered a financial loss due to the defective actions or decisions of all agencies and contracted service providers that deliver services on behalf of the

Australian Government. For this reason we welcome the Committee's recommendation that Comcare, the Department of Education Employment and Workplace Relations and the Department of Finance and Deregulation conclude their consultation in relation to creating a CDDA-type scheme, as a matter of priority. This will be a step towards achieving the goal of more equitable access to compensation across the whole of the public sector.

Stakeholder engagement, outreach and education activities

Our office has developed an effective working relationship with Comcare that has assisted in the effective resolution of complaints. We generally meet quarterly with Comcare's key contact area to discuss any issues arising out of complaints.

Looking ahead

In response to concerns by complainants about the review process we intend to work with Comcare to identify administrative changes that could be made to the review process that might improve claimant experience. With the assistance of Comcare, the initial step would involve monitoring the type and volume of pre-hearing settlements at the Administrative Appeals Tribunal. If this confirms the experience of complainants, steps will be taken to identify barriers to reaching the correct or preferable decision more quickly. This process would also involve working with the Tribunal.

The following case study is an example of how our office was able to assist complainants.

Delay in review

Ms M complained about the time taken by Comcare to complete a review of a decision that she requested in March 2010. Our investigation found that one of the requests for review had initially been overlooked and then no action was taken to progress it until after we became involved.

Comcare finalised the review on 30 July 2010 and apologised to the complainant for the delay. Our office recorded administrative deficiency on the grounds of unreasonable delay, which Comcare accepted.

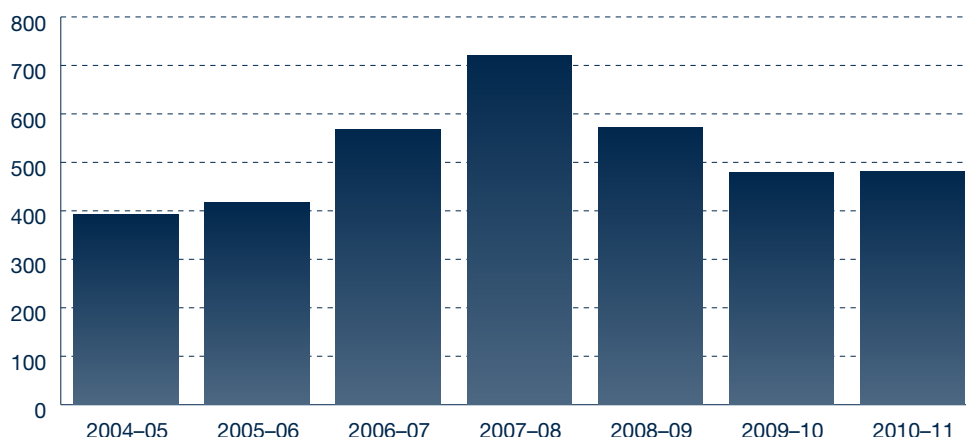
DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

Overview

In 2010–11 we received 481 complaints about the Department of Education, Employment and Workplace Relations (DEEWR, or the department), compared to 479 complaints in 2009–10 and 571 in 2008–09. So there has been no significant change in the number of complaints received compared to the previous year. However, the number of complaints investigated, as

a proportion of complaints received has reduced. This reflects greater specialisation by our office, which has enabled us to assist complainants without always having to undertake an investigation. It is also a product of our increased focus on using complaints to identify and resolve systemic issues through our regular liaison with the department.

Figure 5.6: DEEWR approach and complaint trends 2004–5 to 2010–11



Complaint themes

The main issues raised with our office this year were in relation to:

- concerns about the department’s handling of complaints about Job Services Australia and Disability Employment Service providers
- issues relating to the Australian Apprenticeship Incentive Program
- the administration of child care assistance subsidies such as Jobs, Education and Training Child Care Fee Assistance.

There has been an overall reduction in the number of complaints about Trades Recognition Australia and the General Employee Entitlements and Redundancy Scheme since 2009–10. In relation to the reduction in complaints about Trades Recognition Australia, this is a trend that was noted in our last annual report and appears to be due to the implementation of the Job Ready Program in January 2010. That program provides greater clarity about the steps required by international graduates to demonstrate their job readiness before applying for permanent residency.

Systemic issues

The key systemic issues identified during 2010–11 were:

- adequacy of complaint handling by Job Services Australia and Disability Employment Service providers
- adequacy of record keeping by Job Services Australia and Disability Employment Service providers
- lack of advice about review rights where request to transfer to new Job Services Australia provider has been declined
- consistency and adequacy of decision making by Trades Recognition Australia
- adequacy of complaint handling in relation to child care assistance subsidies.

Cross-agency issues

The intersection between the department and Centrelink in the delivery of child care assistance programs such as Jobs, Education and Training Child Care Fee Assistance has been a source of complaints.

Please see the Overseas Students Ombudsman section on page 128 for information on the department's role in that jurisdiction.

Reports released

Falling through the cracks

The report *Falling through the cracks—Centrelink, DEEWR and FaHCSIA: Engaging with customers with a mental illness in the social security system* (Report 13|2010) was published in October 2010. The report made a range of recommendations designed to improve engagement with and services to customers with mental health issues and disabilities. As the agency with responsibility for elements of social security policy and for Job Services Australia and Disability Employment Services providers, many of the recommendations required action on the part of DEEWR.

Subsequent to the report, DEEWR has participated in the Interagency Working Group, which was established to progress the Ombudsman's recommendations, particularly in relation to training needs for Centrelink

and Job Services Australia and Disability Employment Services staff and updating policy guidelines for payments and service delivery. Additionally, in the 2011–12 Budget, as a part of the *National Mental Health Reform* package, DEEWR secured \$2.4 million in additional funding over the next five years to increase economic and social participation for people with mental illness.

Further information about Centrelink's response to the report can be found at page 56 of the Centrelink chapter.

Administration of the National School Chaplaincy Program

During 2010–11 our office conducted an own motion investigation into DEEWR's administration of the National School Chaplaincy Program, in response to a report released by the Northern Territory (NT) Ombudsman following her office's investigation of complaints about the program. The NT Ombudsman's Report identified issues with the department's administration of the Chaplaincy Program, which she was unable to investigate due to lack of jurisdiction. These matters were referred to our office for consideration, leading to the decision to initiate the investigation. On 26 July 2011 a report was published by our office, *Administration of the National School Chaplaincy Program* (Report No 06|2011). The department broadly agreed with the eight recommendations contained in the report.

The department has recently reviewed the Chaplaincy Program and the Government is currently considering the findings of that review. The department is currently reviewing its administrative arrangements, including the Program Guidelines, in preparation for the expansion of the program in 2012. We will be monitoring the action taken by the department in response to our recommendation over the next six months.

Update from last year

Our office meets with the department quarterly to discuss systemic issues and to follow up on recommendations arising from formal reports and complaints where administrative deficiency has been recorded.

Stakeholder engagement, outreach and education activities

Our stakeholder engagement included:

- Social support round tables
- Regular briefings provided by the department regarding its programs
- Involvement in a briefing regarding job services in Brisbane.

the subsidies, as well as the effectiveness of complaint handling in this area, will be the subject of further scrutiny by our office during 2011–12. This is likely to also involve engagement with Centrelink as the subsidies are jointly administered by the department and Centrelink.

Our office also intends to work further with the department to improve its complaint handling about Job Services Australia and Disability Employment Service providers, as this remains the main subject of complaints about the department.

Looking ahead

Despite the implementation of the 'Contact Once' complaint model by the department and Centrelink in August 2010, the administration of child care assistance subsidies and complaint handling relating to those subsidies remains of concern to our office as complaints continue to be received. The identification of the cause(s) of problems with the administration of

Case studies

The following cases highlight good outcomes achieved through investigation and communication with agencies, on behalf of complainants.

Lost emails

Mr N complained to DEEWR by email about a Job Services Australia provider. He was dissatisfied that his complaint was dealt with by the provider rather than the department.

On investigation, the department advised that it had no record of the email complaint that Mr N had submitted, despite the provider having been notified by the department at the time that a complaint had been lodged. In response to our investigation the department conducted further searches and located Mr N's email. The department advised that staffing changes and absences had resulted in the email being incorrectly classed as having been 'actioned'.

The department apologised to Mr N for failing to respond to his complaint. It also took steps to try to prevent similar oversights from occurring in the future, including increasing staffing levels and implementing a strategy to manage risks associated with staff absences.

Following correct procedure

Mr O complained to the department about an incident that occurred at the office of his Job Services Australia provider in which the police were called to intervene. Mr O did not consider that the department had properly assessed his complaint.

Our investigation found that the department had conducted a thorough investigation of the incident and correctly referred Mr O to the relevant law enforcement authorities. However, the investigation also found that the provider failed to prepare an incident report about its decision to call the police, in accordance with the department's procedures. Our office expressed concern about the provider's failure to follow correct procedure. In response, the department advised it has taken steps to remind Job Services Australia providers of their obligations and the need to properly record and report incidents.

Improved communication

Ms P complained to our office about non-payment of Child Care Rebate for 2009–10. She advised that this had occurred despite advising her child care centre that her daughter had returned to her care. Despite attempts to resolve this issue directly with the child care centre over a number of months, Centrelink and the department, the payment issue was not resolved.

On investigation by our office it became apparent that Centrelink, the department and the child care centre needed to take further action to resolve Ms P's complaint. In response to our investigation the department negotiated with the child care centre to facilitate resubmission of child care attendance information by the child care centre. This enabled the rebate to be paid to Ms P.

This case was a good example of the department working with a child care provider to achieve a reasonable outcome where each party (the parent and the provider) had different views on the matter and there had been no obvious error by any of the parties.

DEPARTMENT OF CLIMATE CHANGE AND ENERGY EFFICIENCY AND DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION AND COMMUNITIES

Overview

During 2010–2011 we received 305 approaches and complaints about the Department of Climate Change and Energy Efficiency (DCCEE), and 32 approaches and complaints about the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC, which was formerly the Department of Environment, Water, Heritage and the Arts – DEWHA).

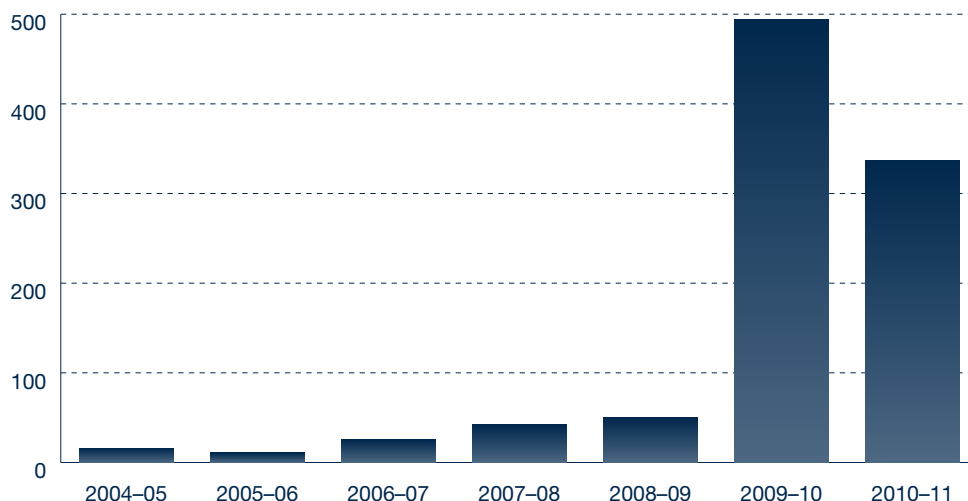
This was a 30% decrease from the 494 approaches and complaints that we received about these two Departments in 2009–10. This decrease reflects the ending of a number of the Australian Government's energy efficiency programs that were a significant

source of complaints in 2009–10, particularly the Home Insulation Program and the Green Loans Program.

In March 2010, responsibility for administering all energy efficiency programs transferred from the then Department of Environment, Water, Heritage and the Arts (now Department of Sustainability, Environment, Water, Population and Communities) to the Department of Climate Change and Energy Efficiency.

However, as discussed further below, the ending of those programs itself created new problems, and meanwhile, some of the systemic problems that we identified previously have not yet been fully fixed. As a result, complaint levels remain historically high, as can be seen from the chart below.

Figure 5.7: Approach and complaint trends DCCEE and DEWHA 2004–5 to 2010–11



Complaint themes

The main issues that people complained to our office about concerned:

- Solar Panel Rebate decisions
- compensation for the Green Loans program's cancellation

- the Insulation Industry Assistance Package.

Solar Panel Rebates

As we reported last year, on 9 June 2009, the Minister for the Environment announced that the Australian

Government would only accept applications for the \$8,000 solar panel rebate that were sent before midnight on 9 June 2009. We received many complaints about lost solar panel rebate applications. DCCEE confirmed that over 1200 applications had been reported lost. In May 2010 the Department wrote to all applicants who claimed to have submitted applications before the 9 June 2009 closure of the program, inviting them to resubmit their applications, together with supporting evidence to show that they had applied before the 9 June 2009 cut-off. Where applicants had not kept a copy of their original application, they were offered the opportunity to submit a duplicate application together with a statutory declaration to that effect. Applicants had until 4 June 2010 to resubmit their application.

Many people took up the Department's offer and resubmitted their applications within the required timeframe. The review of these applications took some time and many applicants were not notified of the Department's decision on their resubmitted application until November 2010. In the meantime we received many complaints about the Department's delay in making its decision on the resubmitted applications.

In our view, DCCEE's delay was regrettable, particularly given the short time frame that it had allowed for applications to be resubmitted. However, apart from expressing our concern to the Department, there was little that this office could do to expedite processing of individual applications when all were equally being affected by the delay.

Compensation for the Green Loans program's cancellation

The Green Loans program was intended to assist energy efficiency initiatives in Australian homes by providing free home sustainability assessments. The assessments were voluntary and provided householders with advice on what they could do to save energy and water in their homes. However, as a result of well-publicised problems with the program's delivery, in February 2010, the Government capped the number of home sustainability assessors at 5000, and the Department suspended issuing contracts to new assessors at that point. Then in July 2010 the Government announced that the Green Loans program would be replaced by a new Green Start program. However, on 21 December 2010, the Government announced that the Green Start program would not

proceed, and that the Green Loans program would continue until 28 February 2011 and then close.

The decisions to suspend issuing new contracts, and eventually to close the home sustainability assessment scheme, affected thousands of home sustainability assessors who had not been able to obtain contracts with the Australian Government. Each had invested time and money on training, insurance and registration, but had never been able to obtain any work under the scheme. Those business establishment costs were essentially lost. Some assessors claimed compensation for these losses from DCCEE under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

In recognition of the impact of its decisions on uncontracted assessors, the Government introduced a new Financial Assistance Scheme (FAS) designed to provide some compensation for uncontracted assessors. DCCEE then wrote to the assessors who had made CDDA claims and told them that it would not proceed with considering those claims, and invited them to lodge FAS claims instead.

We received a number of complaints from uncontracted assessors about the Department's decision to discontinue their CDDA claims.

In our view, it was a positive step for the Government to introduce the FAS to provide compensation for uncontracted assessors, because FAS claims were likely to be much simpler and more straightforward to establish than CDDA claims.

As we explained to complainants, under the FAS, unlike the CDDA Scheme, claimants did not need to show either that there had been any 'defective administration', nor that it caused their losses. It was sufficient for claimants to show that they were an uncontracted assessor, and that they did in fact incur the kinds of business establishment costs covered by the FAS.

To establish a claim under the CDDA scheme, in contrast, claimants need to show both that there was 'defective administration' by an Australian Government agency, and that the defective administration directly caused their losses. In our view, in practice, both requirements were likely to be significant hurdles for uncontracted assessors. In particular, while there were undoubted failures in the governance of the Green Loans program, those kinds of governance failures

did not fit easily into the CDDA Scheme's definition of defective administration.

On the other hand, we were conscious that there could be exceptional cases where uncontracted assessors had experienced specific administrative failures, such as receiving incorrect advice from the Department, that would clearly fall within the definition of 'defective administration' in the CDDA Scheme. If that defective administration directly caused loss not covered by the FAS, then in our view, compensation under the CDDA Scheme should still be payable, notwithstanding the FAS.

We put this view to the Department before the FAS Guidelines were finalised, and the Department made some amendments to the Guidelines as a result. The Department explained to us that the changes were intended to ensure that the introduction of the FAS would not prevent it from considering any CDDA claims in exceptional cases.

In light of this, we invited complainants to tell us if they considered that their case was one of these exceptional ones. To date no-one has pursued their complaint with us on this basis.

Insulation Industry Assistance Package

As with the Green Loans programs, because of well-publicised problems the Government announced the closure of the Home Insulation Program in February 2010. This left insulation installers, manufacturers, importers and distributors with few prospects for their employees, and with many hundreds of thousands of dollars tied up in unwanted stock. The Insulation Industry Assistance Package (IIAP) was designed to assist these businesses by partially reimbursing them for the value of the insulation stock they were holding when the Home Insulation Program closed.

We received a number of complaints from businesses about decisions about their eligibility for assistance under the IIAP. Some had their applications rejected in the first place. Others have received IIAP payments of as much as \$100,000, only to have the Department subsequently determine that they were ineligible and demand the return of the grant.

One IIAP eligibility criterion for insulation installers, intended to ensure that only installers who were still active when the Home Insulation Program was cancelled would be eligible, was that the applicant must have undertaken 10 or more installations

between 1 December 2009 and 12 February 2010 (the 'active installer' test).

We received complaints from several installers who appeared to fall within the intent of the IIAP, in the sense that they were still active in the installation industry when the program closed, but who for various reasons had not made the required number of installations in the relevant period. We pointed out to the Department that the IIAP Guidelines stated:

In cases where these Guidelines do not deal with the particular circumstances of an applicant and the Program Delegate is satisfied that those circumstances are exceptional and favour an assistance payment, the Program Delegate may give directions to permit the approval of the application.

After our intervention, the Department agreed to reconsider several applications in light of that provision.

Another group of complaints was from businesses that had at some point registered with the Department as installers, but had then shifted their activities away from installing insulation, and instead had concentrated on importing and/or distributing insulation. As these businesses were no longer active as installers when the Home Insulation Program was cancelled, they could not meet the 'active installer' test. They therefore applied as importers or distributors.

A key requirement for the IIAP, which reflected the concerns about 'dodgy' installers that had contributed to the Home Insulation Program being cancelled, was that the applicant could not be either the subject of a serious non-compliance investigation, or linked to a serious safety issue (the 'no dodgy installers' requirement).

The Department wanted to make sure that businesses that had been installers at any point would not avoid the 'no dodgy installers' requirement because they had shifted their activities from installing to importing or distributing insulation. However, under the Guidelines, this requirement only applied to insulation installers – not importers or distributors.

The Department therefore adopted an approach of 'once an installer, always an installer' when assessing all IIAP applications. It applied the 'installer' criteria to all businesses that had ever been registered

as installers, even if they were no longer active as installers, and were applying only as importers and/or distributors.

The problem was that, even if these businesses met the 'no dodgy installers' requirement, they could not meet the 'active installer' test, and therefore were not eligible for the IIAP even though they had not done anything wrong.

In our view, the 'no dodgy installers' requirement itself is not unreasonable, given the safety and fraud issues that emerged in the Home Insulation Program. The Department's desire to apply that requirement to any applicant who conducted installations at any time under the Home Insulation Program is understandable.

However, we are concerned that an overly rigid approach to applying the Guidelines might have led to unfair and unintended consequences for businesses that shifted their activities. In our view, the 'exceptional circumstances' provision referred to above provides sufficient flexibility for the Department to require ex-installer applicants to meet 'no dodgy installers'

requirement, but without them also having to meet the 'active installer' test. We are continuing to liaise with the Department on this issue.

Systemic issues

Complaints to us over the last year highlighted issues about the lack of integration between DCCEE's contracted call centres, and the Department's line areas responsible for delivering programs. In particular, the call centre were not able to access information about whether or not the Department had received the caller's application for a particular rebate, or where the application was in the queue.

We have frequently raised this issue with DCCEE, and DEWHA before it, over the past several years. As the case study below demonstrates, this lack of integration can lead not only to delays and frustrations for callers, but to people missing out on rebates they might otherwise be entitled to.

Maintaining accurate records

Mr Q wrote to his local Member of Parliament on 26 November 2009 and to the then Prime Minister the Hon Kevin Rudd MP seeking their assistance to expedite payment of his Home Insulation Program rebate. DCCEE received this correspondence on 19 March 2010. It wrote to Mr Q on 22 July 2010 and advised him that he was not eligible for the rebate because the Department had not received his application within 6 months of the installation date, as required by the Program Guidelines. Mr Q then complained to our office.

Our investigation established that Mr Q had in fact contacted the Energy Efficient Homes call centre on four occasions: 10 and 20 August, 27 October and 26 November 2009. These calls should have alerted the Department to the fact that Mr Q's application had not been received, and the Department should have advised Mr Q to re-send his application.

Our investigation also established that the Department had not properly checked the call centre records when it was preparing its response to the Ministerial correspondence.

In response, the Department immediately sought to remedy its errors. A senior officer telephoned Mr Q to apologise, and to invite him to submit a replacement application. The Department sent the application form to Mr Q on 15 September 2010, and when Mr Q returned the forms they were processed and he was reimbursed immediately.

We have received many other complaints from people whose applications for various rebates had gone missing, and who had followed up with the Department before the due date for them to apply had passed. In cases where our investigation established that the Department failed to give clear and timely

advice to callers about their application not being received, and that they needed to resubmit before the relevant cut-off date, we have recommended that the Department accept late submissions. The Department generally has accepted our recommendations in these cases.

The Department has also recently engaged a new call centre provider, and initial indications are that there are fewer problems arising from a lack of integration between it and the Department. We will continue to closely monitor this issue.

Update from last year

In our last annual report, we reported that we had finalised an own motion investigation into DEWHA's complaint-handling policies and processes without publishing a report because of the transfer of DEWHA's energy efficiency programs to DCCEE in March 2010, and because DEWHA had already committed to bringing its complaints policy into line with our *Better practice guide to complaint handling*.

We continued to liaise with DSEWPAC (as DEWHA became), and were pleased to see the introduction of a new whole-of-Department complaints policy in November 2010.

Last year we also reported that we had worked closely with DCCEE to help it establish new complaint-handling processes specifically for the energy efficiency programs that were transferred to it in March 2010. We said we would continue to work with the Department as it also develops a whole-of-Department complaint-handling system that reflects our better practice guide.

The Department is continuing to develop the DCCEE Complaints Management and Review Framework to guide complaints. It has established an Internal Review Section, and published its Service Charter in March 2011. A departmental working group is working on the final draft of its Complaints Reporting Framework and Reporting Requirements.

We will continue to work with the Department through this process, and expect to be able to report that a whole-of-Department complaint-handling process is in place in our next annual report.

Looking ahead

DCCEE is the lead agency responsible for developing and implementing the Australian Government's Climate Change Plan. The Government's plan does not include the type of large scale, demand-driven rebate programs, such as the Home Insulation and Green Loans programs, which drove the significant increase in complaints this office has received over the last two years.

However, the Plan does envisage establishing at least five new agencies, such as the Clean Energy Regulator and Climate Change Authority, which will be within our jurisdiction. We will be proactive in seeking to ensure that such agencies have appropriate review and complaint-handling mechanisms in place from the start.

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Overview

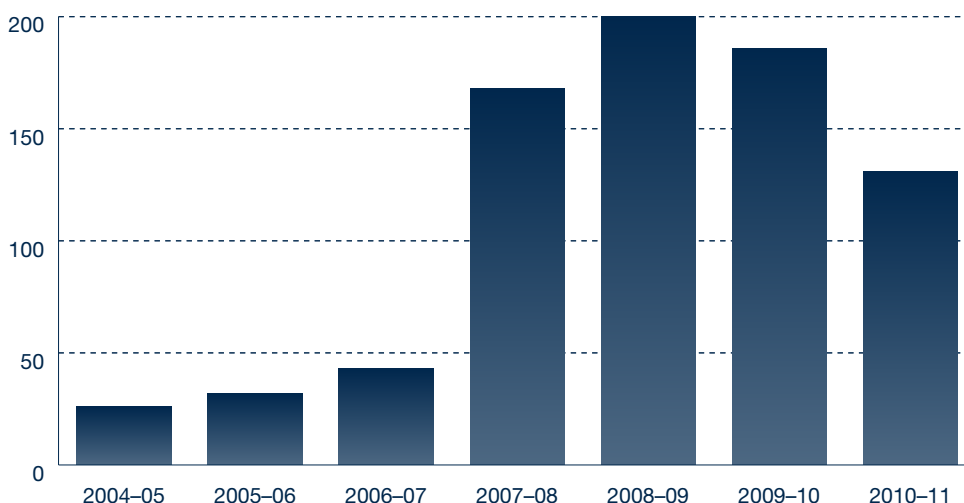
The responsibilities of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA, or the department) include the design, management and delivery of services to some of Australia's most vulnerable and marginalised people. Not only does it have policy responsibility for the majority of Australia's social security system, it oversees and is engaged in, program delivery to Indigenous Australians in remote communities throughout the Northern Territory and in locations in South Australia, Western Australia, New South Wales and Queensland.

The majority of complaints about the department or its programs concern Indigenous programs in the Northern Territory – in the 2010–11 financial year, 89 of the 131 complaints about the department arose out of the Northern Territory. Further details about those

complaints and the issues arising from them can be viewed in the Indigenous section (pages 92–98).

Outside of the Northern Territory, the department's role tends to be that of a policy and funding agency rather than a service delivery agency. This limits the amount of direct contact that this agency has with the community, and thus the number of complaints made about it. Nonetheless, funding agencies such as FaHCSIA retain a responsibility to ensure that the funded entities provide services that meet the policy objectives behind the funding. This is an area of increasing interest to this office and has been at the heart of a number of reports concerning the department which have been published this year (detailed below).

Figure 5.8: FAHCSIA approach and complaint trends 2004–5 to 2010–11



Complaint themes

Of the 42 complaints that did not concern Indigenous programs in the Northern Territory, the key areas of complaint were:

- about the FaHCSIA-funded Complaint Resolution and Referral Service's (CRRS) handling of complaints about Disability Employment Network service providers

- about the service delivery and decisions made by Relationships Australia supervision centres
- from or about bodies funded by FaHCSIA in relation to funding, reporting requirements and disputes about alterations to funding agreements
- about policy issues surrounding social security payments.

The following case study is typical of the complaints we receive from funded bodies as they negotiate with FaHCSIA about funding or address issues arising from audits. This office has been critical of the actions of funding agencies, see for example our report titled *Administration of funding agreements with regional and remote indigenous organisations* (Report 16|2010), released in December 2010. However, in this case, we were satisfied that the Department had acted appropriately.

FaHCSIA's funding decisions and process

An organisation funded by FaHCSIA complained that it had been without funding for two months. Our investigation showed that the Department had carried out an audit of the organisation in response to concerns about financial management. The audit, which identified some financial viability issues, led to negotiations for a revised funding agreement.

There was evidence that the Department had spent considerable time and effort in dealing with this organisation in helping it provide up-to-date financial statements. As those statements were not prepared in time, the department was unable to assess the viability of continuing funding until the old funding agreement was nearing its end. The Department quickly prepared a new funding agreement that took into account the issues raised through the audit process. Understandably, the organisation then took time to analyse and sign the new agreement, during which time it did not have an agreement and was unfunded. As soon as the new agreement was signed, funding re-commenced.

We decided that we could not be critical of the actions taken by the Department as it had taken reasonable steps to assist the organisation through this process, and the unfunded period was an unavoidable consequence of earlier delays caused by factors external to the department. We provided the complainant with an independent review of the Department's actions and a clear explanation of the reasons for our view.

Systemic issues

One of the hallmarks of good government administration is a coordinated and responsive complaint handling system. However, it is often the case that people approach this office because they are not satisfied with the way their complaint to FaHCSIA has been handled. While we continue to get a moderate number of complaints about the Department's complaint handling outside of the NT, the Department is working to improve its own responses to complaints, including improving internal guidance on complaint handling. The Department's recognition of the need for improvement and increased interest in this area was evident at the Department's complaint-handling workshops, held in early 2011. We presented at the Canberra and Adelaide workshops and the Ombudsman spoke to FaHCSIA officers in February 2011. During those presentations, we reinforced the value of complaints, and the importance of encouraging a culture that is receptive to complaints

and feedback. We look forward to assisting the Department in this process.

Complaints during this financial year highlighted the need for greater awareness of, and responsiveness to, tribunal decisions. The implications of this problem were evident in the report *Review rights for Income Managed people in the Northern Territory* (Report 10|2010), published in late 2010. Other complaints to this office, such as the one over the next page, reinforce the need for policy agencies to have mechanisms in place that ensure they are duly informed of any significant tribunal decisions, engage with the broader implications of such decisions and give proper instructions to service agencies, such as Centrelink, so that decisions and policy and guideline changes are efficiently carried out. This is a matter about which we will continue to engage with FaHCSIA and other policy agencies.

Implementation of a Social Security Appeals Tribunal decision

The Social Security Appeals Tribunal made a decision in February 2010 that highlighted an inconsistency between the legislation and FaHCSIA's instructions to Centrelink on how to assess pension claims under an international agreement. While the procedure in place at the time required Centrelink to inform FaHCSIA if there was a problem with those instructions, this Tribunal decision was not brought to FaHCSIA's attention. FaHCSIA did not become aware of this Tribunal decision until, in the course of our investigation, we contacted it about this matter in November 2010. The instructions about the international agreement were then changed to reflect the Tribunal's decision. FaHCSIA is taking steps to avoid a repeat of this and similar problems. Firstly, it is reviewing and consolidating the procedure that Centrelink is required to follow when deciding which Social Security Appeals Tribunal decisions it should alert FaHCSIA to so that significant decisions are referred. Secondly, FaHCSIA's legal section is putting procedures in place aimed at ensuring prompt consideration of the implications of such decisions and the development of strategic responses to them.

Cross-agency issues

As the above case study illustrates, complaints about FaHCSIA often intersect with the work of Centrelink. During our investigation into service delivery to customers dealing with mental health issues, we looked at Centrelink, the Department of Education, Employment and Workplace Relations (DEEWR) and FaHCSIA. That report explored the complexity and gaps that can arise in multi-agency service delivery. Further information about that report is below and contained in the Centrelink section of this Annual Report.

Additionally, the provision of services under the Disability Employment Services program can often involve FaHCSIA, DEEWR and Centrelink. When complainants come to us it is not uncommon to find that they have had dealings with all three agencies but remain confused about which agency can look at the various aspects of their complaint. When complaints of this type come to our attention we work with the complainant to identify the remedy they wish to achieve and to assist them in determining which agency they should progress their problem with.

Reports released

FaHCSIA was one of three agencies investigated in a report concerning service delivery to customers suffering from a mental illness. The report is titled *Falling through the cracks—Centrelink, DEEWR and FaHSCIA: Engaging with customers with a mental illness in the social security system* (Report 13|2010). The report made a range of recommendations designed to improve engagement with, and services

to, customers with mental health issues and disabilities.

FaHCSIA was one of two agencies investigated as a result of a complaint about the Income Management regime in the Northern Territory. The report is titled *Department of Families, Housing, Community Services and Indigenous Affairs and Centrelink: Review rights for Income managed people in the Northern Territory* (Report 10|2010). It highlighted a significant failure in the provision of review rights to people affected by the former income management regime. This report also led to the changes referred to in the case study above about the implementation of a Social Security Appeals Tribunal decision. Further information about that report is included in the Indigenous section of this Annual Report.

FaHCSIA was included in a report titled *Talking in Language: Indigenous language interpreters and government communication* (Report 05|2011). Importantly, FaHCSIA is responsible for the establishment of a national framework on the supply and use of Indigenous language interpreters. It was responsive to this report and provided a briefing to this office, and other agencies involved in the report, at a workshop about Indigenous language interpreting that was hosted by this office in late June 2011. There is further information about that report in the Indigenous section of the Annual Report.

Update from last year

Last year we reported that we were working on reports about the use of Indigenous language interpreters and income management review rights. Both of those reports have been released as detailed above and we continue to monitor and engage with the Department as it implements the recommendations.

Stakeholder engagement, outreach and education activities

As noted earlier, we held a workshop on the problems facing agencies as they seek to better utilise Indigenous language interpreters. The workshop enabled agencies to explain what they are doing to address these problems and to share their knowledge about the challenges and opportunities that exist in this space. FaHCSIA was a primary contributor to that workshop and will continue to play a central role as it seeks to increase the recruitment and retention of Indigenous language interpreters, and encourage agencies to properly use interpreters.

We have been holding round table meetings about social welfare issues with community stakeholders across the country. These meetings often raise issues that touch upon the department's responsibilities for social security policy. Additionally, our work in the NT includes regular engagement with stakeholders involved in Indigenous housing issues, income management policy and other Northern Territory Emergency Response initiatives that come within the department's areas of responsibility. We value the insights these stakeholders provide and benefit from their first-hand experience of how the Department's policies work in practice.

Looking ahead

The Ombudsman's office and the Department have taken steps towards a protocol governing the relationship between our two agencies and to assist with communication and the investigation of complaints about Indigenous programs in the Northern Territory. It is hoped that the protocol will assist this office and the department to achieve practical remedies more quickly for individual complainants and to facilitate root cause analysis as necessary.

In the interim, we continue to engage with FaHCSIA at all levels and meet with specific areas as issues arise. A key theme for our continuing engagement is the extent to which the Department as a funding and policy agency is responsible for the provision of outcomes in an increasingly devolved delivery environment.

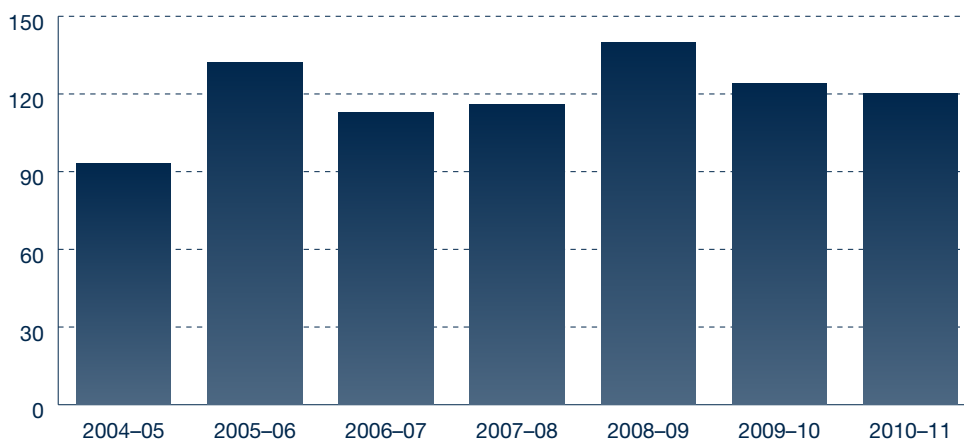
DEPARTMENT OF HEALTH AND AGEING

Overview

The Ombudsman received 120 approaches and complaints about the Department of Health and Ageing (DoHA) in 2010–11. It finalised 113, of which 19 were investigated.

As noted in the 2009–10 Annual Report, most complaints received by the Ombudsman concerned the Department's handling of complaints about aged care.

Figure 5.9: DoHA approach and complaint trends 2004–5 to 2010–11



Aged Care

A common theme in these complaints is access to the Aged Care Commissioner, with many complainants missing the 14-day time limit in which to lodge an appeal against a decision of DoHA's aged care Complaints Investigation Scheme (CIS). In some cases the Aged Care Commissioner's office has been able to accommodate the complainant by considering the issues raised as complaints about CIS's processes, rather than as an appeal about their decisions. There is no time limit for complaints about process.

However, this approach cannot apply in all cases and the outcomes are different from those available where an appeal against a decision has been accepted. We understand that DoHA has implemented the Walton Review recommendation to extend the time limit to appeal from 14 to 28 days from 1 September 2011.

Other complaints this year have highlighted complexities in the aged care system.

Aged care complaints

Mrs S had been residing in an aged care facility for respite care and indicated to her family that she would like to stay in the facility. An assessment was carried out by an Aged Care Assessment Team for the purposes of admission which indicated that Mrs S's care needs were on the border of low to high care and, taking into account her degenerating eyesight, she should be assessed as requiring high care. On entry, the facility advised Mrs S's family that she actually only required low care and would be entered as such. At the time the accommodation agreement was signed the family were unaware that the financial arrangements were different for low and high care and that accommodation bonds were not charged for high care residents.

Aged care complaints (continued)

Later the family queried how the facility could decide that Mrs S required low care when the Assessment Team had assessed her as having high care needs. The Aged Care Commissioner and DoHA each had different views on the law, with DoHA ultimately deciding that the law simply specified that a bond was not payable if the person required high care at the time of entry to the facility. DoHA decided that whether the person required high care was a question of fact to be decided on all of the available evidence at the time including, but not limited to, the Assessment Team assessment and contemporaneous care notes held by the facility. Following a request from the Ombudsman, DoHA also agreed to take into account any additional evidence the provided.

The complaint also raised concerns that the requirement was not well understood by participants and advisors in the aged care sector. In response, DoHA amended its fact sheets to provide additional information.

The Ombudsman made submissions in this period to the Productivity Commission's Inquiry *Caring for Older Australians*, and in response to DoHA's discussion paper *Aged Care Complaints Scheme: Proposed Complaints Management Framework*.

The Ombudsman will continue to monitor the progress of reform in aged care complaint handling.

Continence Aids Payment Scheme program transfers

In mid-2010 the Ombudsman also received a number of complaints about the replacement of the Continence

Aids Assistance Scheme (CAAS) with the Continence Aids Payment Scheme (CAPS) to be administered by Medicare Australia (Medicare) on behalf of DoHA. These complaints concerned delays in processing registrations for CAPS and problems experienced by carers in meeting the requirements to act as nominee for a person whose disability prevented them acting on their own behalf. Our office found it necessary to correspond with both Medicare and DoHA to resolve these complaints.

Continence Aids Payment Scheme

Mrs T completed the form for transfer from the CAAS to the CAPS program on behalf of her adult son in April 2010. The form contained a section for completion by a person's 'legal representative or parent' and Mrs T indicated that she was her son's guardian and mother. In May her son received a letter from Medicare advising him to provide a certified copy of his legal representative's authority to act on his behalf. Mrs T complained that she was already her son's correspondence nominee for Centrelink purposes and that she did not think it reasonable that she had to obtain a formal guardianship order to manage \$470 per year for continence aids.

We contacted Medicare which advised us that this was a policy issue and referred us to DoHA. DoHA advised us that it was the intention of the scheme that people who were already correspondence and payment nominees for Centrelink purposes would be accepted as nominees for the CAPS program. However, neither the form, which included both DoHA and Medicare branding, nor the letter from Medicare had indicated this.

Mrs T provided confirmation of her status as a nominee with Centrelink in June 2010 and the payment was processed in August 2010. The information on the CAPS application form has been amended to include a Centrelink nominee as one of the options for valid legal representation to act on behalf of another party.

Therapeutic Goods Administration

In last year's annual report, we noted that complaints to the Ombudsman had demonstrated that there was room for improvement in the way the Therapeutic Goods Administration communicated with the public

about its work. To this end the Ombudsman made a submission to the DoHA's *Review to improve the transparency of the Therapeutic Goods Administration*, which reported in June 2011.

FAIR WORK OMBUDSMAN

Overview

The Office of the Fair Work Ombudsman (Fair Work Ombudsman) is a statutory office created by the *Fair Work Act 2009*. Operating independently of Government, its functions include promoting harmonious, productive and cooperative workplace relations and ensuring compliance with Commonwealth workplace laws.

In 2010–11 we received 79 approaches and complaints about the Fair Work Ombudsman. This is 26 more than the 53 received in the previous financial year.

The majority of complaints made to our office this year concerned decisions made by the Fair Work Ombudsman in response to claims from employees. The underlying issue with these decisions was that the Fair Work Ombudsman had determined that there had been no breach of the legislation or relevant award. The underlying reason for the increase in complaints to our office appears to relate to a lack of clear understanding about the Fair Work Ombudsman's tiered internal review process. For example complainants often believe that they have exhausted their review rights with the FWO when they have had a process (Tier 1) review, even though they are still eligible for a Tier 2 review. The Fair Work Ombudsman has recently advised that it will be amending its decision letters to provide further information about how a review can be requested. Our office will continue to work with the Fair Work Ombudsman to try to resolve any perceived confusion by complainants about the review process.

Complaint themes

In 2010–11 we investigated only 17 complaints lodged with our office about the Fair Work Ombudsman. Of these complaints the main issues concerned timeliness of the Fair Work Ombudsman during different stages of its assessment and investigation processes.

Although timeliness was an issue for people who had either lodged a claim against an employer, or for an employer being investigated, on the whole we found that the time taken by the Fair Work Ombudsman was not unreasonable in the circumstances. We observed that both employees and employers were anxious to receive their decision as quickly as possible.

However, there are many complicating elements of an investigation that can make it difficult for agencies like the Fair Work Ombudsman to provide accurate timeframes to parties at early stages in the process. We found very few instances of unreasonable delay by the Fair Work Ombudsman.

In most cases where our office did not undertake an investigation, it was because the complainants still had an avenue of review with the Fair Work Ombudsman available to them. Over the coming 12 months we intend to monitor complaints of this type to ensure the Fair Work Ombudsman is adequately communicating information about review rights to claimants.

Cross-agency issues

The Overseas Students Ombudsman and the Fair Work Ombudsman have agreed on an approach to transferring any complaints from overseas students which could more effectively or conveniently be dealt with by the Fair Work Ombudsman. The Overseas Students Ombudsman is required under legislation to transfer complaints in those circumstances, and the agreement is intended to facilitate that process. To date no transfer of a complaint has been made.

Reports released

During 2010–11 we met with the Fair Work Ombudsman and were provided with an update on its implementation of the recommendations made in our own motion investigation report *Fair Work Ombudsman: Exercise of coercive information-gathering powers* (Report 09/2010). That report focused on the policies and procedures used by the Fair Work Ombudsman when exercising those powers in its investigations. The Fair Work Ombudsman responded positively to the report and acknowledged that the working relationship between our agencies had matured as a result of the own motion process. On its website the Fair Work Ombudsman acknowledged that our office's involvement as the Tier 3 step in the Fair Work Ombudsman's file review process is an important part of its quality review processes and strengthens the standing of its investigations. The Fair Work Ombudsman has advised that it referred to our report in a recent review of its Operations Manual.

Update from last year

Since the release of the report mentioned above, the Fair Work Ombudsman has made a number of improvements to its practices to take into account the best practice principles contained in the Administrative Review Council's report *The Coercive Information-Gathering Powers of Government Agencies*" (Report 04|2008).

Looking ahead

Our office will continue to monitor how information about how the Fair Work Ombudsman's internal review mechanisms is communicated to complainants.

MEDICARE AUSTRALIA

Overview

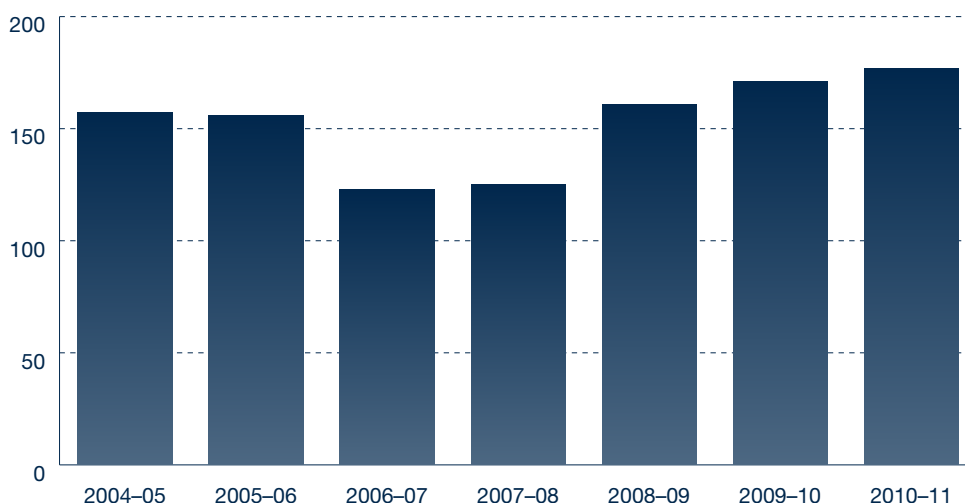
In 2010–11 the Ombudsman received 177 approaches and complaints about Medicare Australia (Medicare). It finalised 184 of which 30 were investigated. This is a similar complaint pattern to previous years.

Complaints about Medicare are diverse and include complaints about enrolments, entitlements, administration of the Medicare levy exemption and newer programs such as the Continence Aids Payment Scheme (see case study about this program in the Department of Health and Ageing overview on page 81).

However, a number of complaints concerned access to allied health services under the Medicare Better Access initiative. Some of these complaints concerned

the quality of advice about entitlements, while others arose from the requirement that certain Medicare services be claimed as a prerequisite before claiming allied health care items under a Mental Health Care Plan. The latter type of complaints reflect the complexity of the program, which requires patients to know when the care plan has been lodged or that another prerequisite item has been recorded before making their claim. Issues about the recording of verbal advice about entitlements under care plans were reported on in our 2009–10 Annual Report (page 81).

Figure 5.10: Medicare approach and complaint trends 2004–5 to 2010–11



Confusion about Medical Health Care Plans

Mrs U visited her doctor for a Mental Health Care Plan to enable her child to receive a number of services from a clinical psychologist under the Better Access Initiative. The doctor's surgery advised that the care plan would not be lodged with Medicare straight away and that this needed to be done before the appointments with the psychologist were covered by the plan. Some days later Mrs U's child attended a psychologist after which Mrs U took her account to a Medicare office and the claim was paid. Mrs U assumed that the care plan was in place and proceeded to make a further appointment for her child. However on the next occasion Medicare

Confusion about Medical Health Care Plans (continued)

advised that the claim could not be paid because the care plan was not in place and none of the other prerequisites for payment applied. Mrs U complained that she had relied on the fact that the previous claim had been paid when she made the second appointment and would have waited if she had known the care plan was still not in place.

On investigation, we found that the Medicare computer system had identified an old unrelated item in Mrs U's claims history and had allowed the initial claim on the basis that a prerequisite item had been claimed. The error had been picked up in a routine post payment check. Medicare advised that options to prevent customers experiencing this type of inconvenience had been discussed with the Department of Health and Ageing. The Department concluded that significant costly systems changes, that were disproportionate to the extent of the problem, would be necessary to prevent claims being allowed and that the steps that had been taken to educate medical practitioners to advise patients were adequate. This left it up to customers to check with their doctors that their care plan has been lodged before receiving a service under the plan. However, Medicare resolved Mrs U's complaint on an individual basis.

MONITORING AND INSPECTIONS

Overview

The Ombudsman is required by law to inspect the records of certain agencies in relation to their use of covert and coercive powers. We do this to determine compliance with legislative requirements governing the use of these powers. We also aim to help agencies improve their processes to comply with the various statutes.

The covert and coercive powers include:

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

Definitions

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

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

Surveillance devices are typically listening devices, cameras and tracking devices that are used to gather information relating to criminal investigations and the location and safe recovery of children. The use of these devices will, in most circumstances, require the issue of a warrant.

A **controlled operation** is a covert operation carried out by law enforcement officers under the *Crimes Act 1914* (Cth) for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence. The operation may result in law enforcement officers engaging in conduct that would otherwise constitute an offence.

In addition, we undertook the function, recommended by the Senate Rural and Regional Affairs and Transport Legislation Committee in 2006 and agreed by the Department of Agriculture, Fisheries and Forestry, of reviewing investigations carried out by the Compliance Branch of the department's Biosecurity Services Group.

We also inform the Commonwealth Attorney-General's Department of our inspection findings, and report

regularly to the Attorney-General and the Minister for Home Affairs. These findings form the basis of our annual briefing to the Parliamentary Joint Committee on Law Enforcement.

In 2010–11, we undertook 37 inspections across 17 different agencies, at both the Commonwealth and the state and territory level.

Influencing positive change

Our inspections provide external scrutiny of, and hold agencies accountable for, the use of covert powers and how they deal with sensitive information. In doing so, our main focus is to improve agencies' compliance with the relevant legislative provisions. As a result, a large part of our work is raising awareness of actual and potential compliance issues among the agencies we inspect, as well as relevant policy makers within government. By promoting positive change in this way, we believe that agencies are more likely to collaborate with us to achieve positive results.

Another way in which we promote positive change is to ensure that our own inspection processes are open and transparent to the agencies, the responsible Ministers and Parliamentary Committees. For example, before conducting inspections we write to agencies outlining our inspection process, the criteria we use to assess compliance, the documents we require access to and the reasons for requesting these documents. We also invite discussions outside the formal inspection process with agencies on administrative processes that may lead to improved compliance with the legislation.

In 2010–11 we saw improved compliance across all regimes and generally in all the agencies we inspected.

Reports Released

The Ombudsman released the following inspection reports in 2010–11:

- November 2010 – Biannual report to the Attorney-General on the results of inspections of records under s 55 of the *Surveillance Devices Act 2004*.
- November 2010 – Annual Report on the Commonwealth Ombudsman's activities in monitoring controlled operations conducted by the Australian Crime Commission and the Australian Federal Police in 2009–10.
- November 2010 – Report to the Department of Agriculture, Fisheries and Forestry on the compliance and investigations activities of the Biosecurity Services Group.
- March 2011 – Biannual report to the Attorney-General on the results of inspections of records under s 55 of the *Surveillance Devices Act 2004*.

Stakeholder Engagement

Working with agencies

Throughout 2010–11, we worked closely with agencies outside our formal inspection processes to promote our oversight role and help them improve compliance. We value these interactions with agencies, in particular the Queensland Crime and Misconduct Commission, the Australian Federal Police and the Australian Crime Commission, who demonstrated their willingness to engage with us to improve compliance and were receptive to our recommendations.

During the year, we met with new staff at the Queensland Crime and Misconduct Commission, the Queensland Police, Tasmania Police, the Australian Customs and Border Protection Service and the Australian Federal Police to explain our oversight functions and inspection procedures.

We also helped agencies such as the Australian Federal Police to set up new policies and procedures following amendments to legislation affecting their exercise of covert and coercive powers.

Working with the Commonwealth Government

Over the past financial year, we have strengthened our collaborative working relationships with the Attorney-General's Department and the Department of the Prime Minister and Cabinet.

Because we work closely with several state and federal law enforcement agencies, we are in a position to provide strong feedback to both departments on:

- how law enforcement agencies apply different regimes;
- provisions of relevant Acts that work well; and
- high-level systemic problems and issues.

This assists us in providing input into the legislative process, especially on issues we have identified during inspections.

Informing the Public

In addition to our legislative obligation to report to the Commonwealth Attorney-General and the Minister for Home Affairs on our inspection findings, we believe that where appropriate, we should also inform the

Australian public of the results of our activities. In 2010–11, for example, we issued media releases on:

- covert policing under the Surveillance Devices Act and the high level of compliance by the Australian Crime Commission and improved procedures of the Australian Federal Police in relation to the use of surveillance devices in the second half of 2010
- the findings from our inspection of Department of Agriculture, Fisheries and Forestry investigations, which outlined our recommendations regarding areas for improvement in compliance with internal operating guidelines and procedures, as well as
- noting the high-level of competency evident in the department's Sydney office
- controlled operations conducted by the Australian Federal Police and the Australian Crime Commission under Part 1AB of the Crimes Act, noting the need for the Australian Crime Commission to improve the level of external scrutiny of ongoing operations.

A day in the life of an inspections officer

Bleary-eyed at the Canberra airport lounge, waiting to board the 7am flight, the Ombudsman inspector prepares for the three days ahead on inspection.

After arriving at the agency concerned, informal discussions begin with the agency representatives. They provide updates on legislative amendments, agency policy and procedural changes, and issues from the previous inspection. During this interview, the agency representative self-discloses an issue which may impact the Ombudsman inspector's findings – she notes the issue and thanks the agency for its forthcoming attitude. She is appreciative of both the representative's understanding of the Ombudsman's role and their willingness to engage with her. Both parties are on the same page – a high level of compliance within the agency is the aim.

After the opening interview, she commences the inspection of agency records. She is well prepared for the inspection:

- aware of recent issues surrounding the regime she is inspecting;
- equipped with up-to-date inspection guidance material, audit criteria and test plans; and
- recent legislative changes and agency policy and procedural changes included in her notes.

Her days in the agency office run smoothly. This is partly due to all the preparation work prior to the inspection: her team had issued a notification letter to the agency head, outlining the inspection process and date, the criteria and methodology used to assess compliance, and a list of documents and sources of evidence required to be provided. This ensured that the agency was aware of the inspection scope, so they understood what would and would not be inspected. In doing their part, the agency provided easy access to all the requested documents and sources. She also often engages with officers in the operational and compliance areas, who provide further information and details. The officers answer questions and clarify issues, all of which is helpful in conducting her assessment.

On her third and final day, she finalises the inspection with an exit interview with the agency representative. This time, she summarises the inspection process and discusses her preliminary findings against the audit criteria. She outlines her findings in relation to the agency's good practices and notes the areas that could be improved. She welcomes any clarification and further information the representative offers.

On returning to Canberra, the next stage begins. She collates her findings and outcomes from her discussions and begins to draft an agency report. She also emails the agency for a little more information, so the report is accurate and fair. Once completed, the agency is provided with the opportunity to make comments on the report. On this occasion, the agency and the Ombudsman's Office have taken different positions on an issue,

A day in the life of an inspections officer (continued)

so a meeting is arranged to reach an agreement. Outcomes from the meeting are included in the finalised report, which is again sent to the agency.

Although the report has been finalised, the process is not yet over. In meeting the Ombudsman's legislative obligations, she then prepares a report on the results of this inspection to the Minister. Also, in recognition of the agency's improvement in legislative compliance, the Ombudsman releases a public statement on his office's general findings.

Looking ahead

As a major focus in future years, we will seek to enhance engagement with all our stakeholders. The Federal and State law enforcement agencies have been responsive to our reports by implementing improvements to deal with issues we have raised. We will seek to build further on this foundation by encouraging even greater mutual co-operation with the aim of improving transparency of administration in applying coercive powers.

We will also seek to extend our inter-agency co-operation to include the Attorney-General's Department, whose advice is essential to us in developing a consistent approach to interpreting the legislation under which law enforcement agencies operate.

FREEDOM OF INFORMATION

The Australian Information Commissioner Act 2010 commenced on 1 November 2010. That Act created offices of the Australian Information Commissioner (OAIC) and the Freedom of Information Commissioner who, together with the existing Privacy Commissioner, are responsible for information management, access and related matters in the Commonwealth.

The Commonwealth Ombudsman entered into a Memorandum of Understanding with the OAIC and agreed that investigating actions taken by Australian Government agencies under the *Freedom of Information Act 1982* (FOI Act) would be the primary responsibility of the OAIC from 1 November 2010. However, the transitional provisions in the new FOI Act mean that complaints about the handling of FOI requests made before 1 November 2010 remain the responsibility of the Commonwealth Ombudsman.

In 2010–11 we received 146 complaints about FOI requests handled by agencies. During the year we finalised 177 complaints about 180 issues. These related to a range of issues including agency delay, lack of explanation for exemptions claimed, and issues concerning processing fees and charges. Of these, 104 were about access to personal documents and 76 about access to general documents. We recommended the remedies for complainants, including expedited processing of delayed FOI requests together with an apology to the applicant and better explanation of reasons for exemptions claimed or for fees and charges levied.

INDIGENOUS PROGRAMS – CLOSING THE GAP IN THE NORTHERN TERRITORY

Overview

The Government has continued its significant investment in and program of reform for Indigenous programs in the Northern Territory (NT). Indigenous Australians in the NT are increasingly exposed to and impacted by a variety of government programs, services and policies. These include the continuation of the measures under the Northern Territory Emergency Response, Closing the Gap in the NT programs, National Partnership Agreements¹, significant investment and reform in relation to remote Indigenous housing, changes to Income Management and other government programs such as employment services. By extension, people are more likely to have queries or complaints about those services and programs.

The office's dedicated Indigenous Unit, whose focus is to oversight Indigenous programs in the NT, has continued to visit Indigenous communities, investigate complaints, address systemic issues and achieve remedies for individuals during this financial year. This year, the team has received 209 complaints relating to Indigenous programs in the NT. Seventy-three per cent of these were received during outreach to 15 remote Indigenous communities and several town camps. Resource constraints, an increased focus on systemic issues and an effort to finalise longstanding complaint investigations meant a reduced capacity for outreach activities toward the second half of this financial year.

Complaint themes again highlight the need for governments to work better together to achieve large scale objectives, and for agencies to be more accessible to people impacted by their policies,

programs or services. There is also room for improvement in how government communicates, engages and consults with Indigenous Australians. As outlined below, this office, in working with the agencies, has made some headway in relation to these areas.

Increasingly, complaints, feedback and our observations highlight the complexities associated with the three levels of government working together to achieve objectives such as those in place under the National Partnership Agreement on Remote Indigenous Housing in the NT, and the Alice Springs Transformation Plan. This office is uniquely positioned to ensure that under such arrangements governments remain focused on delivering citizen-centric and seamless services and programs. A number of complaints investigated by this office this year have identified areas for improvement.

Complaint themes

With the range and complexity of Indigenous programs and significant government investment in the NT, an independent and robust complaints and oversight function is critical. In performing this role, we are in a unique position to provide early warning of problems to government, build community confidence in the accountability of government programs in the NT and work with a range of stakeholders to improve government services and programs delivered to Indigenous Australians in the NT.

Failure to use interpreters led to misunderstanding and confusion

A community worker discussed some concerns with this office during outreach to an Aboriginal community and subsequently supported those affected to make a complaint to the Ombudsman's office. The complaint concerned residents' confusion about the Government's housing plans for their community. Government officials had visited the community to discuss plans for Strategic Indigenous Housing and Infrastructure Program including transition accommodation arrangements for people while their houses were being

¹ Including National Partnership Agreements on Remote Indigenous Housing and Remote Service Delivery

Failure to use interpreters led to misunderstanding and confusion (continued)

refurbished. Residents did not fully understand the information that had been told to them and were worried that they might lose their houses if they moved out of them while they were being refurbished.

An investigation by this office identified that the information session provided by government had not been delivered with the use of an Indigenous interpreter. As a result, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) responded positively by revisiting the community and delivering the information session with the use of an interpreter. The complainants were happy with this outcome and reported that they now understood the arrangements, and their concerns about losing their houses were alleviated.

Improved treatment of BasicsCard customers by a merchant

Ms V complained to our office on behalf of other customers in her community who use the BasicsCard, which is a reusable, PIN-protected EFTPOS card that allows people to spend income-managed money at approved stores and businesses.

She reported that BasicsCard holders often suffer poor treatment by a staff member at the local store. She reported that if people do not have sufficient balances on their cards to purchase their goods, the staff member gets angry at the customer, demands that they leave the store and does not allow them to use other payment methods. Ms V reported that customers are highly embarrassed because the staff member yells at them in front of others. This has resulted in some BasicsCard customers travelling to stores elsewhere to avoid this poor treatment, and having to pay the costs involved in doing so.

After being alerted to this matter, Centrelink took a proactive and problem-solving approach to the matter. This was particularly encouraging given the specific issue did not breach requirements of the merchant terms and conditions managed by Centrelink. Centrelink arranged for senior officers to visit the merchant to discuss the concerns. Centrelink advised that it has an expectation that a merchant will treat customers with courtesy and respect and that in order for a merchant to remain approved for BasicsCard, the merchant would need to continue to support the primary outcome of the BasicsCard.

When Centrelink discussed this matter with the store manager, the store manager was very apologetic and was able to identify the staff member as they had previously been counselled for similar behaviour. The store manager undertook to address the issue straight away. Ms V reported that the staff member no longer works at the store and her community now feel comfortable with shopping there.

In response to this matter, Centrelink advised that it is discussing with FaHCSIA the need for an additional clause in the terms and conditions to address this scenario and the additional requirement for merchant compliance.

The main source of complaints this year again concerned housing reforms in the NT. Since last year's report, a new remote housing system has been rolled out; the Strategic Indigenous Housing and Infrastructure Program has progressed and completed work in 36 communities with work in a further 16 communities underway²; and the NT government has entered Service Level Agreements with the

shires clarifying property and tenancy management arrangements and repairs and maintenance processes. During this time, we have also narrowed our focus in relation to housing complaints and have continued to refine our understanding of the issues.

The Ombudsman has made it clear to agencies and senior government officials that he considers

² Accurate as at July 2011 (sourced from NT Department of Housing, Local Government and Regional Services website)

Australian Government agencies who provide funds or policy direction to State and Territory governments to be accountable for the outcomes on the ground. Further to this, when it comes to housing reforms in the NT, our approach with FaHCSIA has been grounded in its responsibility as the landlord for community housing in 53 communities.

Under the statutory five-year leases that the Australian Government compulsorily acquired over communities at the commencement of the Northern Territory Emergency Response, the Commonwealth stands in the place of the landlord and has control over all land and fixed assets, including community housing. FaHCSIA manages those leases and has entered into a service level agreement with the NT Government's Department of Housing, Local Government and Regional Services (Territory Housing) authorising Territory Housing to manage housing on its behalf. Territory Housing remits rent for housing to FaHCSIA, which in return pays a management fee to Territory Housing. Territory Housing has further devolved service delivery to local shires including housing repairs and maintenance.

We have had a consistent flow of complaints in relation to housing reforms in the NT, which generally relate to:

- confusion surrounding how much rent people are paying or should be paying
- confusion about tenancy agreements, difficulties associated with the responsibilities of head tenants and that people do not get copies of tenancy agreements or have them explained in their language
- confusion about processes and timeframes for repairs and maintenance requests
- weaknesses in the system to log, receipt, monitor and provide status reports to residents for repairs and maintenance requests
- a lack of a response or delayed action in relation to repairs and maintenance requests
- collection of poll taxes or service fees despite reforms aimed at ending this practice
- inability of people to pay rent when they came off Income Management as there were no systems in place to facilitate rent payments outside of Income Management
- inability of people to obtain rent statements in contravention of the Northern Territory *Residential Tenancies Act*
- poor quality work under the Strategic Indigenous Housing and Infrastructure Program (SIHIP) and little action or avenue known to residents to have deficient or faulty work fixed
- problems with transitional housing arrangements for people who were required to move out of their homes while SIHIP work was undertaken
- concerns about the effectiveness of Housing Reference Groups, over-reliance on them to communicate critical government decisions or policy with communities, and how decisions are made and communicated by these groups.

As a result of our investigation into many of these complaints, FaHCSIA has assisted to address the issues for individuals. However, we are continuing to work with FaHCSIA in relation to the systemic nature of these issues and the impact of housing reforms for people on the ground. Welfare rights, legal and advocacy services in the NT have also assisted us to identify issues and case examples, strengthening the quality of feedback and recommendations to agencies. The Ombudsman will release a report in the next financial year drawing on these housing issues to make recommendations aimed at improving government administration in this area.

No action on repairs classified as immediate

During outreach to a remote community in the NT in December 2009, Ms W advised Ombudsman officers that she was unhappy that no action had been taken over an extended period on significant repair issues in her house. Ms W lived in her house with her partner and five children ranging in age from infancy to 15 years. Ombudsman staff were invited into her home where a number of significant repair issues were observed, some of which posed a danger to those living in the house.

No action on repairs classified as immediate (continued)

Ms W advised that she had her name on the housing waitlist for an extended period. In around August 2009 she agreed to take her name off the list in exchange for repairs to be carried out on her house. However, when repairs to her bathroom had not begun a month later she asked to be placed back onto the waitlist.

We raised these issues with FaHCSIA in January 2010. Five months later we were advised that Territory Housing had not previously had a record of these repair issues, but that they had now been referred for urgent action. Two months later, as a result of persistent follow up by this office, Territory Housing inspected the house and classified the repairs as an immediate priority.

Despite continued efforts by this office to follow up on the progress of the repairs, in November 2010 work still had not commenced. Also, Ms W had provided a medical certificate asserting that accommodation issues were causing her child's chest infection. However, this certificate was initially lost and then not acted upon by Territory Housing. Further investigation by our office led to the location of the certificate.

Ms W was eventually allocated a new house and this office continues to pursue the broader systemic problems with FAHCSIA and Territory Housing including a lack of local complaint mechanisms and responsiveness to issues, the need for adequate escalation pathways, inability to monitor timeframes as per service delivery standards, and a further need for clarification of roles and responsibilities.

Inadequate communication and engagement is another theme threading through the majority of complaints received from Indigenous people in the NT. Further, in almost all government services to remote communities there is a critical need for a more effective local information service and adequate complaints mechanisms. Often complaints to this office are the result of:

- people not being able to access information or obtain explanations about significant matters affecting them
- government agencies delivering information in a passive way
- government agencies failing to use interpreters
- government officials glossing over complex information and missing significant points.

These issues result in people being unable to make informed decisions or gain access to services, exemptions, entitlements or information. These concerns led to the Ombudsman's report, *Talking in language: Indigenous language interpreters and government communication* (Report 05|2011).

We also have jurisdiction over Land councils in the NT as they are established by the *Aboriginal Land Rights Act (Northern Territory) Act 1976* and are responsible for representing the interests of Aboriginal people in relation to Aboriginal land. Land councils in the NT are responsible for a range of functions including: consulting with Aboriginal people about proposals

to use Aboriginal land such as mining activities and developments; assisting Aboriginal people to pursue land claims, compensation or resolving disputes about Aboriginal land and its use; assisting Aboriginal people with protecting sacred sites; and assisting Aboriginal people to manage their land.

There is an increasing number of complaints made to the Ombudsman about land councils in the NT. As a result, the Ombudsman looks forward to working more closely with the land councils in the coming years to explore opportunities for improvement in:

- accessibility of information about land council processes
- responsiveness to queries, concerns or complaints
- approaches to service delivery and functions of land councils.

A new model of income management was introduced in the NT in mid-2010 which focuses more on the circumstances of individuals and their payments rather than applying income management to a person because they live in a prescribed community (which was the old Northern Territory Emergency Response model). Since Income Management began in 2007, this office received complaints highlighting problems with: how it was being communicated or explained; difficulties people faced in accessing balances and using their BasicsCards; confusing Income Management account statements; and transfers or

retractions of Income Management funds from third parties. During this reporting period, we have received fewer complaints about the workings of Income Management and the BasicsCard. Exemptions from Income Management is an emerging issue and is the subject of an own motion investigation underway by the Ombudsman, due for release in the 2011–12 financial year.

Systemic issues

The Indigenous Unit has been in operation for almost four years. During this time there has been a strong focus on outreach to Indigenous communities, complaint investigations, engagement with a range of stakeholders, and liaison with key agencies. This has meant that there is now a good grasp of the challenges, systemic issues and broad areas for improvement in government services and programs to Indigenous communities in the NT.

As highlighted above, systemic issues arising from complaint investigations are being identified and raised with agencies. Primarily we do this through individual complaint investigations, meetings or briefings with agencies, contribution to the Closing the Gap monitoring reports released by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) twice a year, or through reports on specific topics.

Key examples include:

Indigenous language interpreters and government communication – an own motion investigation into this issue was conducted and a report including recommendations aimed at 6 agencies was released. This was followed by a workshop with those agencies to discuss implementation of recommendations and hear valuable insights from the Northern Territory Aboriginal Interpreter Service.

Delay in payment of rent compensation for communities subject to a five year lease held by the Commonwealth – we are concerned that although money has been paid to land councils for some communities for distribution to traditional owners, in the majority of cases this money has not been passed onto those traditional owners. FaHCSIA provided a briefing to this office on this issue which outlined action being taken to address the problem and we will continue to monitor progress in this area with a focus on communication and the circumstances of further delay in the next financial year.

Inability of some remote housing tenants to pay rent – through our close engagement with stakeholders we became aware of a problem whereby remote housing customers who exited from Income Management did not have a mechanism by which they could pay their rent. We wrote to three agencies about this issue and made suggestions for managing the situation. The rent deduction scheme available to urban tenants is now in the process of being rolled out to remote tenants.

The Strategic Indigenous Housing and Infrastructure Program employment of 'local' Indigenous people

– we identified that the monitoring and reporting data for 'local' Indigenous employees under the program only captured general Indigenous employment numbers rather than 'local' employment numbers. This was identified through complaints where people raised concerns that locals were not being employed under the program as per the government's objective under the National Partnership Agreement on Remote Indigenous Housing. As a result, and to more accurately reflect employment numbers and information provided to the public about the program's employment statistics, FaHCSIA and the Northern Territory Government have agreed to change the way this information is publicly reported and work together to develop an agreed definition of 'local' for the purposes of capturing employment data.

Inability to transfer funds to BasicsCards on weekends – we received complaints highlighting difficulties people were facing when they had no money on their BasicsCards on weekends and could not contact Centrelink to arrange transfers. In response to raising these concerns with Centrelink, we were advised that Centrelink extended its customer service for the allocation of Income Management funds onto BasicsCards to seven days a week between 8am and 5pm.

Cross-agency issues

The Ombudsman is becoming increasingly concerned about the inadequate level of access that Indigenous people in remote communities have to information about government services and programs affecting them. This is compounded by the fact that agencies' complaint mechanisms are often substandard, although some do better than others. Agencies must implement responsive, accessible and genuine complaint mechanisms that are suitable to the remote Indigenous communities receiving increasing government services, funding and programs.

Those mechanisms must also be able to handle the complexities of the three tiers of government working together. An effective complaints mechanism must be built on a culture that values complaints, seeks feedback and meaningfully engages with people. There must also be a genuine focus on resolving problems and complaints, achieving remedies and drawing on complaints to improve service delivery and underpin policy. Because of these deficiencies, the Indigenous Unit does not refer many of the complaints it receives to agencies in the first instance.

The Ombudsman is also concerned about the fact that often issues are only resolved or considered by agencies once complaints have been made to his office. While we appreciate agencies' responsiveness to our complaint investigations, we encourage agencies to proactively identify issues and resolve both systemic and individual problems.

Reports released

Three reports were released this year.

Talking in language: Indigenous language interpreters and government communication (Report 05|2011)

With the increase of government investment, services and programs in the NT there has been a significant increase in government engagement with Indigenous people. Complaints to this office since the commencement of the Northern Territory Emergency Response highlighted problems with the use and accessibility of Indigenous interpreters by government agencies. As a result, the Ombudsman conducted an own motion investigation to examine six agencies' awareness of the need to make use of Indigenous language interpreters. This investigation resulted in recommendations aimed at improving the use of Indigenous Interpreters and included broad recommendations for all agencies.

The report also identified enormous challenges in recruitment, retention and use of Indigenous interpreters. In order to explore these challenges, allow an opportunity for agencies to share ideas and experiences in relation to Indigenous interpreters and to discuss agencies' progress with implementing the Ombudsman's recommendations, we facilitated a workshop with all the agencies and representatives from the Northern Territory Aboriginal Interpreter Service and NT Government. The involvement of all agencies, open discussions and valuable insights from

the Northern Territory Aboriginal Interpreter Service resulted in a positive and constructive forum.

Administration of funding agreements with regional and remote Indigenous organisations (Report 16|2010)

A complaint investigation about one agency's administration of a program-funding agreement was the catalyst for this report. Significant challenges exist for remote and regional Indigenous organisations operating largely from government grant programs. This report highlighted that complex grant requirements and insufficient support for the funded Indigenous organisations increase the risk of these organisations failing even where programs are being delivered successfully.

This report explores some of these challenges and outlines five principles for better administration by government agencies of funding agreements with regional and remote Indigenous organisations.

Review Rights for Income-Managed people in the Northern Territory (Report 10|2010)

A complaint investigation identified a Social Security Appeals Tribunal decision that it did not have jurisdiction to review a particular case. This had a broader application to other Income Management customers. The impact of the Tribunal's decision went unnoticed by FaHCSIA and Centrelink. The decision should have prompted the two agencies to review the decision and consider the need for appeal, legislative amendment or a change to administrative processes.

When the new Income Management model was rolled out in mid-2010, the issue became redundant. However, we are continuing to follow up on the intersection between the Tribunal and Centrelink in relation to timely analysis and action for significant Tribunal decisions (see Centrelink overview on page 52).

Update from last year

Last year we reported that we engaged an officer to develop an Indigenous communication and engagement strategy, including evidence based research. We have now obtained this research and will be drawing on the results to better inform our approach and share insights with other agencies.

We foreshadowed the release of three reports which were released and outlined above.

Many of last year's complaint themes remain current and minimal progress has been made to address recurring problems raised with this office about housing reforms and the impacts on people. However, we are better engaged with the relevant stakeholders, we have clarified and refined our approach, we have obtained a significant number of remedies for individuals who have raised housing complaints and we have narrowed the broader issues requiring attention in our report into the housing reforms in the NT.

Stakeholder engagement, outreach and education activities

A key focus of the Indigenous Unit's work is stakeholder engagement and outreach. There is little awareness among Indigenous people in the NT, particularly those in remote locations, about their right to complain and the role of the Ombudsman's office. We conduct outreach to Indigenous communities in the NT to ensure our complaints service is accessible and known. The majority of our complaints are received during outreach, which underlines the value of our approach. If we did not ensure our service was accessible, many Indigenous people living in remote settings would have no avenue to seek redress for problems with Government, and the valuable insights provided by the individual complaints and feedback would be lost.

We value our close engagement with stakeholders such as welfare rights, legal and advocacy services. Their input assists us to narrow issues and strengthen feedback to government agencies. They are also well placed to refer individual or systemic matters to us for investigation. A good example is the Ombudsman's decision to conduct an own motion investigation into Centrelink's decision making surrounding Income Management. Information we received from welfare rights agencies coupled with our own complaints and observations, led to his decision. We look forward to working with stakeholders on that investigation.

Our work in our own motion investigation on the use of Indigenous interpreters involved close consultation and engagement with the NTAIS. The assistance of the NTAIS helped us to understand the issues and complexities. The NTAIS also provided training to Indigenous Unit employees in relation to working with Indigenous interpreters. This was incredibly valuable and important for our work in remote communities.

Looking ahead

The Indigenous Unit will continue to conduct outreach to Indigenous communities in the NT, investigate complaints and pursue systemic issues with agencies. In doing this, we will draw on our office's research into communication and engagement with Indigenous people to continue to refine our approach and marketing materials. We will also explore avenues to raise people's awareness about the Ombudsman and assist people to access our services outside of our outreach visits.

We intend to increase our focus on assisting agencies to develop and implement accessible, robust and responsive complaint mechanisms, which are appropriate for people living in remote communities and which can respond to the complexities of the multi-agency, cross jurisdictional environment. We will also work with agencies to improve their communication with Indigenous communities, with a focus on ensuring that people can access information they need to make informed decisions. Indigenous people should be able to expect that they can access the information they need from government, that they will be given clear explanations and reasons for decisions, and that agencies will be proactive in identifying and responding to problems.

With the increasing tendency of governments to work together to achieve objectives including under COAG and NPAs or in other situations where the Commonwealth provides policy or funding to States and Territories to deliver outcomes, there may be implications for the role of oversight agencies such as the Ombudsman. The Ombudsman has made it clear that he will hold Australian Government agencies to account for outcomes of Commonwealth policy or investment. We need to work with agencies and stakeholders to discuss challenges and ensure that oversight mechanisms adequately respond to the changing nature of government service delivery.

We look forward to finalising our investigation into Centrelink's decision making in relation to Income Management and producing a report dealing with remote housing reforms in the NT.



FEATURE

IMPROVING AGENCIES' USE OF INDIGENOUS INTERPRETERS

The Commonwealth Ombudsman hosted a meeting of Commonwealth agencies involved in Indigenous service delivery in the Northern Territory (NT) on 19 June 2011 as a follow-up to his April 2011 report *Talking in Language: Indigenous language interpreters and government communication* (Report 05|2011). While the report drew upon the Ombudsman's work in the NT, it is applicable to service delivery to Indigenous Australians across the country.

The report emphasised that interpreters should be made available to agency staff and the customers they are servicing so that meaningful two-way communication can occur. Other key messages were the importance of agency-wide guidelines on the use of interpreters, training for agencies in working with Indigenous language interpreters, engaging with interpreter services during the design of new programs and reviewing contracts and funding agreements to ensure that third parties meet the same standards as those expected of agencies.

The meeting was an opportunity for agencies to come together and explain the steps they have taken to implement the Ombudsman's recommendations and to discuss the challenges in improving government's use of, and access to, Indigenous language interpreters. Agencies reported that it also provided a valuable opportunity to share ideas and resources.

More information about the Ombudsman's report can be found at www.ombudsman.gov.au. Information about the work of the NTAIS, as well as tips for

working with Indigenous interpreters, and interpreter bookings can be found at <http://www.dhlgrs.nt.gov.au/ais> or by calling (08) 8999 8353.



Colleen Rosas (Director, Northern Territory Aboriginal Interpreter Service) and George Masri (Senior Assistant Ombudsman) with the Ombudsman's report *Talking in Language: Indigenous language interpreters and government communication*.



Overview

Each year as the Commonwealth and Defence Force Ombudsman we receive, on average, between 550 and 750 approaches and complaints about Defence-related agencies. This year we received 632 approaches and complaints, compared to 579 received in 2009–2010.

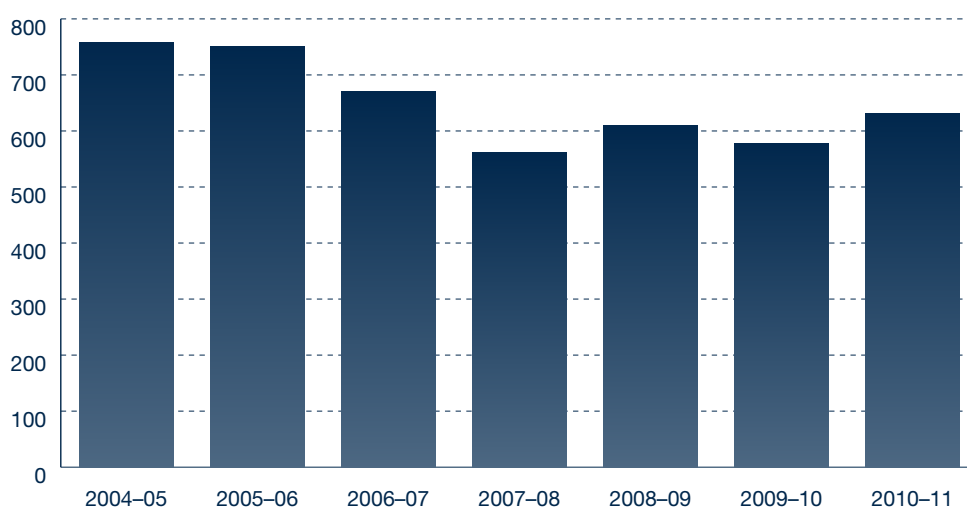
Among Defence-related agencies are the Department of Defence, each arm of the Australian Defence Force (ADF), the Department of Veterans' Affairs, Defence Housing Australia, Toll Transitions and the Australian Government Security Vetting Agency.

We can investigate complaints as either the Commonwealth Ombudsman or the Defence Force

Ombudsman depending on the circumstances.

Complaints that arise as a result of a person serving or having served in the ADF are normally investigated under the Defence Force Ombudsman role. These employment-related matters can include complaints about termination, promotion, postings and pay and entitlements. The Commonwealth Ombudsman normally investigates complaints from members of the public about Defence-related agencies. Complaints of this nature can include issues such as weapons range and aircraft noise, contracting matters and service delivery.

Figure 5.11: Approach and complaint trends 2004–5 to 2010–11 for all Defence agencies



DEPARTMENT OF DEFENCE AND THE AUSTRALIAN DEFENCE FORCE

Complaint Themes

We received 229 approaches and complaints about the Department of Defence and 182 about the ADF. Significant issues arising from these complaints included:

- delay associated with the Redress of Grievance (ROG) process
- a lack of understanding about legislative and policy requirements for matters relating to recruitment, discharge, pay and conditions, entitlements and debt recovery
- transgression of Defence values (in particular, unacceptable behaviour).

A continuing theme with complaints about termination and discharge appears to be a tendency for members being terminated to combine the procedural fairness requirements of the termination process and the complaint process.

In some complaints about recruitment, pay and conditions, entitlements and debt recovery, the decision-making was flawed due to irrelevant considerations being taken into account or the decision maker not having the appropriate delegation.

However, when the rules have been applied correctly we have found that there is limited scope for resolution or remedy, apart from provision of a clearer explanation for the decision.

In investigating these complaints, it is our intention to not only identify flaws in the administrative process and so find a solution for the individual, but to also offer suggestions for improving the process in the longer term.

Systemic issues

Our office has received 34 complaints about delays associated with the Redress of Grievance (ROG) process. This is an increase of 14 from the previous year, indicating that the problem of delay remains as a significant systemic one.

The ROG process involves a member's Commanding Officer (CO) as the first avenue of complaint. Where that officer does not resolve the member's concerns, the member has the right to refer their complaint to their service chief. There has been a significant improvement in the management of ROGs at Unit (CO) level, particularly in the time taken to finalise ROGs about discharge.

Table 5.1: Defence-related approaches and complaints received, 2004–05 to 2010–11

Agency	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
Australian Army	190	169	145	138	141	111	103
Defence Housing Australia	28	29	36	28	43	31	32
Department of Defence	165	138	106	135	157	176	229
Department of Veterans' Affairs	216	276	256	139	160	167	172
Royal Australian Air Force	69	80	57	48	45	39	29
Royal Australian Navy	54	54	50	59	49	43	50
Other (see breakdown for 2010–11 in Appendix 3)	12	4	20	15	14	11	17
Total	758	750	670	562	609	578	632

However, once a ROG has been escalated to the service chief level the problem of delay has continued. We have worked with Defence to finalise recommendations aimed at improving the review

process attached to the ROG system. We will continue to monitor the timeliness of service chief ROGs and propose to review Defence's implementation of the recommendations in 2011–2012.

Unreasonable delay

Mr X lodged a ROG concerning his suspension from a course with his service chief in July 2009. He was informed that his ROG was not likely to be allocated a case officer until after March 2010 and he complained to the Defence Force Ombudsman. Due to the likelihood of the ROG delay overtaking the remedy Mr X was seeking, and the potential for irreparable career disruption, the Defence Force Ombudsman pursued Mr X's complaint. However, the service chief decision was not made until March 2011.

The decision-maker apologised for procedural flaws in the handling of Mr X's suspension and the time it had taken to attend to his ROG. However due to the suspension being in force and the delay in handling Mr X's ROG, providing him with a meaningful remedy was now more difficult.

Another area of concern that Defence has recognised as being a systemic cultural problem involves complaints about unacceptable behaviour in the ADF. The Defence Force Ombudsman welcomes the Defence reviews into aspects of Defence culture and is providing a governance and quality assurance role for the *Review of Allegations of Sexual and other Abuse in Defence*.

The Defence Force Ombudsman receives complaints about unacceptable behaviour in the ADF, some of which may not have been reported through the appropriate complaint channel in Defence. It is of concern that rank and the chain of command might make some members disinclined to complain or use the military justice system. The Ombudsman's role in assessing these complaints is limited to investigating complaints about the administrative processes associated with decisions affecting members, and the Ombudsman may also choose not to investigate

a complaint if the complainant has not first raised the matter with the ADF or if the ADF is still considering the matter.

In June 2011 the Defence Force Ombudsman met with the Inspector General of the ADF to provide input into the *Review of the Management of Incidents and Complaints in Defence*. The Ombudsman has provided comment on: the treatment of victims; transparency of processes; the application of relevant equity policies and contracted Defence staff; and the jurisdictional interface between civil and military law. The Ombudsman's comments were informed by an analysis of complaints received about disciplinary matters, and recommended greater transparency around complainant processes, including publishing results of disciplinary and administrative action and advising the complainant about the results of the action.

Insufficient guidance

Ms Y complained about what she believed to be a lack of investigation, by Defence, of her sexual assault by a serving member of the ADF. She reported the assault to the hospital and was treated. After undergoing counselling for a few months Ms Y reported the matter to the police. This matter was considered by a civilian court and the ADF member was acquitted by a jury. When the member was charged for the alleged assault he had advised his commanding officer. This was reported (as required) but no further action was taken.

The commanding officer did not consider applying the relevant instruction: *Management and Reporting of Sexual Offences*. Advice from Defence is that this instruction does not apply because the alleged assault was not a workplace incident. While we accept this, there appears to be no clear guidance to commanding officers on how to manage situations like that of Ms Y.

Update from last year

Throughout 2010–2011 we have been actively monitoring the issue of ROG delay at service chief level. Defence's backlog at this level reveals significant problems and trends that need to be acted on by Defence.

A new function of Defence commenced in 1 October 2010 – the establishment of a central security vetting agency in the Department of Defence for Commonwealth security clearances, in addition to clearances for ADF members. Our office has received only four complaints concerning security vetting issues, two of which were investigated.

Stakeholder engagement, outreach and education activities

During the year staff from our office travelled to several military establishments and spoke with commanders, administrators and general service members about the role and function of the Defence Force Ombudsman. We have also delivered presentations to service training courses.

On 28 June 2011 the Deputy Defence Force Ombudsman presented a Defence Portfolio Agencies Forum to highlight emerging issues facing decision makers in Defence and the Department of Veterans' Affairs. Key speakers were Professor Robin Creyke, who spoke about the framework and processes of the Administrative Appeals Tribunal, Dr Grant Lester, who presented on issues concerning persistent complainants, and Mr Geoff Earley, Inspector General of the ADF, who chaired a lively panel discussion. The Forum was well received with feedback indicating that the content was valuable and thought-provoking.

Looking ahead

The Defence Force Ombudsman has invited selected Defence members to meet twice yearly to act in an advisory capacity through a consultative forum. The forum will discuss issues and processes which may require Ombudsman intervention to assist Defence in its interactions with members, their families or the wider community. It will also provide advice to the Ombudsman to lead to a more comprehensive understanding of Defence issues and identify areas where the Ombudsman may need to make changes to its complaint-handling processes.

The Defence Force Ombudsman is committed to strengthening our relationship with Defence in order to target strategic opportunities for improvement and actively promote and encourage good complaint handling practices.

DEPARTMENT OF VETERANS' AFFAIRS

Complaint Themes

The Department of Veterans' Affairs (DVA) administers a wide range of services and benefits to approximately 360,000 Australians. During 2010–12 we received 172 approaches and complaints about DVA, four more than the previous year.

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

Consequences of overpayments

DVA made overpayments to several elderly veterans' widows as a result of income received from overseas pension funds not being included in the calculation of the DVA service pension payment.

The DVA's overpayment guidelines provide for a waiver of debt caused by administrative error if the error is wholly DVA's fault. The DVA considered that because the widows were partially or fully responsible for the error, the waiver provision was not applicable. DVA then commenced to recover the overpaid funds from the widows.

Our investigation into this complex issue concluded that DVA's decision not to consider a waiver of the debts was unreasonable. In one case, the widow advised DVA about the death of her husband and provided the

Consequences of overpayments (continued)

necessary income statement to DVA in a timely manner. Whilst the widow had omitted details of one of her overseas pensions from the income statement, DVA did not identify this mistake or a subsequent recording error until four years after its reassessment of the widow's entitlements. We recommended that the decision not to waive the debt be reconsidered and that the guidelines be reviewed with a view to including certain circumstances where discretion should be applied.

In addition to complexity of provisions, it is common for complainants to have mental and physical health conditions which need to be considered in responding to their complaints appropriately. As a result, it often takes time to develop an accurate understanding of the matters complained of and the interaction the claimant has had with DVA prior to a complaint reaching our office. In such cases we have found DVA ready to assist by providing information to clarify its involvement with the person and to also discuss any follow-up issues that may arise. We note that DVA maintains a 'better practice model' in maintaining a dedicated Client Liaison Unit and case coordinators to deal with particularly complex cases and allowing claimants to have regular contact with a dedicated case officer. The Defence Force Ombudsman supports this continuing commitment by DVA to its more vulnerable clients.

In finalising some DVA complaints the only remedy that our office could provide is to better explain why the agency took a particular course of action or why the action taken was, in all the circumstances, not unreasonable.

Systemic issues

A recurring theme in complaints received by our office is that complainants do not understand the explanation provided by DVA in response to their concerns. A priority for our office is to reduce the number of complaints relating to a lack of adequate explanation to veterans and their families about DVA's legislative and policy requirements.

Update from last year

Throughout 2010–2011 we have monitored the success of DVA's internal complaint handling process, established in 2010, and referred complainants to the Veterans' Services and Complaints Management Team. This supports our decision to encourage complainants to try to resolve their problem with the agency before the Defence Force Ombudsman becomes involved.

The Defence Force Ombudsman notes that DVA has been very responsive to recognising the different needs of its often vulnerable client groups and has introduced a number of new 'service models' to assist dependants of deceased ADF members; multiple or mass casualties; seriously injured or wounded; and those with complex or multiple needs.

A positive resolution

Mr Z asked our office to investigate discrepancies in his pension payments, specifically that part of his pension had stopped without a reasonable explanation, and that he was dissatisfied with the lack of response from DVA on this matter.

DVA had begun to investigate Mr Z's complaint before we commenced our formal investigation. DVA notified our office that an initial error had been made by DVA in determining Mr Z's service pension claim, and it had arranged back pay for a total of \$13,000 owed to him and his wife. DVA agreed that the matter had not been sufficiently investigated when first brought to DVA's attention by Mr Z, and apologised for the frustration and uncertainty this may have caused Mr Z and his wife.

Stakeholder engagement, outreach and education activities

In October 2010 the Defence Force Ombudsman participated in a Forum presented by the Returned and Services League national state advocates and pension officers. The Defence Force Ombudsman also sponsored a Root Cause Analysis (RCA) workshop with the Society of Consumer Affairs Professionals (SOCAP). RCA can prevent serious high-risk problems from recurring and can help to reduce consumer enquiries and complaints to the Ombudsman. RCA is a helpful tool for agencies wanting to create a continuous improvement culture and to experience fewer systemic issues. This workshop was well attended by DVA staff.

DEFENCE HOUSING AUSTRALIA AND TOLL TRANSITIONS

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

On 1 July 2010 Toll Transitions assumed responsibility for those functions associated with an ADF member's removal on posting and payment of allowances.

During the last period we received 32 approaches about DHA and five approaches about Toll Transitions.

Many of the complaints related to the adequacy of the policy applicable to ADF removals and allowances payable to ADF personnel. DHA is responsible for delivering a service on behalf of Defence using policy created by Defence. Such cases are not complaints about DHA or Toll Transitions' service delivery, but are rather complaints about Defence policy. In these cases the Defence Force Ombudsman is able to comment on whether the rules are ambiguous or poorly worded, but this does not necessarily provide a satisfactory remedy for the complainant.



FEATURE

DEFENCE PORTFOLIO AGENCIES FORUM

The Deputy Defence Force Ombudsman Alison Larkins held a Defence Portfolio Agencies Forum on 28 June 2011. The Forum provided an opportunity to promote discussion among senior Defence policy officers and decision-makers about administrative issues they needed to be aware of, systems they should consider implementing, and their openness to external critique.

Guest speakers were:

- Professor Robin Creyke, Senior Member, Administrative Appeals Tribunal (AAT)
- Dr Grant Lester, consultant psychiatrist, Victorian Institute of Forensic Mental Health
- Mr Geoff Earley, Inspector General of the Australian Defence Force.

In speaking about the framework and processes of the AAT, Professor Creyke deconstructed several common assumptions, including that, by the time a matter reaches the AAT, it is often too late to remedy a bad decision.

Dr Lester analysed the spectrum of complainants and the management of unreasonable complaint behaviour, emphasising the importance of recognising, and managing it. He also suggested methods of early detection and alternative management strategies.

The presentations were concluded with Mr Geoff Earley who chaired a lively panel discussion on the issues raised by the speakers. Feedback from the participants was that the content from all presenters was valuable and worthwhile.



Dr Grant Lester, consultant psychiatrist at the Victorian Institute of Forensic Mental Health, discusses the management of unreasonable complaint behaviour.



DEPARTMENT OF IMMIGRATION AND CITIZENSHIP

Overview

In 2010–11 we focused our attention on two broad streams of complaints related to the Department of Immigration and Citizenship (DIAC, or the department). One related to ‘unauthorised arrivals by boat’¹ and detention issues. The second stream of complaints related to other migration programs and activities, such as General Skilled Migration. It also included complaints about citizenship decision-making and processing.

During 2010–11 we saw a continued increase in the numbers of unauthorised arrivals by boat on Christmas Island and their placement in detention facilities located in both remote locations and metropolitan areas on the mainland. As a consequence we expanded our inspection program and faced new challenges in providing detention reviews for individual detainees.

Despite these challenges we continued our program of inspections of immigration detention facilities, own motion investigations into systemic issues, and ongoing engagement with the department through regular meetings, briefings and consultation on proposed initiatives. This preventive approach helped to reduce the volume of complaints received about systemic issues and enabled the department to quickly implement processes to address underlying problems.

Overall, we received 2,137 approaches and complaints in 2010–11, a 34% increase from the previous year. This increase is explained by the increased number of unauthorised arrivals by boat who complained to the office in the course of the year, particularly as a result of our active visits program where more than 90% of detention-related complaints were made.

Of these complaints, we investigated 341 with the department, or 16% of all complaints received, and were able to facilitate remedial action by the department in 242, or 71%, of those cases we investigated.

We held regular liaison and engagement activities with the department via its Ombudsman and Human Rights Coordination Section. This included monthly meetings to reconcile complaints and complaint-handling issues as well as a series of briefings by DIAC on areas of interest to us. The latter assisted the office to better understand the context of many of the complaints we had received and to follow up on systemic issues that may arise.

The complaint trends we observed in 2010–11 were similar to those we observed in 2009–10, suggesting there is scope for us to investigate them to identify and focus on systemic or thematic issues. We are actively addressing many of these trends with the department.

¹ This refers to ‘Irregular Maritime Arrivals’, the term used in government contexts.

We continued our program-monitoring compliance and removal inspection actions.

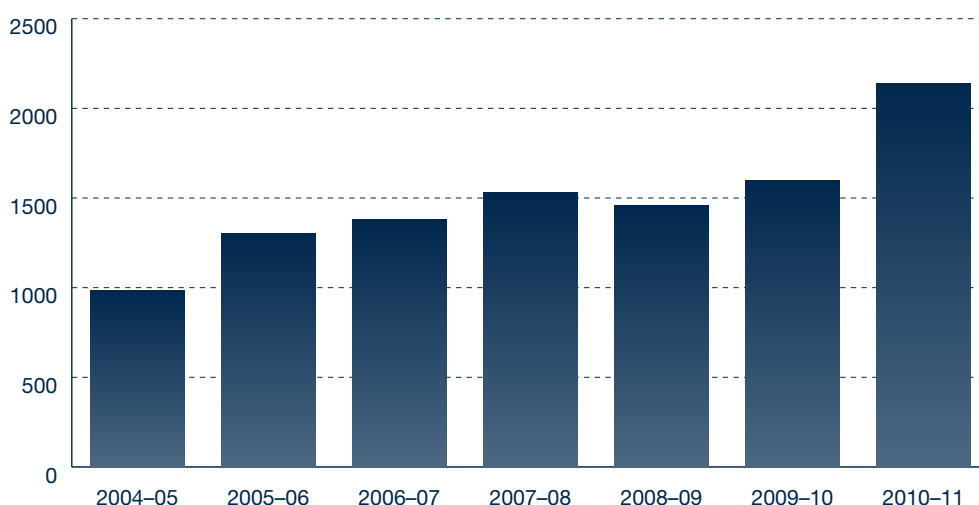
We completed two own motion reports in this reporting period in February 2011:

- *Proper Process for Challenging a Tribunal Decision* (Report 03|2011)
- *Christmas Island immigration detention facilities: Report on the Commonwealth and Immigration Ombudsman's oversight of immigration processes on Christmas Island October 2008 to September 2010* (Report 02|2011)

We are looking to implement a wider program of own motion and systemic investigations during the 2011–12 financial year, including an investigation into the increasing levels of suicide and self-harm in detention centres.

As mentioned in the Law Enforcement Ombudsman section, an own motion report into the Christmas Island Immigration Detention Centre disturbances in March 2011 will be reported on in the next annual report.

Figure 5.12: DIAC approach and complaint trends, 2004–05 to 2010–11



Complaint themes

Monitoring of DIAC's internal complaint-handling

Throughout 2010–11 we continued to monitor the quality of DIAC's internal complaint handling, which is conducted by its Global Feedback Unit (GFU). This underlies our policy of encouraging complainants to try to resolve their problem with the agency before the Ombudsman becomes involved. We monitor the unit's complaint-monitoring practices and reporting by reviewing its complaint records.

Our monitoring activities noted that generally the unit's complaint handling was satisfactory and had properly dealt with the issues raised by complainants. In the small number of cases where we found the complaint

handling incomplete, the underlying themes related to complaints about delays in security clearances. When the complexity of a case required it to be referred to the processing area, the unit had experienced difficulties in getting a timely response. These problems have been raised with DIAC on a case-by-case basis.

Ombudsman staff liaised with DIAC staff on an ongoing basis to discuss their processes for resolving the complaints the department receives from members of the public, and its handling of our investigative

inquiries. We discussed our role with DIAC and our ideas for improving complaint handling generally.

Security clearance delays in offshore processing

Through 2010–11 we continued to receive a large number of complaints from visa applicants who were concerned about the time taken to finalise their visa applications. The case below provides an illustration of the type of complaints we received and the concerns expressed by applicants who face uncertainty about when their application will be finalised.

Our investigations found that in a majority of cases, delays were due to the high number of visa applicants

requiring security clearances, which were being carried out by an external agency. These delays were not always within DIAC's direct control.

DIAC has worked with the external agency to address delays in the referral process, further developed its Security Referral System (SRS) protocols and provided additional training to its staff to better manage and monitor the referrals and clearances process. During 2010–11 DIAC provided our staff with a demonstration of the SRS and a briefing on how its staff handle delays. This has assisted Ombudsman investigation officers in their work.

Security clearance issues

Ms AA, an Australian citizen, complained about DIAC's delay in finalising an application for a spouse visa for her husband. She was concerned as she was expecting a child and wanted her husband to be granted his visa to be in Australia for the birth. DIAC claimed it had no control over the delay because it was caused by a security check of Mr AA's background, which was being conducted by an external agency.

Our investigation revealed that DIAC had provided mandatory information about the security checks required for the grant of a spouse visa and that these checks were undertaken by external agencies. We further explained to Ms AA that DIAC had followed the legislative requirements in regard to Public Interest Criteria referrals to external agencies, in respect of which, DIAC has no control over the time taken to process the clearances.

International student visa processing

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

In one case, a complainant raised concerns about an apparent delay in assessing the validity of her visa application and the impact it had on her ability to obtain permanent residence. This case is also relevant to our discussion of systemic visa application validity issues at the end of this chapter and is discussed in more detail there.

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

Our office noted some processing issues related to students, particularly concerning misunderstandings about implementation by DIAC of processing arrangements for subclass 485 applications. The case study over the page illustrates one such issue.

Student visa issues

DIAC implemented arrangements for processing subclass 485 applications. Under the arrangements, DIAC will process subclass 485 applications in the following order:

1. Applications from people who will have completed a Professional Year before 30 June 2011 who lodged a subclass 485 application before 17 March 2011.
2. Applications lodged from 9 February 2010 to 30 June 2010 where the nominated occupation was on the Skilled Occupation List (SOL) Schedule 3 in effect from 1 July 2010.
3. All other applications will generally be processed based on the date they were received.

Mr AB raised concerns that as a 'priority three' applicant, his application may not be finalised before the new points test comes into effect. He stated the criteria used by DIAC to prioritise the processing of applications were unfair. Our investigation found that DIAC's decision to implement the current processing arrangements is in accordance with the relevant legislation.

Compliance and removals

Monitoring of DIAC's compliance functions demonstrated an improvement in its compliance field operations and training. The main purpose of this ongoing monitoring is to assess the effectiveness of DIAC's policies and procedures governing the location, identification and detention of unlawful non-citizens.

Field observations by Ombudsman staff indicated that DIAC officers were detaining people as a last resort, in keeping with the former Minister for Immigration and Citizenship's statement relating to 'detention values'.

We also observed some of the DIAC training sessions for its field operations staff who plan and conduct compliance activities.

Compliance Issues

Mr AC complained to us about a decision to issue him a Bridging Visa E (BVE) without work rights. His wife and two children were dependants on his visa.

Mr AC was working lawfully whilst going through the review process for a substantive visa. DIAC conducted a compliance visit to his home on 1 July 2010, at which time Mr AC became aware for the first time that his BVE would expire at midnight. On the same day Mr AC went to DIAC's office and was told to come back the next day. By the time he returned at the appointed time he had been unlawful for nine hours. Mr AC decided to request Ministerial Intervention to stay in Australia, a process that can take many months, and was issued a BVE without work rights.

DIAC's response to our investigation indicated that the imposition of the no work condition was a correct application of the law relating to the particular visa, because Mr AC had been unlawful. We considered that although DIAC was not responsible for notifying Mr AC of the impending expiration of his BVE, it did not give Mr AC important information about the implications of becoming unlawful, even for a short time, when it was within its power to do so. We asked DIAC to reconsider the visa options open to Mr AC given this context.

In response to our investigation, DIAC identified that in the compelling and exceptional circumstances of the case it could grant Mr AC a new BVE with permission to work. It also undertook to make changes to its training to reinforce the lessons learned from Mr AC's complaint.

Immigration detention inspections program

We expanded our program to cater for increased numbers and locations of unauthorised arrivals by boat. Our visits also included complaint clinics and interviews with detainees to support our detention review and oversight function. We aim to visit each immigration detention centre (IDC) at least twice a year while maintaining a schedule of four visits a year to Christmas Island and six visits a year to Villawood Immigration Detention Facilities.

During 2010–11 our teams visited:

IDC	Timing
Christmas Island IDC	September, November 2010; May, June 2011
Curtin IDC	May 2011
Scherger	February 2011
Inverbrackie	December 2010, March 2011
Darwin IDC and APODS	January 2011
Villawood	July, September, December 2010; February, May 2011
Perth IDC	July 2010
Maribyrnong IDC	September 2010
Leonora APOD	April 2011
Adelaide Immigration Transit Accommodation	May 2011

Observations across the detention network

We made a number of general observations about issues of concern within the detention network. These included:

- Overcrowding, particularly on Christmas Island, and the effect this appeared to have on the quality of life for detainees. With the transfer of large numbers of detainees from Christmas Island to mainland detention centres, we will monitor this issue to determine if this has resulted in the same problem being moved to mainland detention facilities.
- Concerns about suicide and self-harm are a major issue and continues to be actively monitored across the detention network. The Ombudsman foreshadowed that an own motion investigation into this issue would be conducted; this investigation has now commenced.
- Prolonged detention due to time taken to process detainees' cases, particularly relating to delays in: receiving refugee status assessment outcomes; having an Independent Merits Review hearing scheduled; and receiving security clearance outcomes. New procedures implemented by DIAC to address these problems have seen improvements in delays however there are still concerns that many detainees are in detention for more than 12 months, and for those who receive a negative security clearance and who cannot be returned to their own country appear to face indefinite detention.
- Appropriate use of force, not just during times of major disturbances within the detention network, but also in cases of incidents involving individual detainees. Staff should be suitably qualified to apply such force as necessary. An own motion investigation into the use of force by Australian Federal Police and Serco staff during the Christmas Island disturbances in April 2011 will be released later in 2011.
- Limited recreational and educational activities and excursions across the detention network which continue to be a source of ongoing frustration for detainees. This matter will be the subject of continuing interest to the Ombudsman.
- Problems with property management and loss of property. It is recognised that the large number of people coming into immigration detention and being moved within the detention network creates challenges for managing the logistics of detainees' property. We have received a number of complaints about this issue, particularly relating to items of high value and cash.
- Levels of cultural awareness and consideration of personal dignity feature regularly in approaches to the Ombudsman. Complaints about these matters include referring to people by their ethnic or religious background, lack of personal privacy (particularly for people with disabilities) and claims of racism made against detention service provider staff.

Detention Issues

An Indonesian boat crew detained on Christmas Island approached us on a number of property-related issues. The complaint was multifaceted and included access to suitable clothing to play sport and attend the mosque (they were not attending for this reason), access to schooling for the school age crew, access to internet, and access to English classes.

Discussions with senior Serco staff during the visit resolved all issues raised. This shows the value of our visits program in that a mass complaint by 12 or so persons was resolved in less than a day.

Remote locations

Throughout the year, increasing numbers of IMAs were relocated to immigration detention centres in remote areas. In these centres we observed:

- similar risks of overcrowding and unrest, coupled with an increased sense of isolation, including limited access by road, and reduced access to telephone or internet during adverse weather conditions
- medical services were limited in terms of access to local services
- perceptions of lengthy delays in processing.

We were concerned that the cramped conditions found on Christmas Island are being replicated on a smaller scale in several centres. In general terms:

- several centres are subject to isolation due to weather conditions when roads are flooded and telephone and internet are down etc
- there were consequential difficulties for emergency medical attendance, supply of food and spare parts for equipment
- waiting times for replacement or repair of equipment were significant and adversely impacted on centre operations
- another consequence was the increased pressure detainees placed on the medical services available for local communities.

At Scherger Immigration Detention Centre (Weipa – Far North Queensland) we noted that contingency planning for cyclonic events in the area was inadequate and we made several recommendations.

A particular concern of ours related to the lack of specialist psychiatric services on site. This was particularly important when detainees were being advised that their claims had been refused:

- while the length of time that IMAs are likely to spend in detention has had an adverse impact on detainees' mental health, we observed also that the impact of receiving a negative assessment has the potential to increase the likelihood that the person concerned would be at risk of self-harm
- we observed that negative results also impacted on other detainees, increasing their anxiety
- our inspection at one location found that the method of informing people of Refugee Status Assessment and Independent Merits Review outcomes was undertaken in a manner that would enable detainees to predict an outcome and did little to decrease the adverse impact of negative decision-making outcomes generally.

Record-keeping and processes for dealing with incidents

Our ongoing investigation of an incident which occurred during an inspection, as well as other incidents brought to our attention through complaints and reviews, has highlighted several concerns about the management of incidents. These issues include:

- the accuracy and adequacy of records made when an incident occurs
- poor reporting of use of force during an incident
- poor quality assurance of reports generated post incident
- lack of understanding about critical decision points in the use of force and the need to report these in records
- inadequate investigation of use of force incidents
- lack of de-escalation practices at the time of an incident.

We will continue our focus on these issues during the coming year in anticipation of improvements in the record keeping and processes for managing incidents being noted.

Issues raised by detainees during inspection visits

We observed an underlying level of tension in many centres as well as high levels of distress and anxiety amongst detainees.

Issues raised in complaints clinics:

- despair at length of time in detention
- confusion over the system of medical appointments
- uncertainty over the Independent Merits Review process
- lack of contact with a DIAC case manager
- anxiety for families remaining in home country
- perceptions of unfair Refugee Status Assessment and Independent Merits Review decision-making
- feelings of hopelessness including expression of intent to self-harm.

Detainees consistently raised concerns about the process of their refugee status assessments, as discussed below. This office has provided a report to DIAC detailing our observations of detention facilities arising from visits conducted in the later part of the financial year. DIAC is expected to provide a response to the observations and suggestions outlined in the report.

Oversight of Refugee Status Assessment

The High Court's decision in *Plaintiff M61/2010E v Commonwealth of Australia*; *Plaintiff M69 of 2010 v Commonwealth of Australia* [2010] HCA 41 of November 2010 confirmed that the Refugee Status Assessment and Independent Merits Review processes were valid but there were errors in the Independent Merit Review processes for the two cases before the Court. The Court also determined that unauthorised arrivals by boat were able to seek judicial review of negative refugee status assessments. In response DIAC introduced a refined process known as a Protection Obligation Determination (POD). When the new system commenced on 1 March 2011, around

900 unauthorised arrivals by boat had not commenced Refugee Status Assessment. These were processed under the POD arrangements. At this time there were around 1300 clients who had commenced a Refugee Status Assessment and were awaiting an outcome. Further, on 1 March 2011 there were around 1900 irregular arrivals who were eligible for an Independent Merits Review. Almost 450 of the 1900 were awaiting notification of the refugee status assessment or were yet to request review.

We received a number of complaints about delays in the Refugee Status Assessment process caused by delays in security clearances by an external agency.

- we looked at DIAC's processes regarding the referral and handing down of decisions
- DIAC's new security triage hopes to reduce the number of people requiring full security clearance checks and the backlog of external clearances
- we will continue to monitor this process in the coming year.

Issues with Refugee Status Assessment processing raised by detainees during inspection visits

We received complaints about:

- delays between the times decisions were being made and the times that detainees were informed of the decision outcomes
- errors in decision letters.

Detainees had a perception that certain Independent Merits Review decision-makers were consistently positive or negative in their decisions.

We felt there was limited understanding of the Independent Merits Review process, when cases will be referred for review and how referrals are prioritised.

There were also concerns about the:

- use of interpreters who did not understand the particular dialect of the unauthorised arrival by boat and that the latter was not able to rectify this. Poorly interpreted information can have significant consequences for decision-making
- accuracy of the country information relied upon by decision-makers.

Our office will continue to investigate and monitor these issues.

Reporting on people held in immigration detention

The Ombudsman is required under s 486O of the *Migration Act 1958* to report to the Minister on the appropriateness of the arrangements of a person's detention for anyone who has been in immigration detention for more than two years, and every six months thereafter. A de-identified copy of the report is also tabled in Parliament.

In 2009 a non-statutory process was implemented whereby the Ombudsman would report to the Secretary on the detention arrangements for people who had been in detention for six months, and then at 12 and 18 months if the person was still in detention.

The number of non-statutory reports we received from DIAC increased dramatically in January and placed pressure on the resources of DIAC and our office to respond in an effective and timely manner.

A risk created by the increased number of people in detention may be that reviews become process driven rather than purpose driven.

We noted that during the latter part of the financial year that the presented reports did not include relevant and essential detainee health information and other sundry matters. Following discussion with DIAC this information has since been supplied. We are continuing to work with the department to streamline the reporting process and address the challenges imposed on both this office and DIAC by an increasing detainee reporting base and decreasing resources.

Detention reviews continue to be a valuable measure to guard against individuals falling through the cracks of an expanding detention network. They are also an indicator of systemic problems in detention processes and a measure of policy shortfalls.

We expect that DIAC should be able to quickly produce a review which contains salient information about the person and individual circumstances, any particular risks or needs the person presents, identification of anomalies in the person's detention processes, and an assessment of the person's detention and placement.

With the significant increase in the number of people in detention, our office does not have the capacity to continue to value add to these reviews and is working with DIAC to consider other ways in which we can effectively oversight the detention arrangements for

those in detention who do not yet fall into the two-year statutory reporting

Identifying policy shortfalls

DIAC faces the problem of an increasing number of detainees who have been found:

- not to be refugees, but will not be accepted back by the original country on an involuntary basis or who are stateless
- to be refugees through an Refugee Status Assessment, but have not met security clearance requirements.

These groups raise complex issues for which DIAC has limited solutions under the current legislative framework. They currently face indefinite detention.

Two-year review reports

In according with the Migration Act, this office has a statutory reporting requirement for those persons who have been detained in immigration detention for two or more years.

Reports received under s 486N and s486O of the Migration Act, 2010–11 are:

S 486N reports received from DIAC	60
S 486O reports sent to the Minister	41

People detained for more than two years in Immigration Detention have been exposed to significant incidents within the detention network, including but not limited to suicides and disturbances at detention centres in Villawood, Darwin and Curtin. This is obviously a negative and traumatic environment for people who are also experiencing depression and anxiety.

Issues raised in the two-year reports include:

- an increase in the level of violence in detention centres, particularly Villawood
- deterioration in mental health, in particular of those persons held in immigration detention facilities for prolonged periods. Even though DIAC undertakes monthly assessments of an individual's circumstances and placement it remains that an increasing number of long-term detainees are continuing to be held in immigration detention centres despite

- ongoing recommendations from mental health professionals to consider community detention²
- several people whose visas have been cancelled under s 501 and for whom Australia appears to have non-refoulement³ obligations are subject to prolonged and apparently indefinite detention
- limited police investigation into alleged assaults in Villawood Immigration Detention Centre arising from jurisdictional confusion⁴
- limited supportive psychological intervention in immigration detention⁵
- reliance on static assessments to justify mandatory detention.

Two Year Report

Two reports to the Minister about detainees at Villawood Immigration Detention Centre include allegations of detainee to detainee assault, Detention Service Provider (DSP) officer to detainee assault; and detainee to DSP officer assault. Although detainees have the right to ask for the police to be called to investigate an alleged assault, the police report indicated a general view that charges will not be pursued when the alleged perpetrator has an unresolved immigration status. There is also concern that jurisdictional issues between NSW Police and the Australian Federal Police have not been resolved, with neither agency taking responsibility for investigating claims of alleged offences at Villawood.

Our section 486O report highlighted the need to provide a safe environment for detainees and staff, which includes the involvement of the criminal justice system where appropriate. The Minister has asked DIAC to review the situation, and this office understands that this is in process. This office will continue to monitor the management of serious incidents and investigations within the detention network

Non-statutory review reports

Non-statutory review reports were prepared on the following:

- families in Immigration Residential Housing for too long.
- case placement assessments – several issues and potential case studies including lack of natural justice and not taking into account relevant information, discounting mental health issues and, in one case, isolation from ethnic group.
- mental health problems.

Complaints from people in detention

Recurrent complaint issues include:

- access to medical services
- length of time in detention and associated psychological impact
- violent incidents
- property handling and loss

Systemic issues

Visa application validity

In July 2009, the Ombudsman released *Department of Immigration and Citizenship: Invalid visa applications*

² It is understood that DIAC is implementing a housing program to assist vulnerable detainees including those with ongoing mental health issues who are unable to be considered for community detention. It is understood that this accommodation program will focus on less restrictive hostel-styled accommodation. This office will monitor this program with interest.

³ In essence, the principle that a person cannot be returned to a place where they fear harm, including persecution.

⁴ This office will continue to monitor the resolution of the jurisdictional issues surrounding potentially criminal acts within detention facilities and the development of a Memorandum of Understanding between DIAC, the Australian Federal Police and State police.

⁵ This office notes that DIAC is continuing to work with the Detention Health Advisory Group (DeHAG) and industry experts to improve the level of psychological support provided to detainees and we will continue to monitor the efficacy of this service through our routine visits and reporting functions.

(Report 10|2009). This investigation focused on DIAC's management of invalid visa applications and considered the problems that can occur when invalid visa applications are poorly managed. The investigation looked at the timeliness and adequacy of advice given to visa applicants about their invalid visa applications.

The report found that overall DIAC's management of applications was in accordance with current policy and legislation. However, key areas in need of attention related to:

- improving the clarity of DIAC policies
- addressing the delays associated with assessing invalidity

- improving the advice to visa applicants about the invalidity of their applications
- improving record-keeping practices.

To build on what has already been achieved, during the next financial year this office will be reviewing the steps DIAC is taking to address the issues identified by the Ombudsman with a view to making further recommendations if we identify areas that need further attention. The following case study illustrates some of the issues that arise in visa application validity cases.

See also the proposed own motion and systemic investigations in the Looking ahead section on page 118.

Visa application validity Issues

Ms AD arrived in Australia on a student visa. When she had finished her tertiary studies she became eligible to apply for skilled migration. Ms AD needed to lodge her skilled migration application within six months of having completed her course. She lodged her application on 21 March 2010, and within the prescribed time, but did not provide a skills assessment from the relevant assessing authority at that time. This meant that her application was invalid. While DIAC considered whether her application became valid on 9 June 2010 (the day her skills assessment was received by the Department), because Ms AD was no longer the holder of a substantive visa at this later time, it could not determine that the application was in fact valid. DIAC formally advised her of this on 28 February 2011.

Prior to lodging her application, Ms AD spoke to a DIAC officer who advised her that she needed to provide evidence of having completed her studies. However, the officer may not have told her that she also needed to provide evidence of a suitable skills assessment from the relevant assessing authority. While DIAC officers can provide general advice to applicants, it is the responsibility of applicants to ensure that they meet all relevant visa application and eligibility criteria. DIAC provides this information on its website and applications forms, including:

- how to apply for each class of visa
- visa eligibility requirements
- the need to provide evidence of a skills assessment at the time of lodgement, and
- a list of the relevant assessing authorities.

For these reasons, we formed the view that DIAC's general advice to Ms AD was not inadequate or incorrect or that its actions were unreasonable.

However, Ms AD also complained that DIAC's delay in advising her that the application was invalid meant that she was no longer eligible to apply for a further substantive visa while in Australia. On considering this issue, we felt that if DIAC could have advised her in a more timely manner that her application was invalid, she may have been able to avoid being disadvantaged by becoming unable to validly apply for permanent residence in Australia. However, an investigation of DIAC's actions in this instance would not have provided her with a practical remedy or positive outcome.

Cross-agency issues

We may investigate as appropriate or necessary, issues that arise in the immigration context and which involve other agencies or service providers. For example, in the field of student visas and skilled visas, or in relation to health and detention services provided for DIAC by private individuals or companies.

Please see the Overseas Students Ombudsman section on page 128 for information on the department's role in that jurisdiction.

Reports released

In February 2011, the Ombudsman released *Christmas Island immigration detention facilities: Report on the Commonwealth and Immigration Ombudsman's oversight of immigration processes on Christmas Island October 2008 to September 2010* (Report 02|2011).

Outline of recommendations and DIAC's response include:

- A review of the Refugee Status Assessment process and the processing of security clearances.

The Refugee Status Assessment process has now been replaced by the Protection Obligation Determination, and new procedures put in place to improve processing times for security clearances.

- Releasing detainees who receive a positive Refugee Status Assessment into community detention.

Community detention is not possible on Christmas Island. Consideration will be given to transferring detainees from Christmas Island to community detention on the Australian mainland.

- There should be adequate numbers of accredited interpreters available on Christmas Island to assist in the processing of refugee claims and provision of support services.

DIAC is working to improve interpreter services through a range of strategies, including recruitment, increased use of technology for interpreting services and addressing infrastructure inadequacies on Christmas Island.

- Unaccompanied minors and families with children should have their claims processed on the

Australian mainland and be placed in community detention.

The Minister announced his intention to place the majority of children and their families in community detention.

- DIAC should move as many detainees to the mainland to reduce overcrowding on Christmas Island.

New facilities have been opened at Curtin in Western Australia and Scherger in Queensland. There has been a significant reduction in detainee numbers on Christmas Island as detainees have been transferred to mainland detention centres.

- DIAC should urgently address the shortage of adequate health services on Christmas Island, particularly for detainees with mental health issues.

DIAC will be developing facilities at the Christmas Island hospital for mental health counselling.

In February 2011, the Ombudsman released *Department of Immigration and Citizenship: Proper Process for Challenging a Tribunal Decision* (Report 03|2011). The investigation examined DIAC's approach to the implementation of a Migration Review Tribunal decision that the complainant was in a genuine ongoing relationship for the purposes of the grant of a temporary partner visa. After two years a permanent partner visa could be granted if prescribed criteria could be met. In response to our investigation, DIAC indicated it had concerns about the integrity of the complainant's relationship and, because of those concerns, it disagreed with the Tribunal's relationship findings. It did not, however, apply for review of the Tribunal's decision and after an 18-month delay refused the permanent partner visa, two days after granting the temporary partner visa.

We formed the view that DIAC's approach involved procedural deficiencies including inconsistency and a denial of natural justice, a failure to follow statutory appeal processes and delay.

We recommended that DIAC ensure:

- challenges to court or tribunal decisions occur through proper processes and in a timely fashion
- difficult cases are actively managed
- the flawed decision on the permanent partner visa be remedied.

DIAC accepted all three recommendations and acted quickly to address the visa grant. It also gave consideration to developing an internal monitoring mechanism to oversight implementation of tribunal decisions and develop further policy guidance for decision-makers on compliance with tribunal decisions.

See the ‘Systemic Issues’ section on page 115 relating to visa application validity as a current systemic theme.

Update from last year

See earlier sections relating to visa application validity as a systemic theme and as a released report.

To build on what has already been achieved, during the upcoming financial year we propose reviewing the steps DIAC has taken to address the issues identified by the Ombudsman with a view to making further recommendations if we identify areas which need further attention.

Stakeholder engagement, outreach and education activities

We held regular liaison and engagement meetings with DIAC’s Ombudsman and Human Rights Coordination Section to discuss complaint issues.

Through the Section we arranged for a series of briefings that helped our office better understand the context of a number of complaints we had received.

Staff have attended, or will be attending, a range of stakeholder community presentations and conferences on matters of relevance. We will be looking at developing a program of community stakeholder forums through roundtable meetings, attending conferences and as part of our own motion processes.

Looking ahead

During the next financial year, the office is looking to:

- re-affirm and refine its contact protocols with DIAC to better elaborate and clarify complaint-handling matters
- look at a range of systemic issues, subject to resources and priorities, in the following areas:
 - suicide and self-harm behaviour by detainees

- complaint-handling by DIAC’s Global Feedback Unit and service providers
- plain language and clear communications
- accessibility to services information
- genuineness assessments in visa decision-making
- visa application validity issues
- offshore refugee and humanitarian decision-making
- DIAC implementation of court and tribunal decisions
- take a more active and expanded role in relation to our compliance and removals inspections program
- consider options for how we might work collaboratively with the Australian National Audit Office in discrete areas, such as security clearances.

The year ahead will also bring a continuing challenge to maintain a quality review and oversight of systemic issues and individual cases within the immigration detention framework. We will:

- continue to examine the circumstances of prolonged detention and the implementation of the immigration detention values for detainees in general
- intensify our work with DIAC to ensure that it is able to monitor the welfare of detainees within the immigration system through its review mechanisms
- build on our expanded inspections program to maximise the sources of information and points of contact for detainees within our oversight role
- intensify our scrutiny of the Protection Obligations Determination processes and the remaining Refugee Status Assessment and Independent Merits Review processes
- undertake our six-month and two-year reviews
- engage with relevant stakeholders
- contribute to parliamentary committees.

FEATURE

IMMIGRATION DETENTION – VISITS PROGRAM

During the latter part of 2010 this office reviewed the approach taken to the oversight of immigration detention facilities with a view to providing equitable coverage of all centres. We determined that to provide a commensurate level of service to all unauthorised arrivals by boat regardless of location the existing visit program should be expanded to include all immigration detention facilities on mainland Australia. An assessment of the oversight needs determined that it was feasible to undertake formal visits to each facility at least twice a year with a capacity to increase our presence in any particular location if the need arose.

The trial of the visits program is considered to be a success with activities including conduct-of-complaint

clinics, interviewing individual long-term detainees and observing local practices and procedures. As a direct result of the program we have had the opportunity to speak to more than 500 individual detainees and groups with whom we would otherwise not have had contact due to communication challenges associated with these groups and the remote locations in which they are detained. In the majority of instances the issues raised by detainees have been resolved through direct liaison with the Department of Immigration and Citizenship and Serco staff during the visit or if required addressed more formally post-visit.



Christmas Island Immigration Detention Centre – North West Point



LAW ENFORCEMENT

Overview

The Commonwealth Ombudsman is also the Law Enforcement Ombudsman and has a comprehensive role in oversight of Australian Government law enforcement agencies. The Ombudsman deals with complaints made about the:

- Australian Federal Police (AFP)
- Australian Commission for Law Enforcement Integrity (ACLEI)
- Australian Crime Commission (ACC)
- Attorney-General’s Department (AGD)

- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- CrimTrac.

The Ombudsman can refer allegations of corruption against law enforcement officers to the Integrity Commissioner of ACLEI. The Ombudsman also has a statutory responsibility to review the AFP’s complaint-handling arrangements.

The relevant legislation relating to these functions of the Ombudsman is shown in Table 5.2.

Table 5.2: Legislative basis for Commonwealth Ombudsman oversight of law enforcement activities

Legislation	Function
Investigations	
<i>Ombudsman Act 1976</i>	Investigate complaints about the AFP, AGD, ACC, CrimTrac, ACLEI, AUSTRAC
<i>Witness Protection Act 1994</i>	Investigate complaints from people placed on the National Witness Protection Program or from unsuccessful applicants
Review	
<i>Australian Federal Police Act 1979</i>	Report to the Parliament on the AFP’s complaint handling, with comments on its adequacy and comprehensiveness; receive notification of serious misconduct matters from the AFP

The Ombudsman also inspects the records of law enforcement agencies and other agencies to ensure compliance with legislative requirements applying to certain law enforcement and regulatory activities. This latter work is described in the *Monitoring and inspections* section of this report.

Complaint themes

Key issues arising from law enforcement complaints to the Ombudsman's office included:

- there are still considerable delays in the AFP processing of some complaints, but in general there has been an improvement since last year
- law enforcement agencies should welcome complaints as a way of improving their administrative practices
- the AFP should aim to maintain regular contact with complainants and improve the quality of its letters by using plain language aimed at communicating a message, particularly about the decisions made from investigations
- agencies often provide limited information to complainants and cite the Privacy Act as a reason for taking this approach. This office has seen examples of where an agency could have provided at least general information to a

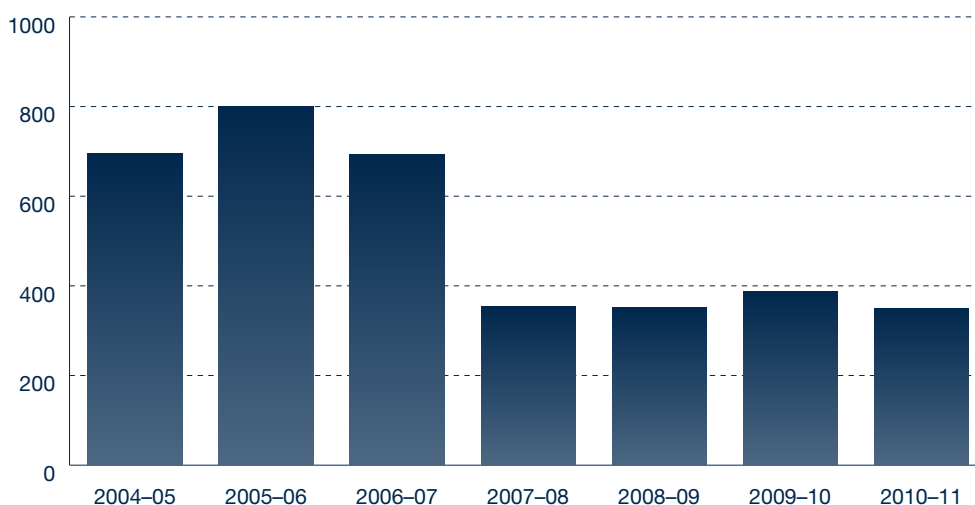
complainant without breaching an employee's privacy (for example, where an employee of an agency has acted inappropriately and the agency takes action against that employee). The Ombudsman suggests that it would be appropriate for agencies to seek the views of the Privacy Commissioner if they remain unsure about how much information can be provided to complainants.

AUSTRALIAN FEDERAL POLICE

The Ombudsman's office performs two significant functions in relation to the AFP. We investigate complaints from both members of the public and members of the AFP, and we also conduct reviews of the administration of the AFP's complaint handling. With this combination of functions, the Ombudsman is well placed to help the public to have confidence in the AFP by being independent, impartial and honest in our views formed from our unique oversight perspective.

A summary of the complaint trends since 2004–05 are shown in Figure 5.13 below. The significant reduction in the number of complaints received after 2006–07 is principally due to a change in the legislation governing the Ombudsman's role in relation to AFP complaints.

Figure 5.13: AFP approach and complaint trends, 2004–05 to 2010–11



Most of the Ombudsman's law enforcement work in 2010–11 related to dealing with complaints made by members of the public about the actions of members of the AFP. Complaints made to the AFP are dealt with under the *Australian Federal Police Act 1979* (AFP Act) and complaints can also be made to the Ombudsman and investigated under the *Ombudsman Act 1976*. The Ombudsman has a statutory obligation to at least annually review the AFP's complaint handling under Part V of the AFP Act and one such review was conducted during the year.

Review of complaint handling

The Ombudsman has an obligation under s40XA of the AFP Act to review the administration of the AFP's handling of complaints through inspection of AFP records. This includes records of the handling of complaints about ACT Policing. The Ombudsman reports to the Commonwealth Parliament annually, commenting on the adequacy and comprehensiveness of the AFP's handling of conduct and practices issues, and inquiries ordered by the relevant Minister. Our most recent *Annual report on the Commonwealth Ombudsman's activities under Part V of the Australian Federal Police Act 1979* covered the period 1 July 2009 to 30 June 2010 and was tabled in Parliament in February 2011. This report covered three reviews and is available on the Ombudsman's website.

The combined recommendations that were made to the AFP from the three reviews referred to in the report were as follows.

1. The AFP should conduct further analysis to determine the causes of delay in finalising complaints in all categories.
2. The AFP continue to focus on improving outcome letters to complaints to provide details of the finding made and reasons for those findings.
3. The AFP should give more attention to maintaining regular contact with complainants during the course of an investigation and, where a matter will not be finalised within the prescribed time, provide a report to the complainant that outlines the progress.

4. The AFP should explain the complaints process clearly to a complainant and record this in their record management system (CRAMS).
5. The AFP should advise the complainant they have the right to complaint to the Ombudsman about the actions of AFP members and about AFP policies, practices and procedures, and advise about how they can complain.
6. The AFP should improve the standard of recording of information in Operational Safety Use of Force Reports, consistent with the requirements of the Commissioner Orders (CO3).
7. Investigations and adjudications of complaints of excessive use of force should overtly demonstrate that the CO3 requirements of negotiation and de-escalation have been fully considered. Members using force should be required to demonstrate that they appropriately employed or discarded these strategies based upon the circumstances at the incident.
8. The Operational Safety Use of Force Report should be amended to include a section requiring the member to set out full details of the member's attempts to negotiate and de-escalate the situation, or to set out full details of why this was not appropriate in the circumstances.
9. Complaint investigations should seek to resolve any difference between the evidence of complaints and members, particularly for more serious conduct issues, by seeking corroborating evidence where this is reasonable to achieve. This should include other forms of evidence such as CCTV records.
10. Investigators and decision-makers should consider a member's complaint history when conducting a complaint investigation and making a decision whether or not to establish a complaint.

We noted that the AFP continues to make efforts to improve the quality and consistency of its complaint handling. In particular the standard of adjudications of complaints was high. However, we noted deteriorating timeliness in resolving complaints across all complaint categories¹. It was also noted that the AFP could

¹ The AFP Commissioner and the Ombudsman, jointly determine the kinds of conduct that are Category 1, 2 or 3 conduct for the purposes of the AFP Act. See feature at the end of this section for more information.

better use the information provided by complainants to determine and address systemic problems. We have consistently found that complaints from members of the public have a low rate of being 'established'² by the AFP. For example, from the time that Part V began in December 2006 until November 2009, no complaints from members of the public for excessive use of force were established through the AFP complaint-handling process. We intend to monitor the way that the AFP deals with complaints about excessive use of force.

During this year we also conducted an inspection to review the AFP's complaint handling for the period 1 March – 31 August 2010. The results of that review will be reported to Parliament in the latter part of 2011.

Complaints received

During 2010–11, we received 349 approaches and complaints relating to the work of the AFP at the ACT community policing (142), national (182) and international (25) levels. This is a slight reduction on the 389 received in 2009–10. Of the 349 complaints, 183 were advised to contact the AFP in the first instance, in line with our office's policy that the agency complained about should have the first opportunity to resolve a complaint. The office further examined 166 of the complaints. The most common issues concerned:

- inappropriate action (54), such as excessive delay, failure to act, inadequate investigation

- customer service (36)
- practices (25)
- conduct on duty (24)
- property and exhibits (3).

Complaints finalised

During 2010–11, we finalised 406 approaches and complaints about the AFP – 148 related to ACT Policing, 19 to International Operations, and the remainder being for national issues. In 185 cases we referred the complainant to the AFP. We declined to investigate 66 complaints for reasons such as there being insufficient basis for a complaint, or the matter being complained of was being considered by a court or tribunal, or the complaint was over 12 months old.

There were 24 complaints that were out of our jurisdiction and in 15 cases we advised the complainant to pursue their matter with another oversight body, court or tribunal.

We completed 117 investigations and advised the AFP that we were critical of its actions in 15 of those cases. In 12, the main criticism was of the unreasonable delay in the AFP investigating and finalising the complaints. In two cases we found there to be a legal error and in one that there had been inadequate advice or explanation to the complainant.

Police behaviour

Mr AE contacted this office in relation to Police behaviour at the site of his son's car crash. Mr AE said the crash took place the day after his house had burnt down. Mr AE was aggressively arguing with his son at the crash site when police were called. Mr AE said that police yelled at him and used capsicum spray. Mr AE complained to the AFP which acknowledged that police at the scene did yell at Mr AE due to his aggressive behaviour to his son but there was no acknowledgement of the use of capsicum spray. Our investigation revealed that the actions of the police were not unreasonable in the circumstances and we found no evidence to indicate that capsicum spray was used on Mr AE.

² A complaint is established where the AFP investigation concludes in favour of the complainant or against the AFP member.

Unreasonable delay

Mr AF lodged complaints with the AFP concerning criminal allegations against him. Mr AF said that an unknown member of the public whom Mr AF suspected was an AFP officer contacted his employer and disclosed personal information that led to Mr AF having to leave his employment. He contacted this office and we investigated the delay in the AFP investigating his complaints. In our view, there was unreasonable delay of over 23 months to resolve Mr AF's complaints, with a closure date still to be determined when we finished our investigation. This far exceeds the benchmark time standard outlined in the AFP National Guideline on Complaint Management.

A badly handled complaint

Mr AG complained to this office that the AFP officer who had investigated his complaint was the supervisor of the officer about whom he had complained. The outcome of that investigation was that Mr AG's complaint was 'not established'. The original complaint that Mr AG had made to the AFP was that an officer had acted on unsubstantiated information to make enquiries about Mr AG that had caused him embarrassment.

After we investigated Mr AG's complaint we came to the view that the original officer had made an error in judgement in the actions that he had taken. However, of particular concern to us was that the AFP officer who investigated Mr AG's complaint had not disclosed his involvement, as the supervisor of the officer complained about. We were of the view that this supervisor had also not properly investigated Mr AG's complaint and not adequately disclosed what we considered to be his conflict of interest in conducting this investigation. The Ombudsman was sufficiently concerned about this matter, and the initial AFP response to our views, to prepare a report to the AFP AG Commissioner about our conclusions on the investigation and to recommend that the AFP better address conflict of interest, information sharing issues, and improve its record keeping.

The Commissioner reconsidered the case in light of the Ombudsman's comments and commissioned a review of the way that the AFP had managed the complaint and the circumstances that led to that complaint being made. The Commissioner's conclusion was that the case showed isolated issues of procedure in terms of the actions of the officer subject to the complaint and the officer who undertook the complaint investigation. However, the Commissioner was satisfied that a 'conflict of interest' was not a key factor in either the original investigation or the complaint investigation.

The Commissioner agreed to action the Ombudsman's recommendations in relation to conflict of interest and record keeping but was of the view that the AFP's information sharing practices were consistent with the relevant legislation.

Given the AFP response the Ombudsman decided not to publish the report, but he was sufficiently concerned about the way the original complaint was managed to reiterate to the Commissioner his critical findings.

Own motion investigations

In the 2009–10 annual report, we indicated that the Ombudsman had commenced an own motion investigation to determine if the AFP's payments to witnesses, particularly large payments, was a widespread practice, and if so whether the governance in place was suitably robust. However, we have suspended work on this investigation pending the resolution of some matters before the court.

An own motion into the Christmas Island Immigration Detention Centre disturbances in March 2011 was commenced and will be reported on in the next annual report.

Looking ahead

Over the next year we will continue to focus our attention on working with the AFP to improve its timeliness in finalising complaint investigations. The establishment of the Adjudication Panel in 2010, and the appointment of a consultant to adjudicate on older Category 3 complaints, demonstrates that the AFP is taking steps to address this problem.

We would like to see the AFP further embrace complaints from members of the public as a resource for the AFP to improve their operations and interactions with the wider community. By doing so the number of future complaints should diminish, particularly where systemic issues are addressed in a timely manner. The AFP generally agrees with our recommendations arising from our reviews and we will continue to monitor steps taken to implement them.

AUSTRALIAN CRIME COMMISSION (ACC)

Complaints about the ACC are managed under the Ombudsman Act. In 2010–11, we received three complaints about the ACC. One of the complaints we referred back to the ACC in the first instance and the other two were considered out of our jurisdiction as they were employment related issues.

ATTORNEY-GENERAL'S DEPARTMENT

The Attorney-General's Department provides expert support to the Government in the maintenance and improvement of Australia's system of law and justice and its national security and emergency management systems.

In 2010–11, we received 30 complaints about the Department. All of the complaints that related to law enforcement matters were referred back to the Department in the first instance so it could consider and if necessary investigate the matters. None of these complainants returned to this office to further advance their complaint.

In one case investigated, we recommended that the complainant be provided with an explanation as to why the Department exempted certain documents from the complainant's FOI request. Three other complaints investigated were dealt with by the Indigenous Unit of this office.

AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY (ACLEI)

The Integrity Commissioner, supported by the Australian Commission for Law Enforcement Integrity (ACLEI), is responsible for preventing, detecting and investigating serious and systemic corruption issues in the Australian Crime Commission and the Australian Federal Police.

During 2010–11, we received three complaints about ACLEI and finalised four complaints during the year (as one related to the previous year). Two complaints were referred to the Australian Federal Police as they were more relevant to the AFP and one was referred to ACLEI in the first instance. In one case we suggested that ACLEI should communicate better with the complainant who was concerned the ACLEI investigation of the complaint was taking too long.

Keeping complainants informed

Ms AH had referred a matter to ACLEI concerning allegations of corruption within the Australian Federal Police.

Ms AH complained to this office that ACLEI had failed to keep her informed of the progress of the matter. We noted that ACLEI does not have a complaint-handling role and does not generally provide personal remedies or restitution to complainants. How ACLEI conducts its inquiries is also a matter for ACLEI to determine. However, in our view, ACLEI, as an Australian government agency, is obliged to conduct its administration in an appropriate manner. This includes managing the expectations of those people who approach it. ACLEI offered to contact Ms AH to inform her of the outcome of her referral.

CRIMTRAC

CrimTrac's primary role is to provide national information-sharing solutions to support the effective operation of police services and law enforcement agencies across state and territory borders. During the period, we received no complaints relating to CrimTrac.

AUSTRAC

AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit.

We received three complaints during the 2010–11 about AUSTRAC compared to five complaints in 2009–10. Two of these complaints were from the same person about the same issue and this investigation is still in progress. The other complaint was considered out of our jurisdiction and the complainant was advised to contact AUSTRAC for more information about the financial-related issue raised. Another complaint finalised during the year was considered to be employment related and out of our jurisdiction and the complainant was referred to other authorities.

- presentation to Bimberi (ACT Government youth detention centre) staff
- office visit by Director PNG Internal Affairs of the Police Constabulary
- Canberra Institute of Technology International Student Orientation Day, Presentation and Market stall
- ACT Disability, Aged and Carer Advocacy Service.

Stakeholder engagement, outreach and education activities

Staff of the Law Enforcement Team meet regularly with the AFP Professional Standards officers and both agencies attend an annual forum to discuss issues of mutual interest and to work on ways to improve the AFP's complaint-handling processes. This year we reviewed the AFP Categories of Conduct for joint consideration by the AFP Commissioner and the Ombudsman.

The Law Enforcement Team engaged in a number outreach and stakeholder activities during the year to discuss the role of the Ombudsman and our complaint-handling procedures:

- visit to the Solomon Islands with the AFP and ACLEI
- presenting to a visiting delegation of the Maldives Police Integrity Commission
- Canberra Institute of Technology Fyshwick Nats



FEATURE

AUSTRALIAN FEDERAL POLICE/ OMBUDSMAN FORUM

The Ombudsman's office hosted the annual Australian Federal Police /Ombudsman Forum in March 2011. The Forum is a valuable opportunity to discuss relevant issues that arise through the work of both agencies, and to exchange information and ideas on ways to improve the AFP's complaint-handling processes. The Forums contribute to a greater understanding by our office of how the AFP operates and the diversity of functions it performs. These Forums have helped build the professional relationship between the AFP's Professional Standards Section and Law Enforcement Ombudsman staff to enable a better understanding of the issues that each face in investigating complaints.

Among the issues considered was proposed changes to the Categories of Conduct, which form the basis for AFP investigation of complaints against AFP members. The changes to the Categories will be considered next year by the Ombudsman and the AFP Commissioner.

Discussions were also held about how the Professional Standards Section can improve the time taken to investigate complaints, as the percentage of complaints being finalised within benchmarks at that time was low. Recent advice from the AFP indicates there has been an improvement in the timeliness of complaint investigation.

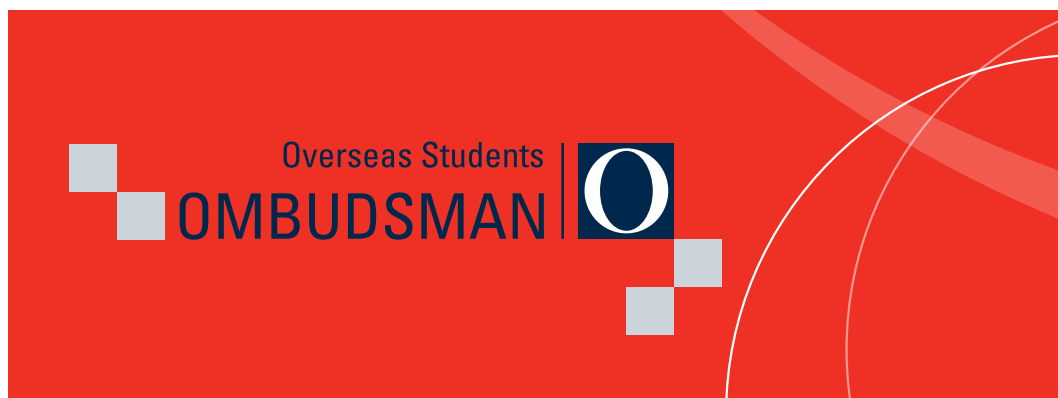
Another focus of the Forum was the low establishment rates³ for complaints from members of the public as compared to those raised internally within the AFP about AFP members.

It was agreed that these issues would be further addressed in future Ombudsman Reviews under Part V of the *AFP Act 1979*.



Delegates at the Australian Federal Police/Ombudsman Forum – hosted by the office of the Commonwealth Ombudsman, March 2011

³ A complaint is established where the AFP investigation concludes in favour of the member of the public or against the AFP member.



OVERSEAS STUDENTS

Overview

The role of the Overseas Students Ombudsman was created following a recommendation by the Hon. Bruce Baird in his *Review of the Education for Overseas Students Act 2000*. The Baird Review found that overseas students studying with private education providers were particularly vulnerable, and would benefit from access to a statutorily independent complaints-handling body such as the Commonwealth Ombudsman. Following amendment of the *Ombudsman Act 1976*, the Overseas Students Ombudsman began operation on 9 April 2011.

The Overseas Students Ombudsman has three clear roles under the legislation:

- to investigate individual complaints
- to report on trends and systemic issues in the sector
- to work with providers to promote best practice complaint handling.

Within the office of the Commonwealth Ombudsman, the Overseas Students Ombudsman role complements existing jurisdiction in relation to the Departments of Education, Employment and Workplace Relations (DEEWR), the Department of Immigration and Citizenship (DIAC), and the Australian National University. It is also relevant to the ACT Ombudsman's jurisdiction in relation to public education providers in the territory.

Between 9 April and 30 June 2011, the Overseas Students Ombudsman received 169 approaches and complaints. The number of complaints – 95 –

includes only those contacts that related specifically to complaints within the jurisdiction of the Overseas Students Ombudsman. There were 74 approaches that were not complaints. These included contacts from students and others whose problems were outside our jurisdiction (for instance, relating to public education providers) and questions from providers and others about the new role and how it functions.

This year we have investigated nine complaints against DEEWR in relation to overseas students. Student-visa related complaints form part of the work of the Immigration Ombudsman.

Complaint themes

The Overseas Students Ombudsman is not limited in the type of complaints it can investigate, so long as those complaints are made by or on behalf of an intending or actual overseas student, and in connection with the actions of a private registered education provider. The Ombudsman has a particular role in conducting external reviews of providers' decisions to report students to DIAC for failing to meet course progress or attendance requirements.

The Overseas Students Ombudsman has received 95 complaints in the nearly 12 weeks since commencement. Some clear trends have emerged. The largest proportion of complaints (almost one in four) relate to refunds of course fees. Issues with transferring between providers lead to 13% of complaints. External reviews of decisions to report students for failing to meet attendance (21%) and

progress (12%) requirements are also significant. These complaints are particularly serious and time sensitive. From a student perspective, they may result in cancellation of a student visa and return to their home country. For providers, who must maintain a student's enrolment while an external review is underway, delays can impact on clarity about student numbers going forward.

Providers must advise their students of their right to an external review when notifying students of their intention to report them to DIAC. This clear pathway and the significance of the possible outcome may explain the dominance of these complaints. We anticipate that, following the full launch of the Overseas Students Ombudsman to students and the wider community in July 2011, the base of complaints will broaden.

Systemic issues

Very few complaints have been finalised or progressed to the point where systemic issues in the sector can be identified and commented on at this stage.

As a whole, we are pleased to note that providers have been very quick to respond to requests for information from the Overseas Students Ombudsman and to act on recommendations made as a result of complaint investigations. This is an early but positive indicator of the willingness of the sector to accept the Ombudsman's role in working to improve outcomes for all stakeholders.

A theme which appears to be emerging across complaint types is the confusion experienced by both providers and students in drafting, maintaining and interpreting clear policies in relation to refunds, progress and attendance. Clarity and accessibility of those documents is essential to all parties understanding their rights and responsibilities, and in being able to meet the standards required of them under the Education Services for Overseas Students framework.

Cross-agency issues

Both DEEWR and DIAC have significant roles in relation to the overseas student sector. Their policies directly affect both providers and students, and the intersect of requirements and procedures is complex and sometimes confusing for both. As Commonwealth and Overseas Student Ombudsman, we have

capacity to investigate complaints about both these departments and the providers affected by them. This enables a broad and comprehensive view of the major policy actors in the sector, as well as those businesses and individuals impacted on by them.

Reports released

In June this year the Commonwealth Ombudsman notified DEEWR that it had commenced an own motion investigation into the operation of the Education Services for Overseas Students Fund, which operates under its policy and legislation. In certain circumstances, the Education Services for Overseas Students Fund repays money to students whose education provider has defaulted, leaving them with no suitable alternative course. We anticipate that that investigation will result in a published report in the latter part of 2011.

At this stage, the focus of the Ombudsman has been on building awareness of the Overseas Students Ombudsman function amongst potential complainants, education providers, other statutory complaint-handlers within the sector (for instance, State and Territory ombudsmen dealing with complaints about public education providers) and other key stakeholders.

Insights from direct experience of complaint handling and further engagement will inform the direction of any major investigations and related reports in the coming year.

Stakeholder engagement, outreach and education activities

The Overseas Students Ombudsman has undertaken significant engagement in preparation for the role commencing. This includes meeting with and presenting to State and Territory ombudsmen, regulators, provider peak bodies, student support organisations, DEEWR, DIAC and others. This consultation helped to clarify the operation of the role and its intersect with other complaint-handling and support bodies to ensure that students received the most appropriate support with minimal effort.

Prior to commencement, the Overseas Students Ombudsman communicated with all registered private education providers (more than 900) to ensure that they were aware of the role and the need to tell students that they could access the Ombudsman's

services. The Ombudsman made arrangements with Australian Council for Private Education and Training, a peak body representing the majority of private education providers, that the Ombudsman's external review service would replace external review arrangements that the Council had offered its members up to that point.

A dedicated Overseas Students Ombudsman website was available from the time of the Overseas Students Ombudsman's start up. It includes Frequently Asked Questions (FAQs) for providers and for students, with the student FAQs available in 21 languages as well as English. Brochures explaining what an ombudsman is, the right to complain, examples of what can be complained about and remedies that might be sought, were sent to all private providers.

A full launch of the Overseas Students Ombudsman, targeting student bodies and specialist education and student media, is planned for 12 July 2011 to coincide

with the Council for International Students Australia's inaugural conference.

Looking ahead

With the Overseas Students Ombudsman now in full operation, priorities for the year ahead include continued liaison with industry stakeholders – most particularly students – to ensure that the Ombudsman is accessible and his role understood. We will continue to identify and act on opportunities to streamline referrals and transfers of complaints.

The Overseas Students Ombudsman has already identified and committed to a number of opportunities to address stakeholder groups about our role and our insights from complaint handling. Those insights will form an important basis for working with providers to promote best practice complaint handling.

Reporting students to DIAC

Three students separately complained about one provider. Each complaint related to the provider's intention to report the student to DIAC for failing to meet course progress or attendance requirements. Ultimately, such reports can lead to the student's visa being cancelled.

In investigating those complaints, we found a number of contradictions in the provider's policies and notices. Ultimately we concluded that the notices could not be effective because they were not based on clear statements of policies that complied with the National Code and were available to the students.

The provider responded promptly and positively to our investigation. It welcomed the clarification of the National Code, which had been inaccurately reflected in its policies and procedures. The provider withdrew all notices in relation to the student complainants and other students to whom notices had been issued but who had not complained to the Ombudsman. The provider updated its policies, posted them on their website, and informed its entire student body of the changes, ensuring that students signed off that they were aware of the new arrangements.

Delays in refunding fees

Three students contacted the Overseas Students Ombudsman about gross delays in receiving a refund of tuition fees from their education provider. The students had each paid around \$7,000 in fees but had been unable to begin their course because their student visa applications were refused. The students applied for a refund. Under the Education Services for Overseas Students Act, providers must pay the refund within four weeks. The provider in this case also had a policy that said they would pay refunds within 10 working days. Despite this, the provider failed to pay the refunds over periods ranging from 11 to 17 months, even though the student's education agents had contacted the provider repeatedly and in some cases made complaints through other avenues without success. At the time of this report, payment of the refunds is imminent. It was not until the Overseas Students Ombudsman investigated that this progress was made.

Overseas Students OMBUDSMAN

FEATURE

SAFETY NET FOR OVERSEAS STUDENTS

The approximately 100,000 overseas students who are currently enrolled in private education now have access to a free, independent and impartial complaints service when they cannot resolve problems directly with any of the roughly 900 private providers offering education services in Australia.

Though the Overseas Students Ombudsman service began operating on 9 April 2011, it was officially launched by the Ombudsman Allan Asher in his keynote speech to the first Council of International Students Australia conference in Melbourne on 12 July 2011.

“This is an important new service for an often vulnerable group,” said Mr Asher.

Overseas students were encouraged to keep note of key transactions with their providers, and providers were warned to keep track of their agents’ claims overseas at the launch of the new Overseas Students Ombudsman service.

News of the service has been warmly welcomed by international students in private education and training,

and their representative and support organisations. Complaints have mainly related to refunds and provider intention to report students on progress and attendance requirements, which can result in visa cancellation.

Together with State and Territory ombudsmen (who deal with complaints from overseas students in public education), the Overseas Students Ombudsman creates a comprehensive safety net for overseas students.

The service also offers information and training to education providers on best-practice complaint handling, drawing on the Commonwealth Ombudsman’s more than 30 years’ experience in complaint investigation. And importantly, the Overseas Students Ombudsman publishes reports on problems and broader issues in international education identified through investigations.

More information is available at www.oso.gov.au



Mr Allan Asher at the official launch of the Overseas Students Ombudsman at Victoria University in Melbourne.



POSTAL INDUSTRY

Overview

Postal Industry Ombudsman Scheme

The Postal Industry Ombudsman (PIO) can only investigate complaints about the provision of a postal or similar service. It cannot consider complaints about other aspects of a postal provider's operations, such as retail services, employment matters or environmental issues. The PIO cannot investigate any complaints made to the PIO more than 12 months

after the action that caused the complaint. However, in these cases, the Commonwealth Ombudsman retains jurisdiction and may investigate administrative actions of Australia Post that do not fall within the jurisdiction of the PIO.

In 2010–11 the PIO received 2,952 approaches and complaints. This is a 22% increase on the 2,421 complaints we received in 2009–10. Table 5.3 shows the number of complaints received and the number of investigations completed during the year about Australia Post and Private Postal Operators.

Table 5.3: Complaints in PIO jurisdiction 2010–11

	Approaches and complaints received	Complaint investigations completed
Australia Post	2,932	472
Private Postal Operators	20	6
Total	2,952	478

For more information on the role of the Postal Industry Ombudsman, please see the feature on page 138.

Australia Post

There continues to be a significant upward trend in complaints to us about Australia Post, with complaints more than doubling over the past six years. In 2010–11 we received 3,123 complaints about Australia Post, of which 2,932 were in PIO jurisdiction and 191 were in

Commonwealth jurisdiction (Figure 5.14). The total is a 19% increase on the 2,626 we received in 2009–10.

We investigated 507 complaints about Australia Post in 2010–11. Of the remainder, we resolved many without investigation, for example by providing the person with a better explanation or informing them about their avenues to resolve the problem. We did not investigate other complaints because they were withdrawn, were out of our jurisdiction or, for a number of reasons, did

not warrant investigation at that time. When complaints were withdrawn, it was generally because the person had been able to resolve their complaint directly with Australia Post without our intervention.

The total number of complaints to our office remains small in comparison to the size of Australia Post's operations. In 2009–10, Australia Post reported handling over 5 billion articles and employed 43,000 people. In that context, we consider it likely that problems and complaints will arise. Our focus is on ensuring that Australia Post has adequate complaint resolution mechanisms and provides reasonable remedies for individual complaints, and that it identifies and addresses systemic problems.

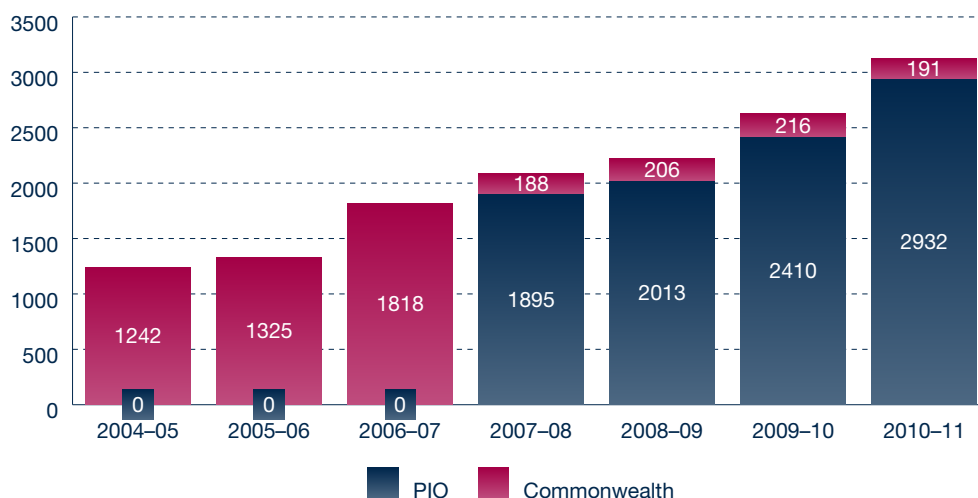
As a Government Business Enterprise, Australia Post is required by legislation to act in accordance with sound commercial practice and to meet certain community service obligations. These obligations require Australia Post to provide a domestic letter service at a single uniform rate of postage and to ensure that the service is reasonably accessible to all people in Australia on an equitable basis. The performance standards for the letter service, set out in regulations, must reasonably

meet the social, industrial and commercial needs of the Australian community.

The letter volume is declining rapidly as people change to electronic means of communication. At the same time, the domestic delivery network is expanding. Australia Post advises that in 2010–11 the domestic delivery network expanded by about 200,000 addresses. These changes are putting increasing pressure on Australia Post's capacity to return a dividend to government and its ability to fund its community service obligations. To address these challenges, Australia Post has implemented a significant restructure of its business.

In dealing with complaints about Australia Post and assessing what is fair and reasonable, we consider Australia Post's commercial and community service obligations. Part of our role is to help complainants better understand these obligations as many Australia Post customers appear to be either unaware or unaccepting of them.

Figure 5.14: Approach and complaint trends Australia Post 2004–05 to 2010–11 by jurisdiction



Other postal operators

In 2010–11, we received 20 complaints about other postal operators, consisting of 7 about Australian Air Express (AAE) and 13 about Federal Express

(Australia) Pty Ltd (FedEx). While this is an 82% increase on the 11 complaints we received in 2009–10, the number remains relatively low. The increase may

be due to an increased awareness of our role among postal operators and their customers following the consultation we undertook with postal operators on which we reported in our 2009–10 annual report.

Of the 19 complaints we finalised in 2010–11, six involved investigations with private postal operators. The remainder were out of our jurisdiction, or did not warrant investigation, or were resolved without investigation or because the complainant withdrew the complaint.

Common themes were delay or loss of items; delay in finalising complaint; and unclear advice from the private postal operator in responding.

Complaint themes

The main themes in complaints about Australia Post were: the Customer Contact Centre's quality of service or information (36%); recurrent mail problems (30%); single event mail problems (27%); post office services, including banking and retail (4%); and corporate, including unfair policy or legislation (3%).

Systemic issues

In addition to investigating individual complaints we use the intelligence from these to monitor and identify potential systemic issues. We discuss these with our Australia Post contacts and, where warranted, we consider if and how we can investigate at a broader level and make recommendations for Australia Post's management to consider. This is discussed in more detail later in this chapter.

Australia Post's terms and conditions

Australia Post's terms and conditions for its services set out the rights and obligations of Australia Post and the customer when entering into a service. They are authorised under Australia Post's enabling legislation.

We received complaints about the terms and conditions and the way in which Australia Post applied them. Where Australia Post had met the terms and conditions, we were not always able to achieve a better outcome for the individual. However, by monitoring these issues we can identify the level and nature of dissatisfaction with the terms and conditions. We are interested in the terms and conditions as a systemic issue because they underlie so many of the complaints.

Australia Post's complaint management

We found recurring issues about Australia Post's complaint management, which may stem from the systems and procedures in place, rather than primarily from human error. For example, the complaints about Australia Post not recording complaints or documentation, or losing documentation and packaging, may point to problems in document registration and record management systems. The complaints about the Customer Contact Centre's lack of response or delay in responding may be due in part to the 'inbound-outbound' arrangements at the Customer Contact Centre where separate teams deal with inbound and outbound callers, and are unable to transfer callers between the two.

Australia Post's stakeholder and community engagement, consultation and notification

We received complaints where the complainants expressed dissatisfaction about how Australia Post considered their views and needs when providing or changing its services, and how Australia Post provided or failed to provide important service information to them. For example, this occurred when Australia Post decided to close post offices in certain areas, and made changes to its business credit account policy.

Cross-agency issues

We continued to receive complaints in 2010–11 about passports lost in the mail. We are progressing work to obtain an update from Australia Post and the Department of Foreign Affairs and Trade on the progress and outcomes of their implementing recommendations in our report *Australia Post and Department of Foreign Affairs and Trade: Passports lost in the mail* (Report 08|2010), which was released in June 2010.

We continued to receive complaints in 2010–11 involving both Australia Post and Australian Customs and Border Protection Service. Complaints were generally about the notification and advice that addressees received from either or both agencies about mail items being seized, held, destroyed or returned to sender.

We also visited Christmas Island and discussed with some residents the impact of Australian Government activities on services such as postal.

Reports or submissions released

We did not undertake or publish any own motion or investigation reports in 2010–11. There were two main reasons for this.

Firstly, Australia Post's business renewal program Future Ready started on 1 July 2010 and aims to achieve significant changes within Australia Post. As we released three own motion investigations in 2009–10 and three in 2008–09, we decided to give Australia Post the opportunity to implement the recommendations to which they had agreed, and to achieve improvements through its renewal program, before undertaking further own motion investigation into systemic issues.

Secondly, we necessarily focused our resources on investigating and responding to the increasing number of complaints we are receiving. We are using the information gathered from these complaints to identify potential systemic issues.

Update from last year

In 2009–10, as detailed in that year's annual report, we recommended that Australia Post:

- increase the amount of compensation that it pays for lost or damaged items
- revise its terms and conditions and other information to more clearly state compensation arrangements for lost or damaged passports
- include on Express Post envelopes and satchels a statement that passports are excluded from compensation if carried by Express Post.

In response to our recommendations, Australia Post changed its Express Post Platinum service to include compensation of up to \$100 (increased from \$50) for lost or damaged items and the replacement of valuable documents, and to allow for extra cover of up to \$5,000. It has made some changes in the terms and conditions, other information, and the Express Post products to better reflect the arrangements.

Stakeholder engagement, outreach and education activities

The Ombudsman met with Australia Post's CEO and Managing Director to discuss the strategic direction and priorities of their respective organisations.

PIO representatives continued to meet with Australia Post at the executive and corporate level, and visited and toured Australia Post facilities at the Melbourne Airport, the Dandenong Letters Centre, and the Port Melbourne Mail Centre. Our focus was on better understanding Australia Post's logistics and operations in service delivery, its complaint management policies and procedures, and the actions it was taking to address the challenges in these areas.

We participated in public outreach activities to promote the PIO's role. PIO team members attended outreach events at Midsumma Festival in Melbourne (January), Orientation Week in Victoria (February) and Agfest in Launceston (May). In their state-based outreach activities, various state offices represented the PIO by providing information and answering questions at events.

Looking ahead

The vision for our work with the postal industry is to support the industry to improve complaint management. We are particularly interested in helping postal agencies to better identify underlying causes of complaints, to resolve complaints more effectively and efficiently, and to achieve better resolution outcomes.

We want to find ways to better target and engage with stakeholders. In particular, we want to maintain an awareness of the PIO among its members and their customers, and we want to attract new members to the scheme. We also want to encourage and support Australia Post to improve its community and stakeholder consultation.

Addressing underlying or systemic issues within Australia Post, especially in complaint management, could reduce the number of complaints we receive. Our challenge is how to best investigate and address systemic issues while continuing to investigate and respond to the increasing number of individual complaints within a reasonable timeframe and with limited resources.

For the year ahead, we have identified the following three key challenges in Australia Post for us to further consider and if possible make improvements.

Australia Post's terms and conditions for its services

Australia Post's terms and conditions for its services set out the rights and obligations of Australia Post and the customer when entering into a service. A key theme in complaints we receive is the perceived unfairness of Australia Post's terms and conditions for its services. This includes but is not limited to the terms and conditions covering liability and compensation, especially for loss or damage to postal items and for consequential loss. We will consider options to review the terms and conditions in the context of consumer laws.

Australia Post's complaint management

In early 2010, Australia Post consolidated its state-based complaints management centres into a national system based in two centres in Brisbane and Melbourne. We intend to pursue with Australia Post whether the arrangements are effective in responding to and resolving complaints.

Australia Post's stakeholder and community engagement, consultation and notification

Australia Post communicates with the community and stakeholders in multiple ways. Much information is publicly available, while other information is communicated more directly to the target audience. Key issues emerging from complaints we receive include:

- a general lack of awareness about Australia Post's role as a commercial enterprise with community service obligations
- the clarity and accessibility of important information about Australia Post's services, and the general lack of awareness of such information
- the need for Australia Post to more actively engage, consult with, and notify stakeholders and the broader community about its services.

We will continue to work with Australia Post to address these concerns.

Case studies – general observations

Lost item and disputed packaging

After seeking advice and help from counter staff at the local post office, Mr AI posted a dental crown that cost around \$3,000 to a dentist by Registered Post. The envelope arrived with the edge torn and the contents missing. Australia Post declared the item lost but declined to pay compensation because it considered the packaging was inadequate.

We investigated on the basis of the reported advice and help that post office staff gave to Mr AI. In response, Australia Post contacted the post office staff involved, who recalled the transaction and confirmed helping Mr AI. Australia Post apologised, paid full compensation for the lost item, and counselled the staff involved about packaging requirements.

Mail redirection

When Mr AJ moved interstate out of the family home, he applied to Australia Post to redirect his mail from the family's PO Box to his new address. Instead of redirecting only his mail, the Licenced Post Office (LPO) redirected all the family's mail. The LPO manager told his family that staff were too busy to sort each mail item; that the redirection service was 'all or nothing' which meant they would redirect all mail or no mail; and that the son could cancel the service and ask for a refund. The family then received mail addressed to the son, and again asked the manager to redirect the mail correctly. The manager reiterated the earlier advice and referred the family to the area manager but would not provide a contact name or details.

Mail redirection (continued)

We investigated due to the lack of resolution, and because the manager's advice and the LPO's actions appeared to be contrary to Australia Post's terms and conditions for the redirection service. In response, Australia Post acknowledged the error, found that the LPO manager had misunderstood the terms and conditions and the complaints process, and instructed the manager to correctly action the redirection. Australia Post apologised to the complainant and provided a refund for the period of failure.

Addressing and mail delivery problems Mail redirection

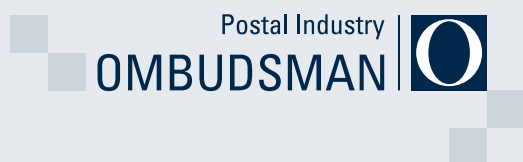
When Mr AK moved to a new house she confirmed with the state land agency and her local council that her new address was included in Australia Post's address database—the National Address File—which Australia Post uses to manage mail sorting and delivery. She should have been receiving mail at her new residential address but was not. When she complained to Australia Post, Australia Post told her that her address was not included in the database and referred her to the local council. The council told her it had authorised Australia Post to include her address in the database, and referred her back to Australia Post.

We investigated on the basis of contradictory advice and lack of resolution. In response, Australia Post confirmed that her address had been included and that mail delivery was active and would improve as businesses progressively used the updated addressing information. Australia Post also found that complaints about the National Address File and mail delivery could be managed better. It quickly implemented a new process for managing such complaints.

Property damage and compensation

Mr AL reported that her newly tiled driveway was damaged by a postal delivery officer. When she made a claim to Australia Post for the cost of repairs, Australia Post asked her, not unreasonably, to provide a quote. She provided a quote from the tiler who had done the original work as he would be able to use leftover matching tiles. Australia Post declined to pay compensation because she did not obtain three quotes and because the quote was not on the tiler's letterhead.

We investigated because Australia Post had not made its requirements clear or provided a reasonable explanation for declining compensation. In response to our investigation, Australia Post acknowledged that it could have exercised its discretion to accept the quote because it did include the tiler's business contact details and because Mr AL had valid reasons for wanting to use the specific tiler. Australia Post apologised, accepted the quote and paid \$300 compensation.



FEATURE

ROLE OF THE POSTAL INDUSTRY OMBUDSMAN

The Commonwealth Ombudsman has served as the Postal Industry Ombudsman (PIO) since the PIO was established on 6 October 2006 to offer an industry ombudsman for the postal and courier industry.

The PIO investigates complaints about Australia Post, and other postal or courier operators that are registered as a Private Postal Operator (PPO) under the *Ombudsman Act 1976*.

Private postal operators registered with the PIO

Australia Post is automatically subject to the PIO's jurisdiction, and other private postal operators can voluntarily register with the PIO. A new private postal operator (Business Porter) joined the PIO scheme on 28 February 2011. At 30 June 2011 the following nine private postal operators, in addition to Australia Post, were registered with the PIO:

- Australian Air Express Pty Ltd
- Business Porter
- Cheque-Mates Pty Ltd
- D & D Mailing Services
- Federal Express (Australia) Pty Ltd
- The Mailing House
- Mailroom Express Pty Ltd
- Universal Express Australia Pty Ltd
- 329 Motorcycle Courier Services.

The PIO:

- is independent and impartial, and does not represent either consumers or postal operators
- can make suggestions or recommendations arising out of his investigations
- is a function of the Commonwealth Ombudsman.

The PIO can only investigate a complaint if:

- the postal operator is Australia Post or a registered PPO
- the complaint relates to a postal or similar service
- the complaint is made within 12 months of the action which caused the complaint.

The PIO cannot investigate:

- actions of Australia Post or a PPO which are not related to a postal or similar service
- complaints about postal operators or couriers which are not registered as a PPO
- matters which are the subject of a court or tribunal hearing (unless special circumstances exist)
- complaints by Australia Post against a PPO
- complaints by a PPO against Australia Post or another PPO (complaints about the administrative actions of Australia Post can be made to the Commonwealth Ombudsman).

More information is available on the PIO website (www.pio.gov.au).



Postal Industry Ombudsman postal trucks have been useful in raising awareness of the office's work.



ROLE

In 1995 the Ombudsman was given the title of Taxation Ombudsman following a recommendation by the Joint Committee of Public Accounts. It recognised the unequal position of the Australian Taxation Office (ATO) and taxpayers, and aimed to give greater focus to the investigation of complaints about the ATO.

The Commonwealth Ombudsman investigates complaints about the ATO and is assisted in this role by a small team who also investigate complaints about the Tax Practitioners Board (TPB) and the Insolvency and Trustee Service Australia (ITSA).

The Tax Practitioners Board was established on 1 March 2010, taking over responsibility for the regulation of tax agents and Business Activity Statement (BAS) agents from the previous state-based Tax Agents' Boards.

The Insolvency and Trustee Service Australia is the government agency responsible for the administration and regulation of the personal insolvency system in Australia.

AUSTRALIAN TAX OFFICE

Complaint trends

In 2010–11 we received 2,589 approaches and complaints about the ATO, an increase of 43% from 1,810 received in 2009–10. This was a continuing trend from the previous year and amounts to an 82% increase in the two years to 2010–11. It is the highest number of complaints about the ATO in five years. Complaints about the ATO represented 13% of all complaints received by the Ombudsman.

As reported in the 2009–10 Annual Report, in 2010 the ATO deployed a major component (release three) of its core tax system as part of its ongoing Information

and Communication Technology (ICT) project, referred to as the Change Program¹, which replaced the 30 year old National Tax System. The new system had some early teething problems which resulted in delays to processing of income tax returns and as shown in the graph below, complaints to this office increased sharply (see also “tax-time” below for further detail).

The office was overwhelmed with approaches in the first quarter of the year, doubling the monthly average of 150 and peaking at 375 in August 2010. As a result, we turned people away advising that the delay issues

¹ The Change Program commenced 2003 when the ATO announced that it had entered into arrangements with service providers to deliver major changes to its ICT in order to enable it to continue to effectively administer the taxation and superannuation systems in to the future.

were known; that the ATO were working to resolve the problems and asked that they wait three months before contacting the office again. In this way, we could address the more serious issues which required further investigation to resolve.

Delays in receipt of refunds, amended assessments and other interactions with the ATO generated the most complaints from taxpayers and tax professionals.

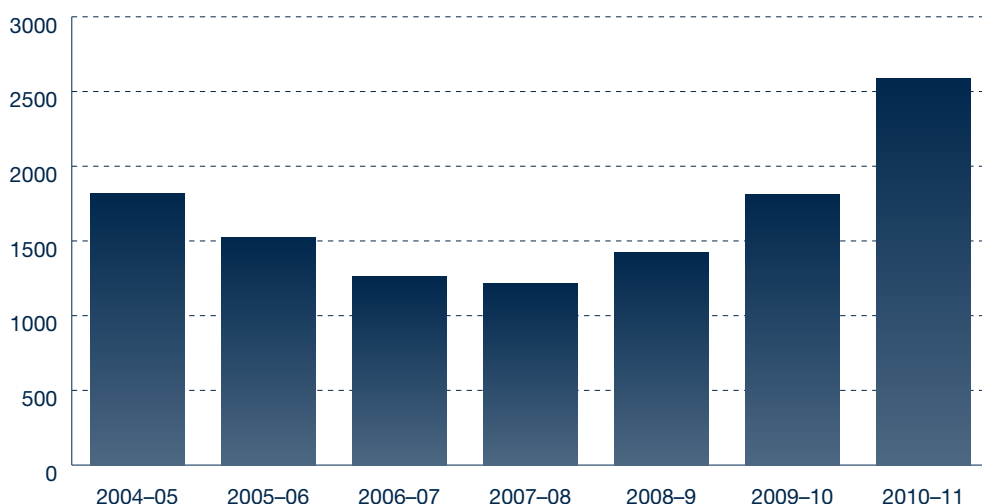
During the year we finalised 2,604 approaches and complaints (1,762 in 2009–10) of which 558 (22.5%) were investigated (316 in 2009–10). We obtained

information concerning around 300 other cases, which did not require full investigation to resolve.

We transferred 13% of the complaints we received directly to ATO Complaints under our assisted transfer process. Transfers occur when the taxpayer has not already complained to the ATO, and they agree to us referring their complaint directly to the ATO's complaint-handling system.

In 2010–11 we achieved one or more remedies in 86% of the cases we investigated. The most common remedies were better explanations (34%), financial remedy (28%) and actions expedited (10%).

Figure 5.15: ATO approach and complaint trends, 2004–05 to 2010–11



Complaint themes

Tax-time 2009–10 (Lodgment and Processing)

As previously mentioned, the ATO deployment of a major new system (release three) as part of the Change program was a key factor causing a dramatic increase in number of complaints and approaches to the office in the latter part of 2009–10.

Whilst the system itself appeared to function as planned, the transition from the old National Taxpayer System (NTS) to the new integrated core processing

(ICP) system generated some unforeseen issues which delayed a large number of the lodged income tax returns.

One of the main causes of complaints about delay related to the ATO's use of "suppressions"². Suppressions in the ICP system resulted in a greater number of returns being suspended and stockpiled than anticipated, which under the NTS may have been cleared with minor intervention.

Suppressions recorded on the records of taxpayers who had previously been bankrupt or who may have had a debt with another agency were the

² Suppression – a form of indicator or alert which temporarily suspends automatic processing of income tax returns to allow corrective action or review, for example in the case of duplications or possible fraudulent activity. It provides a high level of integrity to the process system

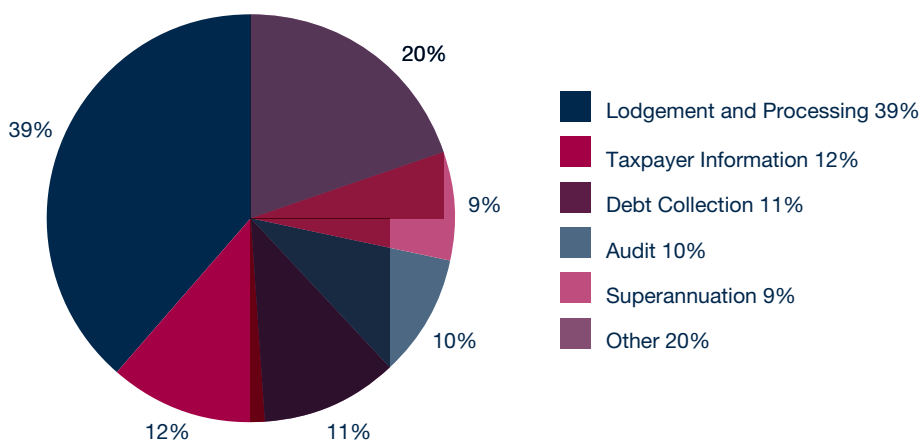
greatest source of complainants to this office. These complainants and others waited in some cases up to five months to receive their return (see Suppressions case study [over the page](#)).

Other events delaying the issue of income tax returns included problems arising from the garnishee system between the ATO and Centrelink as well as the suspected compromise of a tax file number (for further detail, see the Tax File Number Compromise section on page 142).

The deployment of the new system and the Change Program in general received significant scrutiny at the Joint Committee of Parliamentary and Administrative Audits (JCPAA) hearing³, by the Inspector-General of Taxation⁴, as well as criticism in the media.

The ATO received a significant increase in complaints during tax-time 2010 and responded by diverting significant resources and energy to reduce the stockpile, issue refunds and correct the problems. Much work has already been undertaken by the ATO to ensure that the same issues are not present for the 2010–11 tax-time.

Figure 5.16: ATO Main issues raised for fully investigated complaints 2010–11



Suppressions: Insolvency indicator delays issue of refund

Mr AM's tax agent lodged his tax return mid-August 2010 and contacted the ATO mid-December 2010 when he had still not received his refund and the ATO could not provide an explanation. He lodged a complaint with the ATO in early January 2011 and was advised that the matter would be reviewed. In mid-January 2011, Mr AM contacted the Ombudsman's office for assistance.

Initial information obtained from the ATO revealed that Mr AM's record contained a Composite Debt Indicator (suppression) on his record relating to a previous period when Mr AM had been insolvent. These indicators were automatically transferred over with the conversion from the National Taxpayer System to the integrated core processing system. System limitations in overriding the errors caused delays as Mr AM's return (as well as many other taxpayers with suppressions) had to be rekeyed manually.

Mr AM's refund was released within three days of us approaching the ATO which also ATO paid interest for the period exceeding the performance standard.

³ JCPAA hearing 4 March 2011

⁴ Inspector-General of Taxation Report – Review of the Australian Taxation Office's Change Program, December 2010 (released 5 May 2011)

Debt Collection

Eleven percent of the complaints investigated concerned debt collection compared to 13% the previous year.

The source of complaints relate to the ATO's firmer approach to outstanding debt (which it had published information about⁵) which is aimed at those who do not respond to multiple contact attempts, repeatedly default on their payment arrangements, have an escalating debt and there is no evidence that they will be able to meet their ongoing tax obligations or have been subject to an audit where deliberate avoidance was detected and payment avoidance is continuing.

Whilst taxpayers are required to advise the ATO of change of address, an increasing number of complainants advise that they were not aware of the multiple number of addresses that the ATO may hold for them for each 'role' they may have in the ATO systems that simply updating their income tax address does not update all addresses. As seen from the case study below, mail could be sent to a previous address and the resultant non-response may initiate firmer action which may ultimately result in legal action. We continue to consult with the ATO on this issue.

Firmer action not required

The ATO had raised a Pay As You Go instalment debt against Mr AN, but Mr AN had not correctly notified the ATO of his change of residential address when he moved overseas to work. When the debt remained unpaid, the ATO issued debt demand notices to Mr AN at his former residential address, which was still the address of Mr AN's elderly father (Mr AN senior). Mr AN senior did not send on the debt notices to his son overseas, and did not return them to the ATO.

When the debt demand notices went unanswered, the ATO escalated its recovery action to engage a collection agent to pursue the debt in accordance with its Receivables Policy. The debt collection agent contacted Mr AN senior by phone, but quickly realised that Mr AN senior was not the debtor, and ended the call without revealing any of Mr AN's debt information to his father. Mr AN senior was upset and confused by the call, and contacted his son to describe what had occurred.

Mr AN complained to the Ombudsman about the ATO's actions in contacting his father, and for failing to correctly record his current residential address for communicating about his tax affairs. Our investigation revealed that the original debt had been inadvertently raised after Mr AN had moved to work overseas and the ATO had failed to correctly record Mr AN's changed tax status on its systems. However, we were satisfied that the debt collection practices were undertaken in line with ATO policy and relevant guidelines for collection agency practices.

The ATO reversed the debt when Mr AN was able to confirm his changed circumstances, and apologised to Mr AN and his father for the distress and confusion caused by the debt recovery action. The ATO also provided Mr AN with a better explanation of its processes for recording changes in taxpayer circumstances.

Tax File Number Compromise (Taxpayer information)

Tax File Number (TFN) issues accounted for 12% of all complaint issues recorded by us this year and almost 75% of those related to TFN compromise. We

released a report on this issue in September 2010 (see Reports and submissions, below). Whilst the ATO has addressed the matters raised, the Ombudsman continues to receive complaints as illustrated by the case study below.

5 ATO publication NAT 73708 - Firmer action approach to debt collection

TFN Compromise no simple problem

Mr AO lodged his 2009 income tax return through his tax agent in October 2009, expecting a refund from his return. Soon after lodgment the ATO notified Mr AO's tax agent that a return had already been lodged in July 2009 using Mr AO's tax file number (TFN). The tax agent then advised Mr AO that he needed to apply for a new TFN because of the suspected identity theft against his TFN.

Mr AO applied for a new TFN in November 2009, and also informed the ATO that his Centrelink benefits were being affected by the delay in him receiving his 2009 Notice of Assessment.

Mr AO enquired to the ATO in February 2010 about progress of his new TFN and 2009 return, and was told that the 'systems upgrade' was delaying the TFN replacement process. Subsequent calls from Mr AO and his tax agent to the ATO between February and June 2010, including escalation to the compromised TFN business line, failed to resolve the issue. Mr AO lodged a formal complaint with the ATO but further calls to the ATO in June and July 2010 did not resolve the matter.

Mr AO complained to the Ombudsman on 16 August 2010 about the delay. Our enquiries revealed that Mr AO was issued his new TFN on 20 August 2010; however, his 2009 return had not been processed due to an ongoing systems issue. This issue was associated with the fraudulent 2009 transaction identity on the system, leaving Mr AO's legitimate 2009 return 'in suspension'.

On 3 December 2010 the ATO successfully implemented a technical solution to resolve the identified systems issue, and Mr AO's 2009 return was released for processing. The ATO issued his 2009 refund in mid-December 2010. The ATO provided a written apology to Mr AO for the inconvenience and distress caused to him by the delay in resolving this matter.

Superannuation

In 2010–11, around 9% of complaint issues we recorded related to superannuation, especially about unpaid Superannuation Guarantee payments and excess contributions tax.

This is a reduction on the previous year (13%) mainly due to improvement in ATO processes. However, complaints from employees concerned about the ATO's progress towards collecting unpaid superannuation continue to account for almost half of all investigated complaints relating to superannuation.

Following a previous review of the ATO's management of the Superannuation Guarantee system in July 2006, the Ombudsman reported⁶ a main source of complaints (from employees) was insufficient information provided about the collection of unpaid superannuation guarantee. Inadequate communication

with taxpayers is clearly still a problem as complainants report concerns around the infrequency of the advice, the lack of clarity concerning actions taken and the duration of the investigation. A review undertaken by the Inspector-General of Taxation of the ATO's administration of the Superannuation Guarantee⁷ also identified the need for the ATO to improve communications with complainants.

We continue to consult with the ATO concerning the frequency of advice and clarity and content of the letters.

Another major factor identified in non-payment of Superannuation Guarantee related to phoenix⁸ practices by employers, leaving employees as unsecured creditors and consequently unpaid as illustrated in this case study.

⁶ Taxation Ombudsman Activities 2008 Superannuation guarantee internal review. Page 18

⁷ Inspector-General of Taxation - Review into the ATO's administration of the Superannuation Guarantee Charge – publicly released 24 November 2010

⁸ Phoenix activity is typically associated with directors who transfer the assets of an indebted company into a new company of which they are also directors. The director then places the initial company into administration or liquidation with no assets to pay creditors, meanwhile continuing the business using the new company structure.

Employee as an unsecured creditor loses unpaid Superannuation Guarantee

Mr AP complained that he had contacted the ATO on a number of occasions concerning unpaid Superannuation Guarantee by his employer. Because of delays by the ATO, the employer was able to liquidate and re-establish in another location leaving no funds available for the complainant and other employees.

Our initial investigation revealed that Mr AP correctly lodged the necessary Employee Notification and that the ATO had followed the appropriate processes to collect the Superannuation Guarantee, including writing a letter to Mr AP informing him of its progress.

The letter also informed Mr AP that the ATO would advise him within one week of it discovering that the employer's company had become bankrupt, was in liquidation or under administration. However, when the ATO was later advised that the employer's company was in liquidation, it failed to advise Mr AP. As Mr AP was an unsecured creditor, liquidation of the company resulted in insufficient funds available to pay his Superannuation Guarantee.

Our investigation revealed that the ATO had taken appropriate action to collect the debt but the employer's action was the cause of the non-payment of the Superannuation Guarantee. The ATO apologised to Mr AP for not informing him of the liquidation of the employer's company.

This issue was further highlighted in the Cooper Review which commented that in the event of the employer's insolvency, Superannuation Guarantee should be regarded as a priority along with wages⁹. The Government recently announced proposed changes to taxation legislation to extend the Director Penalty regime to include the Superannuation Guarantee so that so that directors are made personally liable for unpaid Superannuation Guarantee

amounts. This is expected to dramatically improve Superannuation Guarantee collections and payments.

Systemic issues

Complaints received reveal systemic issues in the Compensation for Detriment caused by Defective Administration (CDDA) program and communications generally. The issues are demonstrated by the following case studies.

Delayed decision on CDDA claim

Company AQ, through its legal representative, lodged a claim for compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. The claim related to significant costs incurred by Company AQ in disputing audit decisions with the ATO in relation to three tax years.

From the outset, the scope and nature of the claim became a point of uncertainty and there was poor communication between the ATO and Company AQ. Agreement could not be reached about whether the claim was an issue of legal liability, or compensation under the CDDA scheme. The ATO made no offer to Company AQ to resolve the claim within an agreed timeframe.

After almost twelve months' deadlock, Company AQ lodged a complaint to the Ombudsman. Our investigation found that there had been considerable indecision on the ATO's part to confirm whether the matter was a legal liability or a compensation claim under the CDDA scheme. For its part, Company AQ had also been at fault in not responding in good faith to the ATO's requests for clarification of its claim.

⁹ Cooper Review - Super System Review: Final Report – Part Two: Recommendation packages. 4.1.2 Corporations Act and employer insolvency.

Delayed decision on CDDA claim (continued)

We advised Company AQ that the ATO had undertaken to resolve the legal liability issue within six weeks of our investigation ending. This deadline passed without a response from the ATO to Company AQ. Soon after, Company AQ again lodged a second complaint with the Ombudsman over the continuing delay.

Our second investigation of the delay revealed that several administrative factors, including staff shortages and unplanned absences of key staff in the ATO, contributed to periods of inactivity in the decision-making process of the CDDA claim. While Company AQ had also not engaged with the ATO during this period to progress the matter, we continued to press the ATO to resolve the matter.

After a further three months the ATO made an offer of compensation to Company AQ, conceding that there was an element of defective administrative in relation to one aspect of the audit included in the CDDA claim.

The Ombudsman issued a formal notice to the ATO advising that it found the delay in settling the CDDA claim with Company AQ unreasonable. We sought assurances that the causes of the delay were being addressed. The ATO accepted the Ombudsman's finding and undertook to implement the necessary remedial action to avoid similar occurrences in future. The Ombudsman will monitor progress of the ATO's remedial actions over the next few months.

Lack of contact compounds payment issue

Mrs AR paid an ATO debt through her local post office, and received a receipt for her payment. Almost five months later Mrs AR received a debt demand notice from the ATO for the amount she had paid previously. Mrs AR rang the ATO a few days later to advise that she had already paid the debt, and two days later wrote to the ATO providing the payment receipt details and asking the ATO to locate and confirm her payment.

About two weeks after writing to the ATO, Mrs AR received another ATO debt demand letter. She again phoned the ATO to explain that the debt was already paid, and that she was expecting ATO confirmation of this. The ATO told Mrs AR that its service standard was 14 days to issue a response in relation to missing payment enquiries.

Two days later the ATO located the payment and credited it against Mrs AR's income tax account with effect from the original date of her payment. However, the ATO did not respond to Mrs AR to advise her that the payment had been located and credited to her account.

After hearing nothing from the ATO after a further two months and becoming frustrated by the delay in resolving the matter, Mrs AR complained to the Ombudsman. She explained that she was still expecting a response from the ATO to her letter sent three months previously asking it to locate her payment.

After our investigation confirmed the delay was due to administrative lapses in the ATO, we asked the ATO to apologise in writing to Mrs AR for the delay. We have registered Mrs AR's complaint as a possible systemic issue to be addressed in consultation with the ATO to improve its policies and procedures.

Cross-agency issues

The ATO works closely with a range of other Commonwealth agencies and most notably, during tax-time, the ATO routinely receives debt information from the Child Support Agency (CSA) and Centrelink and provides income data to these agencies to enable them to administer the agencies programs.

Many of these exchanges are automated, but problems with those automated processes can prove difficult to resolve as outlined in the case study below:

Getting the run-around between agencies

Ms AS complained to us that the CSA and the ATO were refusing to take responsibility for a mistake that had led to her missing out on child support payments. She said that both agencies had ‘missed the point of her complaint’. Ms AS is a CSA payee. The payer, Mr AT, was behind with his child support payments and ordinarily, the CSA would intercept his tax refund to apply it to his child support debt. Ms AS was distressed to discover that Mr AT had received his tax refund and she had missed out.

Ms AS complained to the CSA. The CSA said that it had asked the ATO for the refund, but the ATO didn’t send it. The CSA said that Ms AS would have to take it up with the ATO. The ATO told Ms AS that due to privacy issues, it was unable to act on her complaint or provide further information as she was not an authorised contact on Mr G’s account and referred her back to the CSA.

We investigated Ms AS’s complaint about both agencies. We found that a human error in the ATO had resulted in Mr AT’s tax refund being released to him, instead of being sent to the CSA. The ATO has now apologised to Ms AS for its mistake. We are continuing to investigate Ms AS’s complaint and we have asked the CSA and the ATO to devise a much better system to work together to investigate and resolve complaints when things go wrong between the agencies. We have also asked the ATO and CSA to consider compensating Ms AS for the financial impact of its error.

Reports and Submissions released

Resolving Tax File Number Compromise

In September 2010 we released an own motion report on the ATO’s response when Tax File Numbers (TFNs) have been compromised or TFN records are incorrectly linked. TFN integrity and ATO data and systems quality are areas of high importance to the tax system.

The report highlighted a deficiency in the system requiring a significant improvement to ATO processes. The ATO has addressed many of the matters we raised and re-engineered the systems and processes to better manage this issue. A new complaint- handling process has been trialled and is currently being assessed for possible expansion to other complaint areas within the ATO.

Other submissions

The Ombudsman made a number of submissions related to our taxation complaint-handling role, including:

- The Treasury consultation – Designing a Tax System Advisory Board, March 2011 – the Ombudsman suggested an alternative composition for an advisory board to include integrity agencies and other non-government

organisations. This board would be well placed to bring problems to the Commissioner’s attention at an early stage to avoid the development of systemic issues.

- The Treasury discussion paper – Making tax time simpler. Standard deductions for the cost of work related expenses and the cost of managing tax affairs, April 2011 – clear regulations and instructions are an important element of the design of the proposed optional standard deduction for work-related expenses and the cost of managing tax affairs. Taxpayers need to understand the differences between the current deduction regime and the proposed standard deduction program.
- The Treasury – response to exposure draft – *Stronger Super*, February 2011 – using tax file numbers as an identifier and to facilitate account consolidation. The ATO has had many years of experience in managing the registration and usage of TFNs, yet still faces challenges in administering the processes. The potential benefits to the superannuation industry and their clients from the extended use of TFNs should be balanced with the need for strong governance policies, process and procedures and an equally robust complaints mechanism.

The office also provided feedback to the ATO in response to its publishing of new procedures relating

to study expense changes for full-time students receiving Youth Allowance (the Anstis¹⁰ case). Although at that stage the office had not received any complaints concerning this process, we felt the procedures could create uncertainty concerning eligibility, amendment of previous year returns, contact details and the existing Tax Ruling TR 98/9. The ATO subsequently reported that the program has worked with minimal complaints. The ATO welcomed the feedback provided by our office and, as a result, made some changes to its products. The ATO also invited feedback on other new measures.

Current Own Motion investigation

In April 2011 the Commonwealth Ombudsman commenced an own motion investigation into certain aspects of the administration of the joint-agency taskforce, Project Wickenby.

Complaints management

At the Joint Committee of Public Accounts and Audit eighth biannual hearing with the Commissioner of Taxation¹¹, the Committee informed the Commissioner that:

The Committee expects the next submission to the biannual hearing (September 2011) from the Australia Taxation Office to contain explicit consideration of, and reporting on action taken to improve complaint handling and address the underlying causes of complaints.

The ATO has begun a review of its complaint-handling process and this office is directly involved in the process.

This office also regularly attends two ATO complaints working groups and provides feedback on the complaints process to help bring continuous improvement to the complaints management process in the ATO.

¹⁰ *Commissioner of Taxation v Symone Anstis*, High Court, 11 November 2010

¹¹ Report 424 – June 2011. Joint Committee of Public Accounts and Audit eighth biannual hearing with the Commissioner of Taxation – 4 March 2011

AUSTRALIAN PRUDENTIAL AND REGULATION AUTHORITY

The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the financial services industry. It oversees banks, credit unions, building societies, life and general insurers and superannuation funds.

The Ombudsman received 162 approaches and complaints about APRA in 2010–11. The office finalised 156 approaches and complaints about APRA in that year, of which 38 were investigated. This is slightly fewer than in previous years.

The majority of complaints concerned the processing of applications for early release of superannuation benefits. The grounds on which APRA can approve early release of superannuation benefits are set out in regulations made under the *Superannuation Industry (Supervision) Act 1993* and are very specific. Common themes in these complaints were that APRA made multiple requests for information and that there were delays in assessing applications once the information was supplied.

Approval processes to access superannuation benefits

Ms AU applied for early release of her superannuation benefits on the basis that this was necessary to pay for an operation for her daughter. She was advised it would take 21 days to process her application. Meanwhile she borrowed money from her friends and the bank to repay lenders who had previously provided money for her daughter's treatment. Ms AU complained that, after the 21 day period, she called APRA only to be advised that her application had not been processed and that she needed to provide more information. When she provided the additional information she was told her application would be placed back in the queue for assessment and she would need to wait a further 21 days.

On investigation, APRA advised us that some, but not all, of the information it had requested had been provided by the applicant. In part, this was due to changes in the applicant's circumstances over the application processing period. However, APRA advised that it was able to approve a partial release of the funds requested based on the information it already had and that the complainant could seek a reconsideration of the amount if she wished to provide the further information.

Transfer of function

During 2011 APRA delegated the management of applications for early release of superannuation benefits to Medicare Australia. Legislation has since been passed that will transfer the function of processing applications for early release of superannuation benefits to the Medicare program of the Department of Human Services from November 2011.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The Ombudsman received 169 approaches and complaints about the Australian Securities and Investments Commission (ASIC) in 2010–11. The office finalised 174 approaches and complaints, of which 42 were investigated. This is a similar number to previous years.

While ASIC delivers a wide range of programs, complaints to the Ombudsman principally concern

registration issues and penalty fees relating to the lodgement of documents and decisions by ASIC to decline to investigate or take action on complaints made to it.

The following case studies show how time consuming and frustrating registration and lodgement issues can be for customers.

Return to sender

In December 2008 ASIC sent an annual review invoice to the complainant company's registered address but it was returned to ASIC marked 'return to sender'. This fact was noted on ASIC's register so that no further mail would be sent to that address until verified. Late fees accrued for the non-payment of the annual review fees and eventually ASIC sent a letter to the residential address of the company secretary. The company paid the amount and wrote to ASIC asking that the late fees be waived because the business was a garage which was still at the address on the register and they did not know why the original invoice had not been delivered.

In addition, the company's letter explained it had opened a post office box and enclosed form 486 to change the contact address to the post box. ASIC waived the late fees on the 2008 invoice. However, instead of following up the reference to the enclosed form 486 (which ASIC says it has no record of receiving) it treated the garage address as verified. In 2009 ASIC again sent the annual review invoice to the garage address and similar events followed. When the company secretary was apprised of the 2009 invoice, they accidentally paid ASIC twice. ASIC refunded the second payment by cheque posted to the garage address. When the cheque was 'returned to sender', ASIC again annotated the garage address as unverified.

In 2010 ASIC again sent the annual review invoice to the garage address, but withheld the subsequent late fee and reminder notices on the basis that the address was unverified. Despite having received no notifications from ASIC, in February 2011 the company secretary paid the review fee based on the amount charged the previous year, just to avoid the previous year's problems. ASIC then sent an overdue notice for the \$6 difference between the last year's annual review fee and the current year's along with the corresponding late fee for not having paid the full amount on time. The company paid the \$6 but sought waiver of the late fees complaining that every year they receive notice of the late fees but never receive the original invoice.

As a result of intervention by this office ASIC agreed to:

- review the effect of the 'return to sender' annotation on its system which led to invoices being generated but not sent
- review its processes to ensure that customers are alerted to any non-receipt of forms referred to as 'enclosed' with customer correspondence
- refund remaining late fee.

The Ombudsman received a number of complaints from people experiencing difficulty trying to correct the spelling of company details.

Forms, forms, forms

Mr AV used ASIC's online lodgement system to lodge a form 205A notifying ASIC of a resolution to change his company's name. The form was lodged at 10.20 am and Mr AV telephoned ASIC at 10.26 am to enquire about confirmation of receipt. Meanwhile ASIC's system issued a notice back to Mr AV advising that the name would need to be manually verified as it contained a word that was not in the database or the Macquarie dictionary. Mr AV then noticed a spelling error in the company name on the form and telephoned ASIC again at 10.59 am and 11.05 am to make the correction.

Each time, he was advised that a new form 205A would need to be lodged as the manual verification of the name on the original form had been fully processed by 10.31 am. This would incur a second transaction fee of \$340. Following intervention by the Ombudsman, ASIC took into account all of Mr AV's circumstances which included that he was a first time company office holder and had lodged the form within the prescribed timeframe through ASIC's preferred online channel. ASIC agreed to refund the fee he had already paid.

Correcting details

On contacting ASIC to request a form, Ms AW discovered that ASIC's database had her company's new street name split into two words. ASIC's contact officer referred the issue on to another team for correction, but this was not acted upon. Two months later Ms AW telephoned ASIC and became aware that the street name was still recorded as two separate words. The ASIC officer told her this was an issue for Australia Post because ASIC relied on its 'Postal Address File' as a database reference for all addresses to Australia. Ms AW called back and was asked to provide a written submission and rates notice to prove the street name was one word. Ms AW then sent ASIC a letter of complaint. Not having received a response three months later, Ms AW telephoned ASIC and advised that she had checked with Australia Post and the street name was one word. Again, her complaint was sent on for assessment. However, nothing further was done.

Our investigation found that ASIC used an Australia Post 'Postal Address File' downloaded into its computer system for validating addresses which had programmed the street name as two words. In response, ASIC advised that it would: review its process for accepting and correcting minor address details so that these may be actioned by telephone request; introduce a process to ensure that complaints were properly recorded and responded to by call centre staff; and that in this case would correct the company address.

TAX PRACTITIONERS BOARD

In March 2011, the Tax Practitioners Board (TPB) completed its first full year of operation. This involved finalising the registration transition from the previous state-based Tax Agent Boards (TAB) to the centralised system.

The Board also has a wide range of sanctions available to it under legislation¹² to ensure that tax and Business Activity Statement agents comply with ethical and legal standards. A new set of registration standards and a code of professional conduct has been developed to provide guidance to agents and their clients as to what minimum standards are acceptable and how sanctions might apply. These same sanctions were not previously available to the TAB.

It is still early days and complaint numbers have been consistent with what would be expected given the relatively short existence of the organisation, the new registration, ethical standards and new sanctions.

The TPB has developed its complaint-management system based on the Ombudsman's best practice model.

Complaints to this office concerning the TPB predominantly related to the explanation offered to complainants concerning an investigation of a complaint made about a registered tax agent. This is illustrated in the following case study.

A better explanation removes doubt

Ms AX complained in February 2010 to the then TAB about the actions of her tax agent who lodged her 2007–08 tax return late in 2009 and informed her that she would be eligible for the then \$900 Economic Stimulus Payment. Because the return was lodged after the legislated cut-off date, Ms AX was not eligible and did not receive the payment. Approaches to the tax agent proved fruitless and Ms AX complained that the tax agent had misled her and felt the charges incurred were not appropriate in the circumstances.

As it had replaced the role of the TAB, the TPB managed the complaint. The TPB advised that it does not investigate matters relating to fee disputes but would look at the actions of the tax agent. Ms AX maintained contact with the TPB during this time and was advised of a response in August 2010. A final response was not received till mid-December 2010 which contained minimal information about the outcome or findings of the investigation. Ms AX asked this office to assist.

Our initial enquiries revealed that the TPB had thoroughly investigated the matter and had sought detailed information from the tax agent to resolve the matter. Privacy legislation imposes restrictions on what information could be conveyed to Ms AX and a minimalist approach was taken in providing a response to the complainant. The TPB also advised that as the issue occurred prior to 1 March 2010 when the new law came into effect, the TPB could only apply the previously available sanctions which involved de-registration. The TPB felt that the issue raised was not of significant value to warrant de-registration.

As there was limited remedy available to address Ms AX's complaint, we asked the TPB to contact Ms AX further and discuss the investigation, within the privacy constraints, and to offer an apology to Ms AX for not providing a sufficient explanation. Ms O was satisfied with the outcome and thanked the office for its assistance.

Remedies were achieved in more than 70% of cases investigated which were mostly a better explanation and/or an apology.

We continue to work with the TPB to ensure that the information it provides to complainants helps them understand the process, what can be expected from the investigation, and fully explains the outcome.

¹² *Tax Agent Services Act 2009; Tax Agent Services Regulations 2009 and Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*

INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA

The number of complaints to the Ombudsman concerning the Insolvency and Trustee Service Australia (ITSA) has remained at around 70 per year for the last three years. The majority of complaints were from those who were themselves bankrupt (almost 75%) and regarded the administration of the estate or issues relating to discharge from bankruptcy. The remainder were from creditors or an associated entity with issues relating to the administration of the estate.

We continue to work with ITSA to bring continuous improvement to its management of complaints.

Stakeholder engagement

The Ombudsman meets regularly with the Inspector-General of Taxation and contributes to the Inspector's reviews.

An initiative of the Taxation Ombudsman is to establish an expert panel of advisors in the form of a Tax Ombudsman consultative committee. Membership of the committee is being finalised, with the first meeting to be held in October 2011.

Looking ahead

The Ombudsman has identified three priorities:

1. **Improving the language of government** – over one third of complaints to the Taxation Ombudsman are resolved through provision of a better explanation either from the agency or the Ombudsman. Complex language can exclude people from services that they need. The use of plain language can dramatically reduce enquiries and confusion.
2. **Providing greater access to services** – people access services and information in different ways, and relying on traditional access methods or technologies can exclude those who cannot use them. Those who are excluded and are “voiceless” need to be heard.
3. **Improving complaint handling** – addressing the issues raised through the complaint to fix the problem so there is a reduced need for complaints.



FEATURE

TAX INSTITUTE NATIONAL CONVENTION

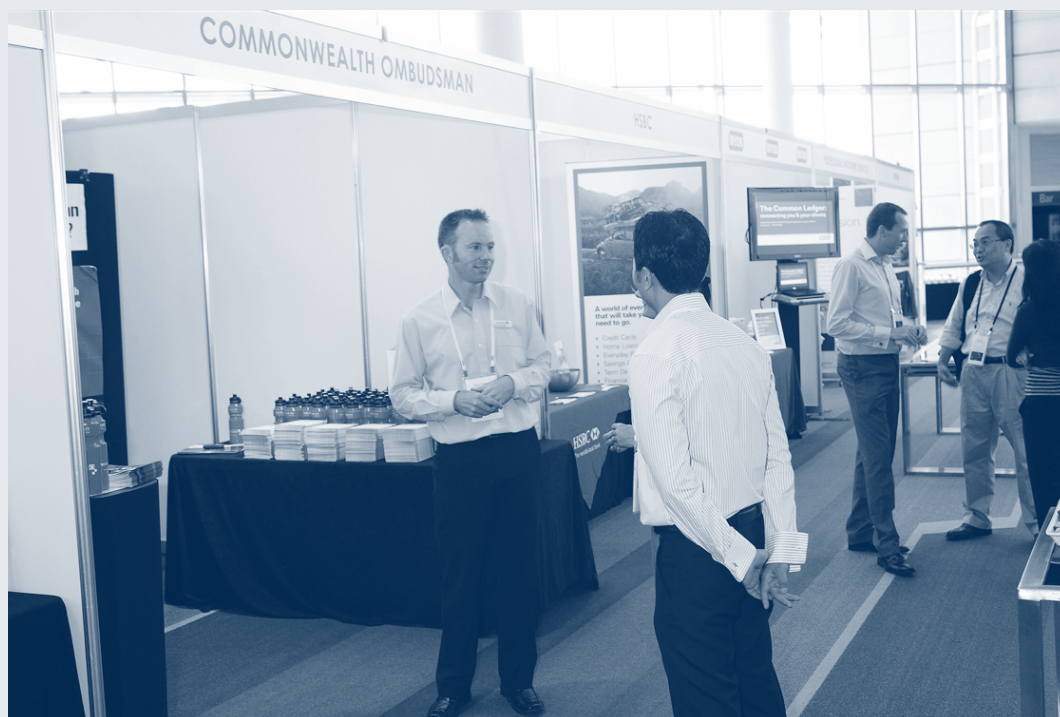
Ombudsman staff manned an exhibition stand at the annual Tax Institute National Convention in Brisbane in March 2011.

The purpose of our attendance at the Convention was to promote the role and function of the office to tax practitioners. In particular, we encouraged practitioners to make informed suggestions to the Ombudsman about areas of tax administration that are problematic or in need of attention.

Many of the delegates at the Convention showed great interest in the office. A few had some knowledge of the

work the Ombudsman does but were keen to know more, while three delegates took the opportunity to make formal complaints.

Delegates discussed their concerns about their work with the Australian Tax Office and what they felt were systemic issues. Ombudsman staff were able to share their experiences of complaints about the Australian Tax Office and its responsiveness. We were also to explain the Ombudsman's powers and ability to seek remedies.



Ombudsman staff at the Tax Institute National Convention in Brisbane.



The Ombudsman at work

Chapter 6

Helping people, improving government

HELPING PEOPLE, IMPROVING GOVERNMENT

A large part of our work is resolving individual complaints and, through this process, improving public administration in a more general sense. This chapter outlines our work in obtaining remedies for individuals, and improving public administration in areas such as communication, procedures and better complaint handling.

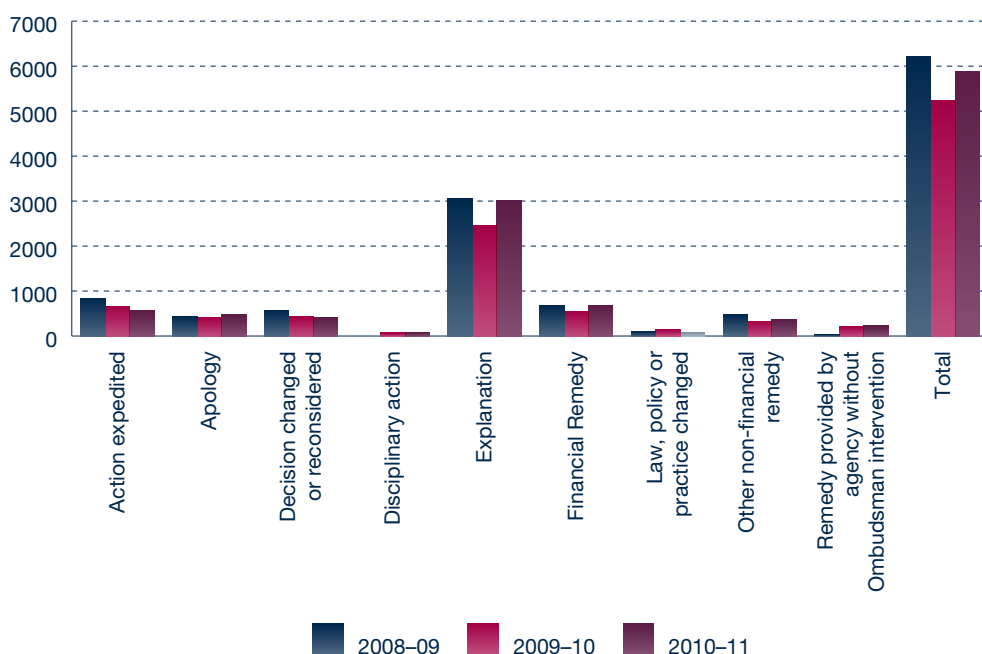
The chapter concludes with a brief explanation of the role of identifying administrative deficiency in agency operations.

Remedies

When investigating an individual complaint, it is important to seek out a remedy for the complainant. Remedies might include an apology, giving better reasons for a decision, expediting action or finding a financial solution.

Figure 6.1 shows the range and number of remedies achieved by the office for complainants. For the year 2010–11 there were 5,890 remedies, up from 5,245 in the year 2009–10—an 11% increase.

Figure 6.1: Remedies achieved for complainants 2008–09 to 2010–11



For information on possible remedies that are available to Australian Government agencies refer to *Fact sheet 3—Remedies*, on our website (www.ombudsman.gov.au).

This section gives a brief explanation of some of the remedies we obtained for individuals through our complaint investigations in 2010–11.

Explanations

Providing a clear explanation of a decision is an important remedy. It can reduce a person's concerns, even if the decision cannot be altered. Giving the reasons for a decision can also be of practical assistance. For example, it may help the person to decide whether to make a fresh application, or seek review or reconsideration of the decision.

Actions and decisions

We receive many complaints about agency decisions. A frequent complaint is that there is delay by an agency in making a decision. Often, a suitable remedy in this situation is to expedite action. Another frequent complaint is that an agency has made a wrong decision. We respect the right of agencies to decide the merits of a claim, but we do examine whether an agency has made a decision based on wrong or incomplete information, ignored relevant information or not applied the principles of natural justice. The appropriate remedy in these circumstances may be for the agency to reconsider or change a decision.

Financial remedies

Poor administration can cause financial loss to people. For example, a person may not receive a benefit to which they were entitled, their benefit may be reduced below their real entitlement, they may have a debt raised against them unreasonably, or they may suffer other financial losses. There is a range of remedies that can be used to provide financial relief or compensation to a person. One remedy is that compensation may be payable under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. In other cases, a debt may be waived or reduced. Other financial remedies might include a refund of fees or charges, or payment of a particular benefit.

Apologies

An apology can be highly effective in addressing a person's complaint. As a matter of general courtesy and good public administration, an agency should apologise and provide an explanation to a person when an error has occurred. Complainants often see an apology as the first step in moving forward.

Good administration

An individual complaint can highlight a recurring problem in agency administration. Following an investigation, the Ombudsman's office may recommend broader changes, such as better training of agency staff, a change to agency procedures or policies, a revision of agency publications or public advice, or a review of government policy or legislation that is having harsh or unintended consequences.

These recommendations may be pursued in various ways. We may raise the issues with an agency through regular liaison, propose improvements during an

investigation, or make a recommendation in a formal report.

During 2010–11 the office published 13 formal reports, comprising some 80 recommendations—90% were accepted in full and 9% in part. Some of these dealt with an individual complaint investigation, some arose from the investigation of numerous similar complaints, and others were own motion investigations dealing with systemic issues. Reports released were:

- Department of Families, Housing, Community Services and Indigenous Affairs and Centrelink: Review rights for Income managed people in the Northern Territory (Report 10|2010)
- Child Support Agency, Department of Human Services: Investigation of a parent's 'capacity to pay' (Report 11|2010)
- Australian Taxation Office: Resolving Tax File Number compromise (Report 12|2010)
- Falling through the cracks—Centrelink, DEEWR and FaHSCIA: Engaging with customers with a mental illness in the social security system (Report 13|2010)
- Department of Human Services, Child Support Agency: Unreasonable Customer Conduct and 'Write Only' policy (Report 14|2010)
- Australian Customs and Border Protection Service: Administration of coercive powers in passenger processing (Report 15|2010)
Administration of funding agreements with regional and remote indigenous organisations (Report 16|2010)
- DAFF Biosecurity Services Group: Compliance and investigations activities of the Biosecurity Services Group (Report 01|2011)
- Christmas Island immigration detention facilities (Report 02|2011)
- DIAC: Proper processing for challenging a tribunal decision (Report 03|2011)
- Centrelink: Right to review—having choices, making choices (Report 04|2011)
- Talking in Language: Indigenous language interpreters and government communication (Report 05|2011)
- DEEWR: Administration of the National School Chaplaincy Program (Report 06|2011).

Improving communication and advice to the public

People rely on government agencies for advice and information about the legislation and programs administered by government. They expect this advice to be accurate and practical. Any qualification or limitation on the general advice provided by an agency should be explained, and if appropriate, a person should be cautioned to seek independent advice relevant to their individual circumstances.

For example, our report entitled *DEEWR: Administration of the National School Chaplaincy Program* (Report 06|2011) made clear recommendations to the Department about improving engagement and consultation with the community, in particular school communities impacted by the roll-out of the program.

Having good procedures

Government agencies must have sound procedures in place to administer complex legislation and programs in a manner that is efficient, effective, fair, transparent and accountable. Many complaints to the Ombudsman's office arise from poor agency procedures.

Many of the reports we published during the year contained recommendations aimed at improving agency procedures.

The report *Department of Human Services, Child Support Agency: Unreasonable Customer Conduct and 'Write-only' policy* (Report 14|2010) highlighted the need for clear and sound procedures for engaging with the public, particularly when managing unreasonable customer conduct.

Interpreting and applying legislation and guidelines correctly

The public relies on government agencies to act lawfully and make lawful decisions. An agency should always be aware of the danger of staff not correctly interpreting legislation or agency guidelines. To deal with this risk, agencies need to have adequate internal quality controls, look for inconsistencies in the application of legislation or guidelines, and focus on problem cases.

The importance of consistent and correct application of legislation and guidelines was highlighted in the

report *FaHCSIA and Centrelink: Review rights for income managed people in the Northern Territory* (Report 10|2010).

Good complaint handling

Good complaint handling is a central theme of Ombudsman work. A good complaint-handling process provides a way for problems to be dealt with quickly and effectively. It can also provide an agency with early information about systemic problem areas in administration. Poor complaint handling can exacerbate what may have been a simple error or oversight, potentially giving rise to other complaints from the person concerned and to a loss of public confidence in the agency.

Over the years the Ombudsman's office has put considerable effort into helping agencies improve their complaint-handling processes. We have done this in a variety of ways, including liaison and training, reviews of agency complaint-handling systems, and publishing relevant material.

The Ombudsman publication *Better Practice Guide to Complaint Handling* defines the essential principles for effective complaint handling. It can be used by agencies when developing a complaint-handling system or when evaluating or monitoring an existing system.

Many of the investigation reports published during 2010–11 contained recommendations relating to how complaints can be handled better. For example, our report entitled *Centrelink: Right to review—having choices, making choices* (Report 04|11) highlighted the need for more transparent processes for options of review and handling of complaints.

We found that navigating between government agencies to fix a problem can be extremely difficult for customers, and that agencies that work together to deliver programs must also work together to resolve problems arising from those programs. This was particularly relevant to the circumstances of people with mental illness, seeking to communicate and resolve complaints with government agencies, as highlighted in the report *Centrelink, DEEWR and FaHCSIA—Falling through the cracks: Engaging with customers with a mental illness in the social security system* (Report 13|2010).

Record keeping

Many complaints relate to with poor record keeping from agencies. A delayed decision will often compound a problem. Poor record keeping can also undermine transparency in agency decision making and lead to allegations of deception, bias, incompetence or corruption.

Sometimes simple errors such as misplacing or losing a file, failing to keep a proper record of an important decision or conversation, or inadvertently confusing people who have similar or identical names, can lead to substantial problems for a person.

Given that the the consequences of compromises are often dire, accurate records and protecting the information of customers must be a crucial priority for government agencies, as highlighted in the report *Australian Taxation Office: Resolving Tax File Number compromise* (Report 12|2010).

Administrative deficiency

Section 15 of the Ombudsman Act lists the grounds on which the Ombudsman can formally make a report to an agency, and ultimately to the Prime Minister and the Parliament. A small number of such reports are made each year to agencies, but reports to the Prime Minister or the Parliament are rare. Most complaints to the Ombudsman can be resolved informally, and without the need to reach a firm view on whether an agency's conduct was defective. This reflects the emphasis of our work on achieving remedies for complainants, and on improving agency complaint-handling processes and public administration generally.

Nevertheless cases do arise in which administrative deficiency should be recorded. This helps to draw attention to problems in agency decision making and processes, and feeds into the systemic work of the Ombudsman's office. The purpose of a finding of administrative deficiency is not to reprimand the agency concerned, and the individual findings are not separately published in the same way that reports under s 15 are usually published. The emphasis is on finding solutions and improving administration.

During 2010–11 we recorded 281 cases where there was administrative deficiency by a government agency (a drop from 340 cases in the previous year).



The Ombudsman at work

Chapter 7 Engagement

ENGAGEMENT

Stakeholder engagement, community outreach and education are central to the Ombudsman's commitment to improving the accessibility and responsiveness of Australian government services, including our own.

In 2010–11 the Ombudsman office implemented a demanding calendar of roundtables, delegations, public speaking engagements and community event outreach with the defined purpose of:

- building and maintaining general public awareness of our services
- enhancing the accessibility of our services and relevance of our work among identified communities and sectors
- gathering intelligence from identified communities and sectors about access barriers, program delivery by agencies and emerging issues in government administration
 - maintaining close consultation with agencies to promote good public administration and improve complaint handling
 - strengthening relationships with review bodies and research organisations to look at issues related to promoting good public administration and administrative law
- sharing learning experiences and tackling common problems with other government integrity agencies, other ombudsman schemes and complaint-handling agencies
- promoting good ombudsmanship regionally and internationally.

This chapter outlines some of these activities and achievements in 2009–10.

Community engagement

A core objective of our engagement program is to promote our work and reputation for rigour, fairness and independence. However, over the past year, as all of government has had to make the best use of diminishing resources, our office has been acutely concerned to apply a social inclusion test to our community engagement activities. Through this

test, the Ombudsman's office gave priority to those activities that would enhance the ability of the most vulnerable and socially excluded members of our communities to deal with government services and our own service.

In 2010–11, our staff were involved in 120 outreach activities across all States and Territories, bringing us into direct contact with 13,130 people. While the number of activities represents an 11% increase on the previous year, our face-to-face contacts decreased by 62%. These significant differences are explained by the program's greater emphasis on community roundtables and complaint clinics targeting homeless people, women, refugees and Indigenous Australians. Indeed, a large part of our outreach work continued to be associated with the Northern Territory Emergency Response (NTER).

Homeless

Our office has conducted fortnightly complaint clinics at major frontline service delivery centres for homeless people in Adelaide, Brisbane and Sydney. Our office is also an active collaborator with Homeless Connect Australia. In the past year, we have participated in the Homeless Connect Program in Brisbane and Sydney with future participation planned for Perth, Adelaide and Melbourne. Involvement with Homeless Connect, as well as our complaints clinics at homeless shelters, confers hospitality and immediacy to the Ombudsman's services. Consumers are welcomed as guests and, if we cannot provide them with same-day results, our staff can make immediate referrals or map out a plan of action to help the individual find a resolution to their complaint.

Gender equity and access

In May 2011, the Commonwealth Ombudsman opened a new outreach facility in association with South Australia's Women's Information Service.

Staff from both our office and the South Australia Ombudsman office have attended the Women's Information Service shopfront in Grenfell Street, Adelaide every Friday morning fortnightly to provide women who feel they have been treated unfairly by a federal or State government agency with better access to the appropriate investigation service. This

initiative has enabled women from a wide variety of communities to speak to qualified complaints officers in person or through the Women's Information Service free-call telephone number.

The Women's Information Service is a resource for women across the State and is a gatekeeper organisation with considerable links with regional and remote communities, as well as isolated and disadvantaged groups such as newly arrived migrants. A diverse range of women, such as those from culturally and linguistically diverse groups or women with a disability, now have greater awareness of and access to services they might not otherwise have.

This project is an excellent example of how partnerships link our services across agencies, sectors and communities.

Aboriginal and Torres Strait Islander

In the past year, investigation officers from the office have visited Kulaluk, Darwin town camp Maningrida, Alice Springs town camps and numerous communities in the Victoria River Region of the Northern Territory to conduct community consultations and complaint clinics as the oversight agency for the Government's NTER/Closing the Gap program initiatives. Our staff also attended the Garma Festival in August 2010, taking our brand and services to the largest annual cultural gathering of Indigenous people in the NT.

In southern states, Staff from our Brisbane office worked with the Queensland Ombudsman's office to present an information booth at the NAIDOC Week Family Fun Day in July 2010, while our Sydney office attended the NSW Indigenous Rugby League Knock-Out as an exhibitor over the long weekend in October 2010 and conducted an information stall at the Greater Western Sydney Aboriginal Assistance Day, May 2011.

Our office continues to be an active member of the Good Service Forum in NSW. The Good Service Forum is a joint outreach program that delivers one-stop-shop engagement and education services to Aboriginal communities across the State. Working with other services on the ground in community outreach delivery helps our office build a clear profile of our legislative powers without antagonising or disappointing complainants when they raise an out of jurisdiction matter with our staff. Instead, we can introduce them to a colleague sitting in the same forum from the appropriate agency to assist them. In

2010–11 we travelled with the Good Service Forum to Muswellbrook, Coledale, Gunnedah and Guyra.

Other highlights

Other highlights of the 2010–11 outreach program include:

- visits to the Indian Ocean Territories (Cocos and Christmas Islands) and the Pilbara district of Western Australia through our partnership with the Regional Awareness and Access Program of WA
- Social Support Team roundtable discussions with community groups and other special interest groups in all State capital cities and the Australian Capital Territory
- visits to Defence Force establishments to highlight the Defence Force Ombudsman role
- information stalls and displays at major gay, lesbian, bisexual, transgender and intersex community festivals and other events promoting our services in view of the same sex reforms introduced in 2010
- outreach to students and other young people through a roadshow of Ombudsman services taken to 15 campuses in Queensland, NSW, Victoria and Tasmania during O-Week 2011 in association with our partners in the Australian and New Zealand Ombudsman Association
- representation at the World Refugee Day Community Festival (Brisbane) and African Summer Festival (Parramatta, NSW)
- distributing Commonwealth Ombudsman publications to relevant information outlets.

Administrative Law Prizes

In 2002 the Ombudsman's office established the Australian National University (ANU) Jack Richardson Prize in Administrative Law. The prize recognises the contributions made by the first Commonwealth Ombudsman, who was also a former professor of law at the ANU. The annual prize is for the best essay by an undergraduate student in administrative law. The 2010 Jack Richardson Prize was awarded to Matthew Blunt.

In 2007–8 the office established the ‘Dennis Pearce Top Performance in Administrative Law Prize’ at the University of Canberra. The prize is named after former Commonwealth Ombudsman (and the first ACT Ombudsman) Professor Dennis Pearce, and is awarded to the student who receives the highest grade in the administrative law unit in the University of Canberra’s Law School. The 2010 winner was James Stanley.

Review and research bodies

Administrative Review Council

The Ombudsman is an ex officio member of the Administrative Review Council.

The council provides advice to the government on administrative law issues and reform. In 2010–11 the Council has been undertaking a major project in its examination of judicial review. The Council is conducting this inquiry of its own motion in accordance with its statutory functions under section 51 of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

While the Council has looked at aspects of judicial review a number of times in its past reports, this is the first time since the *Administrative Decisions (Judicial Review) Act 1977* (ADJR) commenced in 1980 that the Council has considered the interaction between all of the sources of judicial review— constitutional judicial review, general statutory review under the ADJR Act and specific statutory review such as Part 8 of the *Migration Act 1958*.

With significant developments in legal principle and the changes to the nature of government administration which have occurred over the past 35 years, it is important that the Council consider whether the judicial review system is functioning as well as it could. The Council expects to complete its inquiry on judicial review during the 2011–12 reporting year. Further information can be found in the Administrative Review Council Annual Report for 2011.

Whistleblowing

On 25 February 2009 the House of Representatives Standing Committee on Legal and Constitutional Affairs released its report on a preferred model for legislation to protect public interest disclosures within the Australian Government public sector. The

government responded to the committee’s report on 17 March 2010 accepting most of the committee’s recommendations. Those recommendations included a role for the Commonwealth Ombudsman to implement, oversight and play a significant role in the operation of the scheme.

Legislation to give effect to the government’s response has not yet been introduced into the Parliament. However, during the year the Ombudsman’s office has worked closely with the Department of Prime Minister and Cabinet in the development of the legislation. Our efforts have been directed at achieving a scheme that ensures strong protections for whistleblowers and agency accountability, yet is overarching in concept, allowing existing processes and integrity arrangements to operate.

The public interest disclosure scheme applies to the entire public sector (not just APS employees) including contractors, consultants, Defence, Australian Federal Police and parliamentary service employees as well as former public officials. No information is currently collected on the number of public interest disclosures currently raised within the Australian Government. However, in late February 2011 the Commonwealth Ombudsman asked the departments of state and other large agencies for information on the number of whistleblower complaints received over the last three financial years.

Thirty-nine agencies responded to the request. Extrapolating from that data to include the additional 87 agencies under the *Commonwealth Authorities and Companies Act 1997* and 105 agencies under the *Financial Management and Accountability Act 1997*, and making allowance for contractors, consultants, and former public officials, we expect that there will be approximately 3000 public interest disclosures made each year under the scheme. This figure is consistent with academic studies, such as the ‘Whistling While They Work’ project.

Our office has made significant headway in the development of standards, guidelines and other educative material in preparation for the commencement of the scheme. Much work remains, however, in terms of developing appropriate management and reporting systems to give effect to the scheme. With the above figure in mind, we are concerned that resourcing for the implementation and oversight of the scheme may be well short of that

required and note that it is approximately one third that of other comparable state schemes.

An effective public interest disclosure scheme provides indirect benefits to all Australians. It helps ensure the efficient, effective and ethical delivery of government services and ultimately helps reduce risks to the environment and health and safety of the community. It will instil citizen confidence in the Australian public sector. We are hopeful that further funding will be available once the scheme is passed into law.

Engaging internationally

The Commonwealth Ombudsman has a dedicated international program and cooperates internationally in a range of activities to improve government administration, complaint handling and ombudsmanship on the international stage.

Our work is funded largely by AusAID.

Indonesia

In February 2011, we finalised the first phase of the Indonesian Australia Ombudsman Linkages and Strengthening program, which had been running since August 2006. By the time this activity was completed, Indonesia had a new organisation, the Ombudsman of the Republic of Indonesia (ORI), with legislated powers and responsibility for the supervision of the public service.

In February 2011 nine new Ombudsmen were appointed. We are continuing to work together under a new program that will focus on relationships with external agencies.

A highlight of our program in 2010–11 was a series of planning meetings in Jakarta. The discussions focused on the challenges that ORI faces in expanding its organisation into 33 regional offices. Our new program will include activities to assist with building ORI's skills and structure to manage that rapid expansion.

It has been gratifying to observe the continuing strength of our engagement with the Ombudsmen of Indonesia.

Papua New Guinea

This year our office and the Ombudsman Commission of Papua New Guinea (OCPNG) have continued to successfully complete a range of activities designed

to strengthen the skills of the Commission's staff and improve its processes and practices. Particular highlights include the following placements of OCPNG staff in Australia:

- Mr Geita Doura, Finance Manager, learning about financial processes and financial team management
- Ms Alexia Luke, IT Manager, discussing IT procurement and communications options
- Ms Lydia Mulina, Team Leader Government Business Liaison Program Unit, regarding agency liaison
- Mr Bonner Tito, Media and Communications Manager, learning about public affairs and media management
- Mr Dickson Morehari, Human Resources Manager, comparing human resource management in our office and in that of the New South Wales Ombudsman.



Staff of the OCPNG taking part in forensic accounting training run by a Commonwealth Ombudsman staff member in Port Moresby in September 2010

We were also very pleased to host the Secretary of the OCPNG, Mr Gabe Hekoi, in February 2011. His is a statutory position that provides the secretariat support to the Commission. During his visit to Canberra and Sydney, the Secretary was able to discuss the challenges of open and accountable government with staff in our office, and that of the Australian Information Commissioner, the Australian National Audit Office, and the Clerk of Parliament.

During 2010–11 our program moved into assisting the OCPNG with its responsibilities under the Leadership Code, which is a constitutional law that governs the behaviour of leaders in Papua New Guinea, including

elected officials and senior public servants. As our office does not have a similar role, we co-ordinated discussions and placements with anti-corruption and integrity organisations across Australia. The initial visit by Mr Mathew Damaru, Director Leadership, in May 2011 to a variety of organisations has set a solid foundation for more work in this area.

Through the twinning program, Shaun Rohrlach, Director of Public Affairs for the Commonwealth Ombudsman, began placement work with OCPNG teams on a number of long-term communication priorities.

This included:

- planning for the implementation and promotion of a new toll-free number and integrated complaint-handling process for the Commission

- improved cross-team communication and coordination of promotion, outreach and education activities
- planning for the full development of an integrated communications and outreach
- promotion of the Commission's activities in the area of human rights in prisons and oversight of the PNG Police Force.

Work on these projects, including the mentoring of communication projects as part of a policy and program development program, will continue into the next reporting period.



Ombudsman Nero (seated, second from left), Shaun Rohrlach – Director of Public Affairs, Commonwealth Ombudsman (seated, second from right) and staff of the Ombudsman Commission PNG.

Pacific

Our office provides the secretariat support to the Pacific Ombudsman Alliance (POA). The POA's activities and management are funded by AusAID under a four-year agreement. We are now half-way through the four-year consolidation phase, with the Alliance becoming a recognised voice of Pacific ombudsmen and an organisation of expertise in developing complaint handling in the Pacific.

The Alliance is governed by an engaged and active Board, including Ombudsmen from the Cook

Islands, New Zealand, and New South Wales. Annual members' meetings are held to plan the direction and priorities of the Alliance for the coming year. This year, the meeting was hosted by Mr Joe Poraiwai, the Solomon Islands Ombudsman, in conjunction with the 30th anniversary of his office. During the meeting, members discussed and revised POA's long-term strategy and plans.

A very positive aspect of the Alliance's work has been increased co-operation and assistance directly

between members. In December 2010 the Counsel to OCPNG, Mr Vergil Narakobi, was able to assist the Vanuatu Ombudsman in planning changes to the

Vanuatu leadership code. The OCPNG's experience in the practical management of its leadership code was invaluable in the Vanuatu discussions.



Counsel to the OCPNG, Mr Vergil Narakobi, explaining the workings of the PNG Leadership Code to staff of the Vanuatu Ombudsman's office in Port Vila

In September 2010 POA sponsored a visit by the newly appointed Ombudsman from Palau, Mr Lucio Ngiraiwet, to the Solomon Islands for discussions with the Solomon Islands Ombudsman and Leadership Code Commissioner. Mr Ngiraiwet received first-hand advice and experiences from Mr Poraiwai on becoming an effective Ombudsman in a developing island state.

Future directions

As our office becomes more experienced in its international work, we are increasingly sharing our experience with other Australian government agencies, and providing more input into the development of Australia's aid policy. In the future, we plan to increase integration not only between our partners in Indonesia and the Pacific, but also with other relevant Australian government agencies, non-government organisations and our counterpart organisations in the States and Territories.

Australasia and Pacific Ombudsman Region

The Ombudsman is also a member of the Australasia and Pacific Ombudsman Region (APOR), a sub-region of the International Ombudsman Institute. The APOR annual conference was hosted this year by the Control Yuan of Taiwan in Taipei. At the meeting, members agreed in principle to share their training documents, if relevant to other members. In particular, members are interested in practical training projects and sharing other Ombudsmen's working experiences. APOR is also undertaking a comparative study analysing the legal basis of ombudsman institutions in the APOR region.

The next APOR conference will be held in conjunction with the International Ombudsman Institute conference in New Zealand in November 2012.



Appendices

APPENDIX 1—FREEDOM OF INFORMATION STATEMENT

Prior to 1 November 2010, section 8 of the *Freedom of Information Act 1982* (FOI Act) required each Australian Government agency to publish information about the way it is organised, its powers, the kinds of decisions it makes, the documents it holds, the way members of the public can obtain access to these documents and any arrangements for public involvement in the work of the agency.

However, amendments to the FOI Act that commenced on 1 November 2010 omitted the former s 8 annual reporting requirements and replaced them with a continual information disclosure regime for Australian Government agencies. On 1 May 2011 the Ombudsman set up its information publication scheme, FOI disclosure log and published the agency FOI plan on the Ombudsman's website (www.ombudsman.gov.au).

The body of this annual report explains the organisation and major functions of the Commonwealth Ombudsman. This statement supplements that general information to meet the requirements of s 8 of the FOI Act. It is correct as at 30 June 2011.

Freedom of information requests

Prior to the 1 November 2010 amendments to the FOI Act the Ombudsman's office dealt with a small number of FOI requests (20 in 2009–10). These requests generally related to documents relevant to the Ombudsman's investigations work. From 1 July 2010 to 30 October 2010 there was a steady increase in the number of FOI requests to this office. However, from 1 November 2010 to 30 June 2011 there has been a substantial increase in the number of FOI requests received by this office. In the 2010–11 reporting period, we received 92 FOI requests which is a 360% increase compared to 2009–10. Similar to our previous annual reports the documents requested under the FOI Act relate to the investigations work of the Ombudsman.

Functions and decision-making powers of the Ombudsman

The Commonwealth Ombudsman was established by the *Ombudsman Act 1976* (Ombudsman Act). The Act came into effect on 1 July 1977 and is administered by the Prime Minister. The Ombudsman is also the Defence Force Ombudsman, the Immigration Ombudsman, the Law Enforcement Ombudsman, the Postal Industry Ombudsman and the Taxation Ombudsman.

The national office of the Commonwealth Ombudsman and the office of the Australian Capital Territory Ombudsman are co-located in Canberra. Other offices are located in Adelaide, Alice Springs, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

The Ombudsman and Deputy Ombudsmen are statutory officers appointed under the Ombudsman Act. Staff are employed under the *Public Service Act 1999*.

Investigation of administrative actions

Following a complaint from a member of the public, or using 'own motion' powers under the Ombudsman Act, the Ombudsman may investigate the administrative actions of most Australian Government departments and agencies and private contractors delivering government services.

The Ombudsman cannot investigate:

- the actions of government ministers or judges
- most employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Australian Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide to not investigate complaints that are 'stale' or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where it is considered an

investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as considered appropriate. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the FOI Act and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, the Ombudsman may report that view to the agency and recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report to the Prime Minister and report to the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

Defence Force Ombudsman

Section 19C of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Defence Force Ombudsman (DFO). The DFO can investigate complaints from current or former members of the Australian Defence Force about Defence Force employment matters. The DFO cannot investigate most actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual. The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances. The DFO also investigates complaints from ex-service personnel or their families.

Taxation Ombudsman

Under s 4(3) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Taxation Ombudsman when dealing with matters relating to the Australian Taxation Office.

Immigration Ombudsman

Under s 4(4) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Immigration Ombudsman when dealing with matters relating to immigration, including immigration detention. The Ombudsman has a specific statutory role under s 486O of the *Migration Act 1958* of reporting to the Minister for Immigration concerning the circumstances of any person who has been in immigration detention for two years or more.

Law Enforcement Ombudsman

Under s 4(5) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Law Enforcement Ombudsman when investigating complaints about the conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the Australian Federal Police Act 1979 (AFP Act). Complaints about the conduct of AFP officers received prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act). This Act was repealed after relevant provisions of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commenced on 30 December 2006.

The special procedures that applied under the Complaints Act to complaints about the AFP's practices and procedures or the conduct of individual AFP members are explained in previous annual reports.

Complaints about the conduct of AFP officers received after 30 December 2006 are dealt with under the Ombudsman Act. In addition, under the AFP Act the Ombudsman is required to review the administration of the AFP's handling of complaints, through inspection of AFP records, at least annually. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the minister. The results of these reviews must be provided to Parliament on an annual basis.

Overseas Students Ombudsman

Section 19ZI establishes that the Commonwealth Ombudsman is also the Overseas Students Ombudsman. The Overseas Students Ombudsman's functions are to investigate complaints about the

actions of private registered education providers in connection with intending, accepted and current overseas students. The role includes conducting external reviews of complaints and appeals to private registered providers under standard 8 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007. Under the *Ombudsman Act 1976*, the Overseas Students Ombudsman is also to give advice and training to private registered providers about handling overseas students' complaints.

The role of the Overseas Students Ombudsman came into effect on 9 April 2011.

The Ombudsman's intercept and surveillance devices audit

Under the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, the Ombudsman can inspect certain records of the AFP, the Australian Crime Commission (ACC) and the Australian Commission for Law Enforcement Integrity (ACLEI), and certain other agencies under specific circumstances, to ascertain whether the agencies have complied with specified recordkeeping requirements of the Acts.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP, the ACC and ACLEI.

Postal Industry Ombudsman

Section 19L of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Postal Industry Ombudsman (PIO). The PIO deals with complaints about postal service delivery by Australia Post and those private sector postal operators that elect to be members of the PIO scheme.

Australian Capital Territory (ACT) Ombudsman

Under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth), the Commonwealth Ombudsman discharges the role of ACT Ombudsman. A services agreement between the Commonwealth Ombudsman and the ACT Government covers the discharge of this role. The work of the ACT

Ombudsman is set out in a separate annual report made to the ACT Government pursuant to the *Ombudsman Act 1989* (ACT).

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate public interest disclosures in relation to the actions of ACT Government agencies.

Categories of documents held by the Ombudsman

The Ombudsman holds information related to:

- investigations, including complaints, correspondence and consultations with complainants, agencies and other information sources, background material, records of conversation, analysis and advice, and reports
- oversight functions
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative processes, policy or legislation
- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

General enquiries and requests for access to documents or other matters relating to FOI may be made in person, by telephone or in writing at any Commonwealth Ombudsman office. Each office is open between 9 am and 5 pm on weekdays. People can contact the Commonwealth Ombudsman's office by calling 1300 362 072. (See contacts in 'References' section of this report.)

Under s 23 of the FOI Act, the Ombudsman has authorised the Deputy Ombudsmen, all Senior Assistant Ombudsmen, and some Executive Level officers to grant or refuse requests for access. Under an arrangement made outside the Act, the Ombudsman has agreed to officers at and above Executive Level 1 providing limited complaint information if requested by, or on behalf of, a complainant as detailed below.

Following are some observations about how those requests are handled:

- The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:
 - documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else
 - records of telephone conversations involving the complainant
 - most database entries relating to the complainant.
- In the course of an investigation, we may provide an agency response to a complainant so that they can better understand the agency's position. It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about the content and context of the documents, in light of their experience in dealing with similar requests.
- A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make. The Ombudsman would not be bound to accept those suggestions, but they would have to be given considerable weight. From the point of view of the complainant, if there is a complaint about an FOI process, it is probably better that the Ombudsman's office has been involved as little as possible.

APPENDIX 2—PRESENTATIONS BY STAFF

Asher, A. 2010, presentation to 17th Annual Public Sector Fraud and Corruption Conference, Canberra

- 2010, presentation to Financial and Consumer Rights Council Annual Conference, Phillip Island, Victoria
- 2010, presentation to Legal Aid Civil Law Conference, Sydney
- 2010, presentation to National Archives Leadership Development Program, Canberra
- 2010, *Plans and objectives for the next five years*, presentation to Government Oversight – Baring the New Watchdogs seminar, Canberra
- 2010, presentation to Westminster Tax Discussion Group, Sydney
- 2011, *A fair Deal for asylum-seekers?*, presentation to the University of Melbourne Law School, Melbourne
- 2011, *Boat people, the Australian Government and the Commonwealth Ombudsman*, presentation to Australasian and Pacific Ombudsman Region Conference, Taipei
- 2011, *Connecting Records and Information Management in the New Age*, presentation to Records and Information Management Professionals Association of Australasia, Canberra
- 2011, *Integrity agencies: the fourth arm of government*, presentation to L21 Public Sector Leadership conference 2011, Sydney
- 2011, *Overview of the Commonwealth Ombudsman's role and jurisdiction across Commonwealth/State responsibilities*, presentation to Senior Management Group, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra
- 2011, presentation to Connections Series 11 Seminar on the Australian Public Service and the Citizen, Canberra
- 2011, presentation to Consumer Unity & Trust Society Conference for Reviewing the Global Experiences with Economic Regulation, New Delhi

- 2011, presentation to DLA Phillips Fox Breakfast Seminar for Defence Legal Day, Canberra

Bowring-Greer, F. 2011, *Commonwealth Ombudsman: Overview of role & approach*, Department of Families, Housing, Community Services and Indigenous Affairs complaint handling staff workshop, Canberra

- 2010, *Parliament and Administrative Law*, presentation to APSC Senior Executive Service Orientation Program, Canberra

Masri, G. 2010, *Commonwealth Ombudsman: Role and Approach to Social Support Oversight*, presentation to Welfare Rights Conference, Melbourne

- 2010–11, *Administrative Law and the control of Government action*, multiple presentations to APSC Senior Executive Service Orientation Program, Canberra
- 2011, *Accountability and good governance*, presentation to ACT Public Service Executive Leadership Development Program, Canberra
- 2011, *Improving Public Administration – Observations from Complaints Investigations*, CPD Compliance for Government Lawyers, Melbourne
- 2011, *Managing Public Integrity in the Investigation and Prosecution of Fraud*, presentation to Managing Fraud and Corruption in Government Conference, Canberra
- 2011, *Using complaints as a vital tool in assuring good governance*, presentation to Evolving Models of Governance and Accountability Conference, Canberra

Neish, R. 2010, 'Introduction to Ethics, Financial Investigations and Forensic Accounting' training course to PNG Ombudsman Commission

Roberts, C. 2011, *Role of the Commonwealth Ombudsman*, presentation to International Deployment Group, Australian Federal Police, Solomon Islands

Stankevicius, A. 2011, *Role of the Commonwealth Ombudsman and our Experience of Customs Complaints*, presentation to Enforcement and Investigations Divisional Conference, Canberra

- 2011, *Role of the Commonwealth Ombudsman on Christmas Island*, presentation to the Christmas Island Community Consultative Committee, Christmas Island
- 2011, *Role of the Ombudsman and our Experience of Taxation Complaints*, presentation to Australian Taxation Office Debt Executives, Canberra
- 2011, *Role of the Ombudsman and our Experience of Taxation Complaints*, presentation to Australian Taxation Office Superannuation Executives, Canberra

APPENDIX 3—STATISTICS

Explanations of terms used in Appendix 3

Approaches/complaints finalised—approaches/complaints finalised in 2009–10, including some complaints carried over from previous years

Approaches/complaints received—approaches/complaints received in 2009–10

Category 1—resolved without investigation, outcomes include decisions not to investigate and referrals to appropriate agency or authority

Category 2—cannot be resolved at category 1 and require further internal enquiries/research or more information from the complainant, resolved without contacting the agency

Category 3—investigation conducted and agency contacted

Category 4—further investigation conducted, as the complaint/approach was not able to be resolved in category 3

Category 5—further investigation conducted, as the complaint/approach was not able to be resolved in category 4; involves formal reporting processes

Issues—approaches/complaints can contain a number of issues, each requiring a separate decision as to whether to investigate; each issue may result in a separate outcome

Remedies—complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11

Portfolio/Agency	Received	Finalised					Remedies								
		No Investigation		Investigated			Total Finalised Approaches								
	Total Received Approaches	Category 1	Category 2	Category 3	Category 4	Category 5									Total Remedies Finalised
ACT Government	742	369	239	127	37	2	774	18	15	27	2	9	6	9	220
ACT Arts Bureau	1	1					1								
ACT Corrective Services	169	81	49	30	12		172	5		3		2	1		23
ACT Department of Justice and Community Safety	5	2	3				5								
ACT Dept of Business, Arts, Sport & Tourism	1	1					1								
ACT Emergency Services Agency	4	2	2		1		5	1							1
ACT Gambling and Racing Commission	2		1	1			2								1
ACT Health	18	12	4				16								
ACT Land Development Agency	1		1				1								
ACT Legislative Assembly	1		1				1								
ACT Magistrates Court and Tribunals	5	4	1				5								
ACT Office of Regulatory Services	19	8	7	4			19		1	3			1	1	9
ACT Planning and Land Authority	35	13	18	4	1		36			1			1		6
ACT Policing	142	93	39	12	3	1	148	4	1	1			1	1	81
ActewAGL	12	6	6	2			14			1					2
ACTION	8	4	1	2			7								2
Canberra Institute of Technology	9	1	6	4	1		12								1
Chief Minister's Department	3		1	1			2								1
Civil and Administrative Tribunal	8	4	1	1	2		7								1
Department of Disability Housing and Community Services	14	7	2	3			12			2					3
Department of Education and Training	12	4	8	2	1		15		1						2
Department of Land and Property Services	1	1					1								
Department of the Territory and Municipal Services	36	16	13	13	4		46	2	2	3	1	3	1	3	18
Department of Treasury	15	7	6	2	1		16			3					5
Director of Public Prosecutions	1	1					1								
Environment ACT	4	3	1				4								
Housing ACT	146	66	45	33	11	1	156	7	8	8			1	3	56
Human Rights Commission	4	3	1				4								
Legal Aid Commission of the ACT	7	3	1	4			7								1
Office for Children, Youth and Family Support	16	9	7				16								
Office of the Public Advocate of the ACT	2	1	1	1			3								
Public Trustee for the ACT	11	5	1	4			10								2

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11 (continued)

Portfolio/Agency	Received	Finalised				Finalised Remedies														
		No Investigation	Investigated																	
Total Received Approaches																				
Roads ACT	22	10	9	2	21	5	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	2	2	2	1	3	1	3	1	1	1	1	1	1	1	1	1	1	1	1	1
	6	1	3	1	5	1	5	1	1	1	1	1	1	1	1	1	1	1	1	1
	69	30	18	15	69	1	3	2	1	3	1	18	1	3	1	1	1	1	1	1
	4	2	1	1	3	1	3	2	1	3	1	1	1	3	1	1	1	1	1	1
	5	3			4							1								
	41	19	9	11	42	1	3	2	1	3	2	11	1	2						
	17	6	7	3	17							3		1	1					
	2		1		2							2								
	453	188	169	125	508	4	2	5		2	5	32	1	6	3	1				
Attorney-General's	18	8	10	1	19							1		6	3	1				
	30	12	15	3	31	1	1	1	1	1	2									
	3		1	3	4						1									
	3	2	1		3															
	107	56	37	13	112	1	1	1	1	1	12	1	3							
	207	78	79	90	258															
	5	1	4		5															
	3	2	1		3															
	70	27	17	15	67	2	1	3		1	3	17		2	3					
	7	2	4		6															
Broadband, Communications and the Digital Economy	3,212	1,171	1,438	499	3,130	102	175	56	71	787	145		9	101	44					
	3,123	1,130	1,402	486	3,039	101	175	55	71	777	145		9	99	44					
	16	8	7	1	16					2										
	33	10	21	4	35					3										

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11 (continued)

Portfolio/Agency	Received	Finalised				Finalised Remedies									
		No Investigation	Investigated		Total Finalised Approaches	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total Remedies Finalised
Department of Broadband, Communications and the Digital Economy	40	23	8	9	40	1	5	1		5			2		9
Climate Change and Energy Efficiency	308	112	109	101	349	9	5	13		54	38	7	4	7	137
Department of Climate Change and Energy Efficiency	305	112	108	100	347	9	5	13		52	38	7	4	7	135
Office of the Renewable Energy Regulator	3		1	1	2					2					2
Commonwealth Parliamentary Services	2	1	1		2										
Department of Parliamentary Services	1	1			1										
Joint House Department	1		1		1										
Courts	85	42	43	5	92	2							1		3
Fair Work Australia	25	10	14	1	26	1							1		2
Family Court of Australia	32	18	15	2	35										
Federal Court of Australia	8	2	3	2	7	1									1
Federal Magistrates Court of Australia	19	11	9		21										
High Court of Australia	1	1	2		3										
Defence	632	217	239	97	609	9	11	12		77	7	1	5	6	128
Australian Army	103	46	28	17	103	3	2	3		16			1	3	28
Australian Army Cadets	3	2	1		3										
Australian Navy Cadets	1														
Australian War Memorial	1	1			1										
Defence Force Retirement and Death Benefits Authority	5		4	1	6					1					1
Defence Housing Australia	32	16	7	4	29		1			6	2			1	10
Department of Defence	229	75	95	34	229	4	3	4		28	3	1	1	1	45
Department of Veterans' Affairs	172	57	68	26	159	1	3	5		17	1		1		28
Royal Australian Air Force	29	6	18	3	29					3			1		4
Royal Australian Navy	50	14	15	10	45	1	2			6			2		11
Toll Transitions	5		1	2	3						1				1
Veterans' Review Board	2		2		2										
Education, Employment and Workplace Relations	642	251	246	126	664	27	5	16		119	15	1	8	2	193
Australian Curriculum Assessment and Reporting Authority				1	1					2					2

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11 (continued)

Portfolio/Agency	Received	Finalised					Finalised Remedies										
		No Investigation		Investigated			Total Finalised Approaches	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total Remedies Finalised
Total Received Approaches	1	Category 1	Category 2	Category 3	Category 4	Category 5											
	Australian Institute for Teaching and School Leadership	17	5	6	3		14										
Australian National University	64	22	30	10	6		68										17
Comcare	481	203	171	100	29		503										17
Department of Education, Employment and Workplace Relations																	
Fair Work Ombudsman	79	21	39	12	5		77										18
Families, Housing, Community Services and Indigenous Affairs	288	69	126	130	51	1	377										218
Aboriginal Hostels Limited	9	1	6	2			9										3
Anindilyakwa Land Council			2	2			4										
Central Land Council	3		2	1			3										
Department of Families, Housing, Community Services and Indigenous Affairs	131	23	38	113	41	1	216										195
Indigenous Business Australia	4	2	2		1		5										3
Indigenous Land Corporation	3		2				2										
Northern Land Council	24	2	9	4	5		20										10
Outback Stores	3		1				1										
Registrar of Indigenous Corporations	12	3	7		1		11										1
Social Security Appeals Tribunal	97	37	56	8	3		104										6
Torres Strait Regional Authority	2	1	1		2		2										
Finance and Deregulation	95	35	32	16	14		97										26
Australian Electoral Commission	30	13	10	5	1		29										5
Commissioner for Superannuation (ComSuper)	16	10	3	1			14										
Department of Finance and Deregulation	49	12	19	10	13		54										21
Foreign Affairs and Trade	149	75	61	13	6		155										25
Australian Agency for International Development (AusAID)	11	9	4				13										
Australian Centre for International Agricultural Research	1				1		1										2
Australian Trade Commission	4	2	3				5										
Department of Foreign Affairs and Trade	133	64	54	13	5		136										23
Health and Ageing	148	68	43	23	6		140										25

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11 (continued)

Portfolio/Agency	Received	Finalised					Total Finalised Approaches	Remedies									Total Remedies Finalised		
		No Investigation		Investigated				Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention			
Australian Institute of Health and Welfare Australian Institute of Sport Australian Radiation Protection and Nuclear Safety Agency Australian Sports Drug Agency Department of Health and Ageing Food Standards Australia New Zealand National Health and Medical Research Council Office of Hearing Services Office of the Aged Care Commissioner Human Services Australian Hearing Centrelink Child Support Agency Commonwealth Rehabilitation Service Department of Human Services Medicare Australia Professional Services Review Immigration and Citizenship Department of Immigration and Citizenship Migration Review Tribunal and Refugee Review Tribunal Office of the Migration Agents Registration Authority Infrastructure, Transport, Regional Development and Local Government Airservices Australia Australian Maritime Safety Authority Australian Rail Track Corporation Australian Transport Safety Bureau Civil Aviation Safety Authority Department of Infrastructure and Transport	Total Received Approaches	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
	Category 1	1					1	7	4	7	1	19	2	208	11	3	2	81	95
	Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	
	Category 3																		
	Category 4																		
	Category 5																		
	Category 1	1					3,758					1	2	11	3	2	2	2	7
	Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2
	Category 3																		
	Category 4																		
	Category 5																		
	Category 1	1					3,758					1	2	11	3	2	2	2	7
	Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2
	Category 3																		
	Category 4																		
	Category 5																		
	Category 1	1					3,758					1	2	11	3	2	2	2	7
	Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2
	Category 3																		
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1	2	11	3	2	2	2	7	
Category 2			1			1,748	1,449	282		7,241	226	155			1,086	211	19	2	
Category 3																			
Category 4																			
Category 5																			
Category 1	1					3,758					1								

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11 (continued)

Portfolio/Agency	Received	Finalised				Finalised Remedies									
		No Investigation		Investigated		Remedies									
	Total Received Approaches	Category 1	Category 2	Category 3	Category 4	Category 5	Total Finalised Approaches								
Innovation, Industry, Science and Research	90	27	55	6	2		90	1	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Total Remedies Finalised
AusIndustry	26	8	15	3			26					2			2
Australian Nuclear Science and Technology Organisation	3		3				3								
Australian Research Council	1	1					2		1			1			6
Commonwealth Scientific and Industrial Research Organisation	12	3	8		1		11			1				3	
Department of Innovation, Industry, Science and Research	36	9	24	3			36					3		1	4
IP Australia	12	6	5		1		12					1			1
Out of Jurisdiction	19,098	18,325	698	22	9		19,054								
Commonwealth Ombudsman	579	324	223				547								
Ombudsman FOI Requests	114	3	79	22	9		113								
Out of Jurisdiction	18,405	17,998	396				18,394								
	95	4	22	10			36			5		3	5	2	16
Overseas Student Ombudsman	142	53	62	20	1		136					12		1	13
Prime Minister and Cabinet	3	1					1								
Australia Council for the Arts	16	14	2				16								
Australian Public Service Commission	5	3	2	1			6								
Australian Sports Commission	5		2				2								
Department of Regional Australia, Regional Development and Local Government	8	2	2	3			7					2			2
Department of the Prime Minister and Cabinet	4	1	2	1			4					1			1
Governor-General and Commander-in-Chief	4	2	1	1			4								
National Archives of Australia	1			1			1					1			1
National Capital Authority	2		1	1			2					2			2
National Film and Sound Archives	51	17	22	3			42					1			1
National Library of Australia	37	11	26	6			43					1			2
Office of the Australian Information Commissioner	6	2	2	2	1		7					3			3
Office of the Privacy Commissioner															
Screen Australia															

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2010–11 (continued)

Portfolio/Agency	Received	Finalised				Finalised Remedies									
		No Investigation		Investigated		Total Finalised Approaches									
	Total Received Approaches	20	2	11	8	3	1	5	1	19	1	4	1	1	Total Remedies Finalised 7
Private Postal Operators															
Resources, Energy and Tourism															
Department of Resources, Energy and Tourism	6	4	1							5					
	6	4	1							5					
Sustainability, Environment, Water, Population and Communities															
32	16	8	3	1	36										17
Australian Antarctic Division	1														
Bureau of Meteorology	3	3		2	3					3		1			4
Department of Sustainability, Environment, Water, Population and Communities	25	13	7	1	28										
Great Barrier Reef Marine Park Authority	3														
Treasury	3,092	1,191	1,209	437	2	2	266	5	3,108	93	81	37		84	1
Australian Bureau of Statistics	44	26	13	4					43	1	3			38	907
Australian Competition and Consumer Commission	47	26	14	7			4		51	1					5
Australian Prudential Regulation Authority	162	72	46	32	6		6		156	6				3	11
Australian Securities and Investments Commission	169	49	83	31	11		11		174	1	4	10		1	37
Australian Taxation Office	2,589	996	1,020	342	241	5	241	5	2,604	83	71	24		80	50
Australian Valuation Office	1			1					1					37	787
Department of the Treasury	5	2	2	1			1		5					1	
Productivity Commission	2	1							1						
Reserve Bank of Australia	1		1						1						
Superannuation Complaints Tribunal	39	7	19	15					41	1					
Tax Agents Board															
Tax Practitioner's Board	33	12	11	5	2		2		30		3	2			7
Grand Total	38,919	27,071	7,418	3,537	913	18	38,957			558	475	411	88	367	5,890

APPENDIX 4—ADDITIONAL REPORTING ON POSTAL INDUSTRY OMBUDSMAN

This appendix provides additional reporting on the Postal Industry Ombudsman (PIO) function as required under s19X of the Ombudsman Act 1976 (the Act).

Details of the circumstances and number of occasions where the PIO has made a requirement of a person under s9.

The PIO made no requirements under s 9 during 2010–11.

Details of the circumstances and number of occasions where the holder of the office of the PIO has decided under subsection 19N(3) to deal with, or to continue to deal with, a complaint or part of a complaint in his or her capacity as the holder of the office of Commonwealth Ombudsman.

There are no occasions where a complaint or part of a complaint was transferred from the PIO to the Commonwealth Ombudsman under s19N(93).

Details of recommendations made in reports during the year under s19V; and statistical information about actions taken during that year as a result of such information.

The PIO made no reports during the year under s19V.

APPENDIX 5—CONSULTANCY SERVICES, ADVERTISING AND MARKET RESEARCH

Consultancy services

The office engages consultants when the expertise required is not available within the organisation or when the specialist skills required are not available without diverting resources from other higher priority tasks. In accordance with procurement guidelines,

consultants are selected by open tender, panel arrangements, select tendering or direct sourcing.

Table A1 provides details of consultancy services let by the office during 2010–11 with a contract value (GST inclusive) of \$10,000 or more.

Table A2: Consultancy services, 2010–11

Consultant name	Description	Contract price	Selection process (1)	Justification (2)
Syfa Solutions Pty Ltd	Plans on site IT security development	\$15,000	Direct	B
Ipsos Public Affairs Pty Ltd	Survey on Australian & ACT government agencies	\$44,946	Direct	C
Winangali Pty Ltd	Research on Aboriginal & Torres Strait Islander use of complaint services	\$47,515	Select	B
Australian National University	Consultancy Services by Dr Mathew from the ANU	\$15,000	Direct	B
Ipsos Public Affairs Pty Ltd	Survey on public awareness	\$74,910	Direct	C
Centre for Public Management Pty Ltd	Advice on a staff management matter	\$14,000	Direct	B
Mallesons Stephen Jaques	Legal services on renewal of Sydney premises lease	\$30,682	Select	B
Total		\$242,053		

Definitions

(1) Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (December 2008):

- **Open tender**—a procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are generally sought from the Australian Government AusTender internet site.
- **Select tender**—a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. This procurement process may only be used under certain defined circumstances.
- **Direct sourcing**—a form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their

unique expertise and/or their special ability to supply the goods and/or services sought.

- **Panel**—an arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a pre-determined length of time, usually at a pre-arranged price.

(2) Justification for decision to use consultancy:

- A—skills currently unavailable within agency
- B—need for specialised or professional skills
- C—need for independent research or assessment.

Advertising and market research

Advertising is used to publicise the office's services. No advertising campaigns were undertaken in 2010–11. The office's advertising strategies were designed and conceived in-house. Payment of \$16,092 including GST was made to Adcorp. The expenditure was for recruitment notices.

Ipsos Public Affairs Pty Ltd conducted a public awareness survey and an Australian & ACT government agencies survey for the office in 2010–11. The purpose of the first survey was to identify and profile factors mitigating, limiting or eroding public awareness of the Office of the Commonwealth Ombudsman. The latter was to conduct a census of Australian and ACT government agencies about which the Ombudsman received more than five complaints in 2009–10.

In addition, Winangali Pty Ltd conducted an Aboriginal & Torres Strait Islander use of complaint services research. The purpose of the research is to improve the services of the Commonwealth Ombudsman to Australia's Indigenous people. The total cost of market research was \$141,375 including GST.

APPENDIX 6—AGENCY RESOURCE STATEMENT AND RESOURCES FOR OUTCOMES

Table A3: Ombudsman office resource statement 2010–11

	Actual available appropriations 2010–11 \$'000	Payments made 2010–11 \$'000	Balance remaining \$'000
	(a)	(b)	(a-b)
Ordinary Annual Services¹			
Departmental appropriation			
Prior year departmental appropriation	4,699	4,699	-
Departmental appropriation	20,313	13,784	6,529
S.31 Relevant agency receipts ³	2,032	2,032	-
Total	27,044	20,515	6,529
Total ordinary annual services	27,044	20,515	6,529
Departmental non-operating			
Equity injections ²	170	145	25
Total	170	145	25
Total other services	170	145	25
Total resourcing and payments	27,214	20,660	6,554

¹ Appropriation Bill (No.1) 2010–11 and Appropriation Bill (No.3) 2010–11

² Appropriation Bill (No.2) 2008–09, Appropriation Bill (No.4) 2008–09 and Appropriation Act (No.2) 2009–10 as passed

³ Own source income

Table A4: Resources for Outcome 1

Outcome 1: Fair and accountable administrative action by Australian Government agencies by investigating complaints, reviewing administrative action and inspecting statutory compliance by law enforcement agencies.

	Budget 2010–11 \$'000	Actual 2010–11 \$'000	Variation 2010–11 \$'000
Program 1: Office of the Commonwealth Ombudsman			
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1 & 3)	19,516	19,516	-
Revenue from independent sources (s31)	1,750	1,763	(13)
Expenses not requiring appropriation in the Budget year	965	121	844
Total for Program 1.1	22,231	21,400	831
Outcome 1 Totals by appropriation type			
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1)	19,516	19,516	-
Revenue from independent sources (s31)	1,750	1,763	(13)
Expenses not requiring appropriation in the Budget year	965	121	844
Total expenses for Outcome 1	22,231	21,400	831
Average Staffing Level (number)	147	146	2

APPENDIX 7—FINANCIAL STATEMENTS



INDEPENDENT AUDITOR'S REPORT

To the Cabinet Secretary and Special Minister of State for the Public Service and Integrity

I have audited the accompanying financial statements of the Office of the Commonwealth Ombudsman for the year ended 30 June 2011, which comprise: a Statement by the Chief Executive and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Asset Additions; and Notes comprising a Summary of Significant Accounting Policies.

Chief Executive's Responsibility for the Financial Statements

The Chief Executive of the Office of the Commonwealth Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as the Chief Executive determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Office of the Commonwealth Ombudsman's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Commonwealth Ombudsman's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Chief Executive of the Office of the Commonwealth Ombudsman, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

GPO Box 707 CANBERRA ACT 2601
19 National Circuit BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

Independence

In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Opinion

In my opinion, the financial statements of the Office of the Commonwealth Ombudsman:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Ombudsman's financial position as at 30 June 2011 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



Kristian Gage
Audit Principal

Delegate of the Auditor-General

Canberra
15 September 2011

Office of the Commonwealth Ombudsman

STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2011 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed 

Allan Asher
Chief Executive

15 September 2011

Signed 

Tracey Frey
Chief Financial Officer

15 September 2011

STATEMENT OF COMPREHENSIVE INCOME
for the period ended 30 June 2011

	Notes	2011 \$	2010 \$
EXPENSES			
Employee benefits	3A	14,663,674	15,539,928
Supplier expenses	3B	5,660,370	5,174,863
Depreciation and amortisation	3C	754,889	742,437
Losses from asset sales	3D	-	837
Write-Down and Impairment of Assets	3E	320,738	-
Total expenses		21,399,671	21,458,065
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	4A	1,760,960	1,513,903
Total own-source revenue		1,760,960	1,513,903
Gains			
Sale of assets	4B	2,100	32
Other	4C	386,488	29,000
Total gains		388,588	29,032
Total own-source income		2,149,548	1,542,935
Net cost of (contribution by) services		(19,250,123)	(19,915,130)
Revenue from Government	4D	19,516,000	18,795,000
Surplus (Deficit) attributable to the Australian Government		265,877	(1,120,130)
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves		471,320	31,155
Total other comprehensive income		471,320	31,155
Total comprehensive income (loss)		737,197	(1,088,975)
Total comprehensive income (loss) attributable to the Australian Government		737,197	(1,088,975)

The above statement should be read in conjunction with the accompanying notes.

BALANCE SHEET
as at 30 June 2011

	Notes	2011 \$	2010 \$
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	213,089	368,624
Trade and other receivables	5B	6,796,815	4,534,569
Other	5C	390,944	1,314,714
Total financial assets		7,400,848	6,217,907
Non-Financial Assets			
Property, plant and equipment	6A,B,C	2,933,888	2,921,148
Intangibles	6D,E	353,894	482,249
Other	6F	244,506	262,303
Total non-financial assets		3,532,288	3,665,700
Total Assets		10,933,136	9,883,607
LIABILITIES			
Payables			
Suppliers	7A	527,491	544,889
Operating leases	7B	2,287,659	2,203,642
Other	7C	794,716	1,175,859
Total payables		3,609,866	3,924,390
Provisions			
Employee provisions	8A	3,365,522	3,259,526
Other	8B	135,907	437,047
Total provisions		3,501,429	3,696,573
Total Liabilities		7,111,295	7,620,963
Net Assets		3,821,841	2,262,644
EQUITY			
Parent Entity Interest			
Contributed equity		2,980,000	2,158,000
Reserves		563,210	91,890
Retained surplus (accumulated deficit)		278,631	12,754
Total parent entity interest		3,821,841	2,262,644

The above statement should be read in conjunction with the accompanying notes.

STATEMENT OF CHANGES IN EQUITY

for the period ended 30 June 2011

	Retained earnings		Asset revaluation reserve		Contributed equity/capital		Total equity	
	2011	2010	2011	2010	2011	2010	2011	2010
	\$	\$	\$	\$	\$	\$	\$	\$
Opening balance								
Balance carried forward from previous period	12,754	1,132,884	91,890	60,735	2,158,000	2,013,000	2,262,644	3,206,619
Adjusted opening balance	12,754	1,132,884	91,890	60,735	2,158,000	2,013,000	2,262,644	3,206,619
Comprehensive income								
Other comprehensive income	-	-	471,320	31,155	-	-	471,320	31,155
Surplus (Deficit) for the period	265,877	(1,120,130)					265,877	(1,120,130)
Total comprehensive income (loss)	265,877	(1,120,130)	471,320	31,155	-	-	737,197	(1,088,975)
of which:								
Attributable to the Australian Government	265,877	(1,120,130)	471,320	31,155	-	-	737,197	(1,088,975)
Transactions with owners								
Distributions to owners								
Contributions by owners								
Equity injection - Appropriation	-	-	-	-	25,000	145,000	25,000	145,000
Departmental capital budget	-	-	-	-	797,000	-	797,000	-
Sub-total transactions with owners	-	-	-	-	822,000	145,000	822,000	145,000
Closing balance as at 30 June	278,631	12,754	563,210	91,890	2,980,000	2,158,000	3,821,841	2,262,644
Closing balance attributable to the Australian Government	278,631	12,754	563,210	91,890	2,980,000	2,158,000	3,821,841	2,262,644

The above statement should be read in conjunction with the accompanying notes.

CASH FLOW STATEMENT
for the period ended 30 June 2011

	Notes	2011 \$	2010 \$
OPERATING ACTIVITIES			
Cash received			
Goods and services		2,187,991	2,238,745
Appropriations		19,778,000	22,552,000
Net GST received		356,952	366,237
Other		187,589	96,245
Total cash received		<u>22,510,531</u>	<u>25,253,227</u>
Cash used			
Employees		14,822,175	15,527,408
Suppliers		5,746,635	5,502,902
Section 31 receipts returned to the Official Public Account		2,229,789	1,637,868
Total cash used		<u>22,798,599</u>	<u>22,668,178</u>
Net cash from (used by) operating activities	9	<u>(288,069)</u>	<u>2,585,049</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		2,100	64
Total cash received		<u>2,100</u>	<u>64</u>
Cash used			
Purchase of property, plant and equipment		329,164	2,121,044
Purchase of intangibles		99,403	223,525
Total cash used		<u>428,567</u>	<u>2,344,569</u>
Net cash from (used by) investing activities		<u>(426,467)</u>	<u>(2,344,505)</u>
FINANCING ACTIVITIES			
Cash received			
Contributed equity		145,000	-
Departmental Capital Budget		414,000	-
Total cash received		<u>559,000</u>	<u>-</u>
Net cash from (used by) financing activities		<u>559,000</u>	<u>-</u>
Net increase (decrease) in cash held		<u>(155,535)</u>	<u>240,544</u>
Cash and cash equivalents at the beginning of the reporting period		368,624	128,080
Cash and cash equivalents at the end of the reporting period	5A	<u>213,089</u>	<u>368,624</u>

The above statement should be read in conjunction with the accompanying notes.

SCHEDULE OF COMMITMENTS

as at 30 June 2011

	2011	2010
	\$	\$
BY TYPE		
Commitments receivable		
Sale of services	2,078,273	2,561,588
Net GST recoverable on commitments	1,516,284	1,628,621
Total commitments receivable	3,594,558	4,190,209
Commitments payable		
Operating leases	18,757,402	20,476,420
Net commitments by type	15,162,845	16,286,211
BY MATURITY		
Commitments receivable		
Sale of services		
One year or less	1,568,145	1,541,332
From one to five years	510,128	1,020,256
Total services income	2,078,273	2,561,588
GST recoverable on commitments		
One year or less	(54,267)	(16,898)
From one to five years	444,625	398,062
Over five years	1,125,927	1,247,457
Total other commitments receivable	1,516,284	1,628,621
Commitments payable		
Operating lease commitments		
One year or less	971,204	1,355,455
From one to five years	5,401,004	5,398,938
Over five years	12,385,194	13,722,027
Total operating lease commitments	18,757,402	20,476,420
Net commitments by maturity	15,162,845	16,286,211

NB: Commitments are GST inclusive where relevant.

This schedule should be read in conjunction with the accompanying notes.

Operating leases included are effectively non-cancellable and comprise leases for office accommodation.

General description of all leasing arrangements (the office was the lessee)

Leases for office accommodation: lease payments for Canberra, Melbourne and Brisbane were subject to a fixed rate increase in accordance with each contract. The initial periods of office accommodation leases are still current and Brisbane and Melbourne may be renewed for up to five years at the office's option.

SCHEDULE OF ASSET ADDITIONS

for the period ended 30 June 2011

The following non-financial non-current assets were added in 2010-11:

	Leashold improvements	Other property, plant & equipment	Intangibles	Other	Total
	\$	\$	\$	\$	\$
Additions funded in the current year					
By purchase - appropriation ordinary annual services (FMA Act only)					
Departmental capital budget	10,397	186,499	123,402	-	320,298
By purchase - appropriation other services (FMA Act only)					
Equity injections	-	145,000	-	-	145,000
Total funded additions funded in the current year	10,397	331,499	123,402	-	465,298

The following non-financial non-current assets were added in 2009-10:

	Leashold improvements	Other property, plant & equipment	Intangibles	Other	Total
	\$	\$	\$	\$	\$
Additions funded in the current year					
By purchase - appropriation ordinary annual services (FMA Act only)					
Ordinary operating costs	1,297,366	823,678	223,526	-	2,344,570
Total funded additions funded in the current year	1,297,366	823,678	223,526	-	2,344,570

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Note 1: Summary of Significant Accounting Policies

1.1 Office of the Commonwealth Ombudsman Objectives

The Office of the Commonwealth Ombudsman is an Australian Government controlled entity. The objective of the Office of the Commonwealth Ombudsman is to provide a cost-effective form of independent administrative review, which is timely, informal and involves no direct cost to individuals. Coverage is comprehensive, embracing almost all of the administrative activity of the Commonwealth departments and agencies.

Through the handling of complaints and the conduct of own motion investigations, the Office contributes to continuous improvement in the performance of agencies and their accountability to Government, the Parliament and the community.

The Office is structured to meet one outcome:

Outcome 1: Fair and accountable administrative action by Australian Government agencies by investigating complaints, reviewing administrative action and inspecting statutory compliance by law enforcement agencies.

The continued existence of the Office in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Office's administration and programs.

The Office's activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the office in its own right. The Office has no administered activities.

1.2 Basis of Preparation of the Financial Statements

The financial statements are general purpose financial statements and are required by section 49 of the *Accountability Act 1997*.

The Financial Statements have been prepared in accordance with:

- a) Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2010; and *Financial Management and*
- b) Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars.

Unless an alternative treatment is specifically required by an accounting standard or the FMO, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under Agreements Equally Proportionately Unperformed are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments or the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the statement of comprehensive income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

The Office has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2011 or in the comparative financial year.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates or other judgements have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 New Australian Accounting Standards

Adoption of New Australian Accounting Standard Requirements

No accounting standard has been adopted earlier than the application date as stated in the respective standard.

Future Australian Accounting Standard Requirements

New standards, reissued standards, amendments to standards or interpretations ("the new requirements") applicable to future reporting periods have been issued by the Australian Accounting Standards Board during the year. It is anticipated that the new requirements will have no material financial impact on future reporting periods.

1.5 Revenue

Other Types of Revenue

Revenue from the sale of goods is recognised when:

- the risks and rewards of ownership have been transferred to the buyer;
- the Office retains no managerial involvement or effective control over the goods;
- the revenue and transaction costs incurred can be reliably measured; and
- it is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits associated with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of reporting period. Allowances are made when collectability of the debt is no longer probable.

Resources Received Free of Charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Revenue from Government

Amounts appropriated for departmental outputs for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the Office gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Office or authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

Sale of Assets

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Australian Government Office or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other Distributions to Owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend.

1.8 Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of end of reporting period are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Office is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Office's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the estimated future cash flows to be made in respect to all employees as at 30 June 2011. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Office recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of the Office are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap) or some other fund.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and the other funds are defined contribution schemes.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Office makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Office's employees. The Office accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.12 Financial Assets

The Office classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss;
- held-to-maturity investments;
- available-for-sale financial assets; and
- loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Financial Assets at Fair Value Through Profit or Loss

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are a part of an identified portfolio of financial instruments that the Office manages together and has a recent actual pattern of short-term profit-taking; or
- are derivatives that are not designated and effective as a hedging instrument.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

Available-for-Sale Financial Assets

Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories.

Available-for-sale financial assets are recorded at fair value. Gains and losses arising from changes in fair value are recognised directly in reserves (equity) with the exception of impairment losses. Interest is calculated using the effective interest method and foreign exchange gains and losses on monetary assets are recognised directly in profit or loss. Where the asset is disposed of or is determined to be impaired, part (or all) of the cumulative gain or loss previously recognised in the reserve is included in profit and loss for the period.

Where a reliable fair value cannot be established for unlisted investments in equity instruments cost is used. The Office has no such instruments.

Held-to-Maturity Investments

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold to maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting periods.

- *Financial assets held at amortised cost* - if there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the statement of comprehensive income.
- *Available for sale financial assets* - if there is objective evidence that an impairment loss on an available-for-sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the statement of comprehensive income.
- *Financial assets held at cost* - If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.13 Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

Financial Liabilities at Fair Value Through Profit or Loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.14 Contingent Liabilities and Contingent Assets

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.15 Financial Guarantee Contracts

Financial guarantee contracts are accounted for in accordance with AASB 139 *Financial Instruments: Recognition and Measurement*. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

1.16 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Office's accounts immediately prior to the restructuring.

1.17 Property, Plant and Equipment

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the office where there exists an obligation to restore the property to its original condition. These costs are included in the value of the office's leasehold improvements with a corresponding provision for the 'makegood' recognised.

Revaluations

Fair values for each class of asset are determined as shown below:

<i>Asset Class</i>	<i>Fair value measured at:</i>
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Office using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2011	2010
Leasehold improvements	Lease term	Lease term
Plant and Equipment	3 to 10 years	3 to 10 years

Impairment

All assets were assessed for impairment at 30 June 2011. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Office were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

1.18 Intangibles

The Office's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Office's software are 1 to 8 years (2009-10: 1 to 8 years).

All software assets were assessed for indications of impairment as at 30 June 2011.

1.19 Taxation

The Office is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

Note 2: Events After the Reporting Period

No significant events occurred after balance date that would materially affect the financial statements.

Note 3: Expenses

	2011 \$	2010 \$
Note 3A: Employee Benefits		
Wages and salaries	11,147,992	11,382,055
Superannuation:		
Defined contribution plans	701,990	641,063
Defined benefit plans	1,148,847	1,343,833
Leave and other entitlements	1,664,845	1,728,069
Separation and redundancies	-	444,908
Total employee benefits	14,663,674	15,539,928
Note 3B: Suppliers		
Goods and services		
Consultants and contractors	378,296	169,579
Information technology and communications	744,669	710,097
Other	2,762,512	2,234,595
Total goods and services	3,885,477	3,114,271
Goods and services are made up of:		
Provision of goods – external parties	309,963	443,286
Rendering of services – related entities	299,969	337,400
Rendering of services – external parties	3,275,545	2,333,585
Total goods and services	3,885,477	3,114,271
Other supplier expenses		
Operating lease rentals – external parties:		
Minimum lease payments	1,655,106	1,972,552
Workers compensation expenses	119,787	88,040
Total other supplier expenses	1,774,893	2,060,592
Total supplier expenses	5,660,370	5,174,863
Note 3C: Depreciation and Amortisation		
Depreciation:		
Property, plant and equipment	606,745	563,151
Amortisation:		
Intangibles - Computer Software	148,144	179,286
Total depreciation and amortisation	754,889	742,437
Note 3D: Losses from Asset Sales		
Property, plant and equipment:		
Proceeds from sale	-	-
Carrying value of assets sold	-	837
Selling expense	-	-
Total losses from asset sales	-	837
Note 3E: Write-Down and Impairment of Assets		
Asset write-downs and impairments from:		
Impairment on financial instruments	3,319	-
Impairment of property, plant and equipment	213,808	-
Impairment on intangible assets	103,611	-
Total write-down and impairment of assets	320,738	-

Note 4: Income

	2011	2010
	\$	\$

REVENUE

Note 4A: Sale of Goods and Rendering of Services

Rendering of services - related entities	802,583	512,650
Rendering of services - external parties	958,377	1,001,253
Total sale of goods and rendering of services	1,760,960	1,513,903

Note 4B: Sale of Assets

Property, plant and equipment:		
Proceeds from sale	2,100	64
Carrying value of assets sold	-	(32)
Net gain from sale of assets	2,100	32

Note 4C: Other Gains

Resources received free of charge	30,000	29,000
Reversal of makegood provision	321,216	-
Reversal of leasehold incentive	35,272	-
Total other gains	386,488	29,000

REVENUE FROM GOVERNMENT

Note 4D: Revenue from Government

Appropriations:		
Departmental appropriation	19,516,000	18,795,000
Total revenue from Government	19,516,000	18,795,000

Note 5: Financial Assets

	2011 \$	2010 \$
<u>Note 5A: Cash and Cash Equivalents</u>		
Cash on hand or on deposit	213,089	358,624
Cash held by outsiders	-	10,000
Total cash and cash equivalents	213,089	368,624
<u>Note 5B: Trade and Other Receivables</u>		
Good and Services:		
Goods and services - related entities	178,334	53,032
Goods and services - external parties	10,570	6,276
Total receivables for goods and services	188,904	59,308
Appropriations receivable:		
For existing outputs	6,553,657	4,322,868
Other receivables:		
GST receivable from the Australian Taxation Office	54,254	152,393
Total trade and other receivables (gross)	6,796,815	4,534,569
Receivables are expected to be recovered in:		
No more than 12 months	6,796,815	4,534,569
Total trade and other receivables (gross)	6,796,815	4,534,569
Receivables are aged as follows:		
Not overdue	6,795,528	4,517,662
Overdue by:		
0 to 30 days	1,287	154
31 to 60 days	-	16,528
61 to 90 days	-	-
More than 90 days	-	225
Total trade and other receivables (gross)	6,796,815	4,534,569
<u>Note 5C: Other Financial Assets</u>		
Lease incentives	390,944	1,314,714
Total other financial assets	390,944	1,314,714
Total other financial assets - are expected to be recovered in:		
No more than 12 months	390,944	923,771
More than 12 months	-	390,943
Total other financial assets	390,944	1,314,714

Note 6: Non-Financial Assets

	2011 \$	2010 \$
Note 6A: Leasehold improvements		
Leasehold improvements:		
Fair value	1,596,991	2,888,976
Accumulated depreciation	-	(1,101,718)
Total leasehold improvements	1,596,991	1,787,258
Note 6B: Other Property, Plant and Equipment		
Other property, plant and equipment:		
Fair value	1,337,760	2,388,739
Accumulated depreciation	(863)	(1,254,849)
Total other property, plant and equipment	1,336,897	1,133,890
Total property, plant and equipment	2,933,888	2,921,148

All revaluations were conducted in accordance with the revaluation policy stated at Note 1. An independent valuer conducted the revaluations as at 30 June 2011.

A revaluation increment of \$249,868 for leasehold improvements and an increment of \$241,528 for other property, plant and equipment were credited to the asset revaluation reserve by asset class and included in the equity section of the balance sheet; no increments were expensed.

No indicators of impairment were found for property, plant and equipment.

No property, plant and equipment is expected to be sold or disposed of within the next 12 months.

Note 6C: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2010-11)

	Leasehold improvements \$	Other property, plant & equipment \$	Total \$
As at 1 July 2010			
Gross book value	2,888,976	2,388,739	5,277,715
Accumulated depreciation and impairment	(1,101,718)	(1,254,849)	(2,356,567)
Net book value 1 July 2010	1,787,258	1,133,890	2,921,148
Additions:			
By purchase	10,397	331,499	341,896
Revaluations and impairments recognised in other comprehensive income	249,868	241,528	491,396
Depreciation expense	(275,606)	(331,139)	(606,745)
Disposals:			
Other	(174,926)	(38,881)	(213,807)
Net book value 30 June 2011	1,596,991	1,336,897	2,933,888
Net book value as of 30 June 2011 represented by:			
Gross book value	1,596,991	1,337,760	2,934,751
Accumulated depreciation	-	(863)	(863)
	1,596,991	1,336,897	2,933,888

Note 6C (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2009-10)

	Leasehold improvements \$	Other property, plant & equipment \$	Total \$
As at 1 July 2009			
Gross book value	1,591,584	1,666,459	3,258,043
Accumulated depreciation and impairment	(828,972)	(1,064,945)	(1,893,917)
Net book value 1 July 2009	762,612	601,514	1,364,126
Additions:			
By purchase	1,297,366	823,678	2,121,044
Depreciation expense	(272,720)	(290,432)	(563,152)
Disposals:			
Other	-	(870)	(870)
Net book value 30 June 2010	1,787,258	1,133,890	2,921,148
Net book value as of 30 June 2010 represented by:			
Gross book value	2,888,976	2,388,739	5,277,715
Accumulated depreciation	(1,101,718)	(1,254,849)	(2,356,567)
	1,787,258	1,133,890	2,921,148

	2011 \$	2010 \$
Note 6D: Intangibles		
Computer software:		
Purchased	1,516,085	1,543,280
Total computer software (gross)	1,516,085	1,543,280
Accumulated amortisation	(1,162,191)	(1,061,031)
Total computer software (net)	353,894	482,249
Total intangibles	353,894	482,249

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)

	Computer software purchased \$
As at 1 July 2010	
Gross book value	1,543,280
Accumulated amortisation and impairment	(1,061,031)
Net book value 1 July 2010	482,249
Additions:	
By purchase	123,402
Amortisation	(148,144)
Disposals:	
Other	(103,613)
Net book value 30 June 2011	353,894
Net book value as of 30 June 2011 represented by:	
Gross book value	1,516,085
Accumulated amortisation and impairment	(1,162,191)
	353,894

Note 6E (Cont'd): Reconciliation of the Opening and Closing Balances of Intangibles (2009-10)

	Computer software purchased	
	\$	
As at 1 July 2009		
Gross book value	1,357,739	
Accumulated amortisation and impairment	(919,730)	
Net book value 1 July 2009	438,009	
Additions:		
By purchase	223,526	
Disposals:	(179,286)	
Net book value 30 June 2010	482,249	
Net book value as of 30 June 2010 represented by:		
Gross book value	1,543,280	
Accumulated amortisation and impairment	(1,061,031)	
	<u>482,249</u>	
	2011	2010
	\$	\$
Note 6F: Other Non-Financial Assets		
Prepayments	<u>244,506</u>	<u>262,303</u>
Total other non-financial assets	244,506	262,303
No indicators of impairment were found for other non-financial assets.		
Total other non-financial assets - are expected to be recovered in:		
No more than 12 months	228,442	262,303
More than 12 months	<u>16,064</u>	<u>-</u>
Total other non-financial assets	244,506	262,303

Note 7: Payables

	2011	2010
	\$	\$

Note 7A: Suppliers

Trade creditors and accruals	527,491	544,889
Total supplier payables	527,491	544,889

Supplier payables are expected to be settled within 12 months:

Related entities	105,599	174,059
External parties	421,892	370,830
Total supplier payables	527,491	544,889

Settlement is usually made within 30 days.

Note 7B: Operating leases

Operating lease incentives	1,808,499	2,005,693
Fixed lease increase	479,160	197,949
Total operating leases	2,287,659	2,203,642

Total operating leases are expected to be settled in:

No more than 12 months	162,030	186,820
More than 12 months	2,125,629	2,016,822
Total operating leases	2,287,659	2,203,642

Settlement is usually made within 30 days.

Note 7C: Other Payables

Salaries and wages	343,490	233,542
Superannuation	47,380	34,542
Separations and redundancies	-	71,945
Unearned income	403,846	835,830
Total other payables	794,716	1,175,859

Total other payables are expected to be settled in:

No more than 12 months	794,716	1,175,859
More than 12 months	-	-
Total other payables	794,716	1,175,859

Note 8: Provisions

	2011 \$	2010 \$
Note 8A: Employee Provisions		
Leave	3,365,522	3,259,526
Total employee provisions	3,365,522	3,259,526

Employee provisions are expected to be settled in:

No more than 12 months	1,084,078	1,123,785
More than 12 months	2,281,444	2,135,741
Total employee provisions	3,365,522	3,259,526

Note 8B: Other Provisions

Provision for restoration obligations	135,907	437,047
Total other provisions	135,907	437,047

Other provisions are expected to be settled in:

No more than 12 months	12,000	361,260
More than 12 months	123,907	75,787
Total other provisions	135,907	437,047

	Provision for restoration \$
Carrying amount 1 July 2010	437,047
Amounts reversed	(301,140)
Closing balance 2011	135,907

The Office currently has 4 agreements for the leasing of premises which have provisions requiring the Office to restore the premises to their original condition at the conclusion of the lease. The Office has made a provision to reflect the value of this obligation.

Note 9: Cash Flow Reconciliation

	2011 \$	2010 \$
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	213,089	368,624
Balance sheet	213,089	368,624
Difference	<u>-</u>	<u>-</u>
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(19,250,123)	(19,915,130)
Add revenue from Government	19,516,000	18,795,000
Adjustments for non-cash items		
Depreciation / amortisation	754,889	742,437
Net write down of non-financial assets	317,419	-
(Gain)/loss on disposal of assets	(2,100)	806
(Gain)/loss on reversal of makegood provision	(321,216)	-
Changes in assets / liabilities		
(Increase) / decrease in net receivables	(1,999,246)	2,228,953
(Increase) / decrease in other financial assets	923,770	(1,314,714)
(Increase) / decrease in prepayments	17,797	60,845
Increase / (decrease) in employee provisions	105,996	(112,368)
Increase / (decrease) in supplier payables	(54,128)	(211,587)
Increase / (decrease) in operating leases payable	84,017	1,896,307
Increase / (decrease) in other payable	(381,143)	414,501
Net cash from (used by) operating activities	<u>(288,069)</u>	<u>2,585,049</u>

Note 10: Contingent Liabilities and Assets

The Office has no contingent liabilities.

The Office has identified in its contracts and leases a number of indemnity provisions. None of these are quantifiable and all are considered remote. There are no existing or likely claims of which the office is aware.

Note 11: Senior Executive Remuneration

Note 11A: Senior Executive Remuneration Expense for the Reporting Period

	2011 \$	2010 \$
Short-term employee benefits:		
Salary	741,122	1,292,092
Annual leave accrued	60,137	138,206
Performance bonuses	-	-
Motor vehicle and other allowances	70,257	132,800
Total short-term employee benefits	871,516	1,563,098
Post-employment benefits:		
Superannuation	106,840	220,005
Total post-employment benefits	106,840	220,005
Other long-term benefits:		
Long-service leave	19,272	47,094
Total other long-term benefits	19,272	47,094
Termination benefits	-	-
Total	997,629	1,830,197

Notes:

1. Note 11A excludes acting arrangements and part-year service where remuneration expensed for a senior executive was less than \$150,000.

Note 11: Senior Executive Remuneration (cont)

Note 11B: Average Annual Remuneration Packages and Bonus Paid for Substantive Senior Executives as at the end of the Reporting Period

	as at 30 June 2011		as at 30 June 2010	
	Fixed Elements and Bonus Paid ¹		Senior Executives	
	No.	Total	No.	Total
		\$		\$
Total remuneration (including part-time arrangements):				
\$150,000 to \$179,999	-	-	2	154,272
\$180,000 to \$209,999	4	27,084	3	158,714
\$300,000 to \$329,999	2	64,082	1	254,480
Total	6	329,002	6	316,040

Notes:

1. This table reports substantive senior executives who were employed by the entity at the end of the reporting period. Fixed elements were based on the employment agreement of each individual. Each row represents an average annualised figure (based on headcount) for the individuals in that remuneration package band (i.e. the 'Total' column).

2. No bonuses have been paid.

Variable Elements:

With the exception of bonuses, variable elements were not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements were available as part of senior executives' remuneration package:

(a) Bonuses:

- No bonuses have been paid.

(b) Senior executives were entitled to the following leave entitlements:

- Annual Leave (AL): entitled to 20 to 25 days (2010: 20 days) each full year worked (pro-rata for part-time SES);
- Personal Leave (PL): entitled to 20 days (2010: 20 days) or part-time equivalent; and
- Long Service Leave (LSL): in accordance with Long Service Leave (Commonwealth Employees) Act 1976.

(c) Senior executives were members of one of the following superannuation funds:

- Australian Government Employee Superannuation Trust (AGEST): this fund is for senior executives who were employed for a defined period. Employer contributions were set at 15.4 per cent (2010: 15.4 per cent). More information on AGESt can be found at <http://www.agesst.com.au>;
- Commonwealth Superannuation Scheme (CSS): this scheme is closed to new members, and employer contributions were averaged 28.3 per cent (2010: 24 per cent) (including productivity component). More information on CSS can be found at <http://www.css.gov.au>;
- Public Sector Superannuation Scheme (PSS): this scheme is closed to new members, with current employer contributions were set at 15.4 per cent (2010: 15.4 per cent) (including productivity component). More information on PSS can be found at <http://www.pss.gov.au>;
- Public Sector Superannuation Accumulation Plan (PSSap): employer contributions were set at 15.4 per cent (2010: 15.4 per cent), and the fund has been in operation since July 2005. More information on PSSap can be found at <http://www.pssap.gov.au>; and
- Other: there were some senior executives who had their own superannuation arrangements (e.g. self-managed superannuation funds). Their employer contributions were set at 15.4 per cent (2010: 15.4 per cent).

(d) Variable allowances:

- Allowance in lieu of mobile phone (\$30 per month)
- Various salary sacrifice arrangements were available to senior executives including superannuation and motor

Note 11C: Other Highly Paid Staff

During the reporting period, there were no employees whose salary plus performance bonus were \$150,000 or more that did not have a role as senior executive.

Note 12: Remuneration of Auditors

	2011 \$	2010 \$
Financial statement audit services were provided free of charge to the Agency.		
The fair value of the services provided was:	30,000	29,000
No other services were provided by the Auditor-General.		

Note 13: Financial Instruments

	Notes	2011 \$	2010 \$
Note 13A: Categories of Financial Instruments			
Financial Assets			
Loans and receivables:			
Cash and cash equivalents	5A	213,089	368,624
Trade and other receivables	5B	188,904	59,308
Carrying amount of financial assets		401,993	427,932
Financial Liabilities			
At amortised cost:			
Supplier payables	7A	527,491	544,889
Carrying amount of financial liabilities		527,491	544,889

Note 13B: Net Income and Expense from Financial Assets

Loans and receivables			
Impairment		(3,319)	-
Net gain/(loss) loans and receivables		(3,319)	-
Net gain/(loss) from financial assets		(3,319)	-

The net income/expense from financial assets not at fair value from profit and loss is \$3,319. (2010: \$0).

Note 13C: Net Income and Expense from Financial Liabilities

The net income/expense from financial liabilities not at fair value from profit and loss is nil. (2010: nil).			
		-	-

Note 13D: Fair Value of Financial Instruments

The fair values of the financial instruments approximates their carrying amounts.

Note 13E: Credit Risk

The Office is exposed to minimal credit risk due to the nature of its financial assets. The maximum exposure to credit risk is the amounts held as trade and other receivables should default occur, \$188,904. (2010: \$59,308). The risk of default on these amounts was assessed to be nil as at 30 June 2011 (2010: \$225).

Ageing of financial assets that are past due can be found in note 5B.

The Office manages its credit risk through its policies and procedures issued under the Chief Executive's Instructions.

Note 13F: Liquidity Risk

The Office's exposure to liquidity risk is minimal due to the appropriation funding mechanisms available from the Department of Finance and Deregulation. The office manages liquidity risk through its policies and procedures.

Maturities for non-derivative financial liabilities 2011

	On demand	within 1 year	1 to 2 years	2 to 5 years	> 5 years	Total
	\$	\$	\$	\$	\$	\$
Supplier payables	-	527,491	-	-	-	527,491
Unearned income	-	-	-	-	-	-
Total	-	527,491	-	-	-	527,491

Maturities for non-derivative financial liabilities 2010

	On demand	within 1 year	1 to 2 years	2 to 5 years	> 5 years	Total
	\$	\$	\$	\$	\$	\$
Supplier payables	-	544,889	-	-	-	544,889
Unearned income	-	-	-	-	-	-
Total	-	544,889	-	-	-	544,889

The office has no derivative financial liabilities in both the current and prior year.

Note 13G: Market Risk

The Office holds only basic financial instruments that do not pose any market risk. The Office is not exposed to currency risk or other price risk.

Note 14: Appropriations (FMA Act only)

Table A: Annual Appropriations ('Recoverable GST exclusive')

	2011 Appropriations							Appropriation applied in 2011 (current and prior years)	Variance ^(c)
	Appropriation Act		FMA Act						
	Annual Appropriation	Appropriations reduced ^(a)	AFM ^(b)	Section 30	Section 31	Section 32	Total appropriation		
DEPARTMENTAL									
Ordinary annual services	20,313,000	-	-	184,345	2,032,416	-	22,529,760	20,411,352	2,118,409
Other services	25,000	-	-	-	-	-	-	-	(120,000)
Equity									
Total departmental	20,338,000	-	-	184,345	2,032,416	-	22,554,760	20,556,352	1,998,409

Notes:

- (a) Appropriations reduced under Appropriation Acts (No.1,3,5) 2010-11: sections 10, 11, 12 and 15 and under Appropriation Acts (No.2,4,6) 2010-11: sections 12,13, 14 and 17. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2010-11 there was no reduction in any appropriation.
- (b) There were no adjustments that met the recognition criteria of a formal addition or reduction in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period.
- (c) The variance of \$2.1m in ordinary annual services was primarily due to the office not achieving its budgeted average staffing level.

	2010 Appropriations								Appropriation applied in 2010 (current and prior years) \$	Variance ^(c) \$
	Appropriation Act			FMA Act				Total appropriation \$		
	Annual Appropriation \$	Appropriations reduced ^(a) \$	AFM ^(b) \$	Section 14 (Act No. 1) \$	Section 30 \$	Section 31 \$	Section 32 \$			
DEPARTMENTAL										
Ordinary annual services	18,904,000	(109,000)	-	-	95,559	2,049,299	-	20,939,858	22,044,087	(1,104,229)
Other services	145,000	-	-	-	-	-	-	-	-	145,000
Equity										
Total departmental	19,049,000	(109,000)	-	-	95,559	2,049,299	-	21,084,858	22,044,087	(959,229)

Notes:

- (a) Appropriations reduced under Appropriation Acts (No.1,3,5) 2010-11: sections 10, 11, 12 and 15 and under Appropriation Acts (No.2,4,6) 2010-11: sections 12,13, 14 and 17. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. On the 29th June 2010, the Finance Minister issued a determination to reduce departmental appropriations following a request by the Special Minister of State. The amount of the reduction under Appropriation Act (No. 1) 2009-10 was \$109,000.
- (b) There were no adjustments that met the recognition criteria of a formal addition or reduction in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period.
- (c) The variance of (\$1.1m) in ordinary annual services was primarily due to the office fitting out new accommodation.

Note 15: Compensation and Debt Relief

	2011 \$	2010 \$
No 'Act of Grace' expenses were incurred during the reporting period. (2010: No expenses).	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997. (2010: No waivers).	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2010: No payments).	-	-
No ex-gratia payments were provided for during the reporting period. (2010: No payments).	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period. (2010: No payments).	-	-

Note 16: Reporting of Outcomes

Note 16A: Net Cost of Outcome Delivery

	Outcome 1	
	2011	2010
	\$	\$
Expenses		
Departmental	21,399,671	21,458,065
Total	21,399,671	21,458,065
Income from non-government sector		
Departmental		
Activities subject to cost recovery	-	-
Interest on cash deposits	-	-
Gain from disposal of asset	2,100	32
Reversal of previous asset write-downs	-	-
Goods and services income	958,377	1,001,253
Other	356,488	-
Total departmental	1,316,965	1,001,285
Total	1,316,965	1,001,285
Other own-source income		
Departmental	832,583	541,650
Total	832,583	541,650
Net cost of outcome delivery	19,250,123	19,915,130

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome. Refer to Outcome 1 Resourcing Table on page (page no-188) of this Annual Report.



The office has one outcome, therefore the Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcomes table has not been prepared.

Note 17: Comprehensive Income (Loss) Attributable to the entity

	2011 \$	2010 \$
Total Comprehensive Income (loss) Attributable to the entity		
Total comprehensive income (loss) attributable to the Australian Government ¹	737,197	(1,088,975)
Plus: non-appropriated expenses		
Depreciation and amortisation expenses	754,889	742,437
Total comprehensive income (loss) attributable to the entity	1,492,086	(346,538)

1. As per the Statement of Comprehensive Income.

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ABBREVIATIONS AND ACRONYMS

AAT	Administrative Appeals Tribunal	Cth	Commonwealth
ACC	Australian Crime Commission	DAFF	Department of Agriculture, Fisheries and Forestry
ACLEI	Australian Commission for Law Enforcement Integrity	DEEWR	Department of Education, Employment and Workplace Relations
ACT	Australian Capital Territory	DFO	Defence Force Ombudsman
ADF	Australian Defence Force	DHA	Defence Housing Australia
AFP	Australian Federal Police	DHS	Department of Human Services
AFP Act	<i>Australian Federal Police Act 1979 (Cth)</i>	DIAC	Department of Immigration and Citizenship
AIAL	Australian Institute of Administrative Law	DPO	Departure Prohibition Order
ANAO	Australian National Audit Office	DSP	disability support pension
ANZOA	Australia and New Zealand Ombudsman Association	DVA	Department of Veterans' Affairs
ANU	Australian National University	ed.	editor
AO	Officer of the Order of Australia	EL	Executive Level
APOR	Australasian and Pacific Ombudsman Region	EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
APS	Australian Public Service	ESSP	Economic Security Strategy payment
APSC	Australian Public Service Commission	FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
ARO	authorised review officer	FOI	freedom of information
ATO	Australian Taxation Office	FOI Act	<i>Freedom of Information Act 1982 (Cth)</i>
AusAID	Australian Agency for International Development	FTB	family tax benefit
CDDA	Compensation for Detriment Caused by Defective Administration	GEERS	General Employee Entitlements and Redundancy Scheme
CIS	Complaints Investigation Scheme	G4S	G4S Australia Pty Ltd
CIU	Compliance and Investigation Unit	GFU	Global Feedback Unit
COAG	Council of Australian Governments	GST	goods and services tax
Complaints Act	<i>Complaints (Australian Federal Police) Act 1981 (Cth)</i>	Hon.	Honourable
Crimes Act	<i>Crimes Act 1914 (Cth)</i>	IDC	Immigration Detention Centre
CSA	Child Support Agency	IT	information technology
CSC	Customer Service Centre	JCA	job capacity assessment
		JNM	Job Network Member
		JOIN	Joint Outreach Initiative Network
		MAP	Migration Assessment Policy

Migration Act	SES	Senior Executive Service
<i>Migration Act 1958 (Cth)</i>	SGC	superannuation guarantee charge
MP	SNP	School Nutrition Program
NSA	SSAT	Social Security Appeals Tribunal
NSW	TFN	tax file number
NT	TGA	Therapeutic Goods Administration
NTER	TIA Act	<i>Telecommunications (Interception and Access) Act 1979 (Cth)</i>
OCPNG	TRA	Trades Recognition Australia
ODM	UK	United Kingdom
OH&S	US	United States of America
OH&S Act		
<i>Occupational Health and Safety Act 1991 (Cth)</i>		
Ombudsman Act		
<i>Ombudsman Act 1976 (Cth)</i>		
ORI		
Ombudsman of the Republic of Indonesia		
PAYG		
pay as you go		
PCT		
Public Contact Team		
PIO		
Postal Industry Ombudsman		
PNG		
Papua New Guinea		
PPO		
private postal operator		
Privacy Act		
<i>Privacy Act 1988 (Cth)</i>		
Prof.		
Professor		
PRS		
Professional Standards		
Public Service Act		
<i>Public Service Act 1999 (Cth)</i>		
RAAF		
Royal Australian Air Force		
RCS		
residential classification scales		
ROG		
redress of grievance		
RSA		
refugee status assessment		
rtd		
retired		
s		
section		
SA		
South Australia		
SD Act		
<i>Surveillance Devices Act 2004 (Cth)</i>		

COMPLIANCE INDEX

This is a guide to the report's compliance with the Requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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No material errors have been identified in the Commonwealth Ombudsman Annual Report 2009–10	?
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CONTACTS

Enquiries 9 am–5 pm Monday to Friday
 Phone 1300 362 072
 Postal GPO Box 442, Canberra ACT 2601
 Facsimile 02 6276 0123
 Email ombudsman@ombudsman.gov.au
 Online complaint form
www.ombudsman.gov.au
 SMS: 0413 COM OMB (0413 266 662) (standard carrier rates apply)
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Commonwealth Ombudsman offices

Adelaide

Level 5, 50 Grenfell Street
Adelaide SA 5000
 Fax 08 8226 8618

Brisbane

Level 17, 53 Albert Street
Brisbane QLD 4000
 Fax 07 3228 9999

Canberra and National Office

Level 5, Childers Square
Childers Street
Canberra City ACT 2600
 GPO Box 442, Canberra ACT 2601
 Fax 02 6276 0123

Darwin

Level 12, NT House
Cnr Bennett & Mitchell Streets
Darwin NT 0801
 GPO BOX 1344, Darwin NT 0801
 Fax 08 8941 5400

Hobart

Ground Floor, 99 Bathurst Street
Hobart TAS 7000
 GPO Box 442 Canberra ACT 2601

Melbourne

Level 1, 441 St Kilda Road
Melbourne VIC 3004
 PO Box 7444, St Kilda Road, VIC 8004
 Fax 03 9867 3750

Perth

Level 12, St Martin's Tower
44 St Georges Terrace
Perth WA 6000
 PO Box Z5386, St George's Terrace,
 Perth WA 6831
 Fax 08 9221 4381

Sydney

Level 7, North Wing
Sydney Central, 477 Pitt Street
Sydney NSW 2000
 PO Box K825, Haymarket NSW 1240
 Fax 02 9211 4402

