



## Own Motion Investigations and Administrative Improvement

A key function of the Office is to improve the standard of public administration. The Office achieves positive outcomes in this area in a number of ways including:

- Improvements to public administration as a result of:
  - The investigation of complaints;
  - Reviews of child deaths and family and domestic violence fatalities; and
  - Undertaking own motion investigations that are based on the patterns, trends and themes that arise from the investigation of complaints, and the review of certain child deaths and family and domestic violence fatalities;
- Providing guidance to public authorities on good decision making and practices and complaint handling through continuous liaison, publications, presentations and workshops;
- Working collaboratively with other integrity and accountability agencies to encourage best practice and leadership in public authorities; and
- Undertaking inspection and monitoring functions.

### Improvements from Complaints and Reviews

In addition to outcomes which result in some form of assistance for the complainant, the Ombudsman also achieves outcomes which are aimed at improving public administration. Among other things, this reduces the likelihood of the same or similar issues which gave rise to the complaint occurring again in the future. Further details of the improvements arising from complaint resolution are shown in the [Complaint Resolution section](#).

Child death and family and domestic violence fatality reviews also result in improvements to public administration as a result of the review of individual child deaths and family and domestic violence fatalities. Further details of the improvements arising from reviews are shown in the [Child Death Review section](#) and the [Family and Domestic Violence Fatality Review section](#).

### Own Motion Investigations

One of the ways that the Office endeavours to improve public administration is to undertake investigations of systemic and thematic patterns and trends arising from complaints made to the Ombudsman and from child death and family and domestic violence fatality reviews. These investigations are referred to as own motion investigations.

Own motion investigations are intended to result in improvements to public administration that are evidence-based, proportionate, practical and where the benefits of the improvements outweigh the costs of their implementation.

Own motion investigations that arise out of child death and family and domestic violence fatality reviews focus on the practices of agencies that interact with children

and families and aim to improve the administration of these services to prevent or reduce child deaths and family and domestic violence fatalities.

## Selecting topics for own motion investigations

Topics for own motion investigations are selected based on a number of criteria that include:

- The number and nature of complaints, child death and family and domestic violence fatality reviews, and other issues brought to the attention of the Ombudsman;
- The likely public interest in the identified issue of concern;
- The number of people likely to be affected;
- Whether reviews of the issue have been done recently or are in progress by the Office or other organisations;
- The potential for the Ombudsman's investigation to improve administration across public authorities; and
- Whether investigation of the chosen topic is the best and most efficient use of the Office's resources.

Having identified a topic, extensive preliminary research is carried out to assist in planning the scope and objectives of the investigation. A public authority selected to be part of an own motion investigation is informed when the project commences and Ombudsman staff consult regularly with staff at all levels to ensure that the facts and understanding of the issues are correct and findings are evidence-based. The public authority is given regular progress reports on findings together with the opportunity to comment on draft conclusions and any recommendations.

## Monitoring the implementation of recommendations

Recommendations for administrative improvements are based closely on evidence gathered during investigations and are designed to be a proportionate response to the number and type of administrative issues identified. Each of the recommendations arising from own motion investigations is actively monitored by the Office to ensure its implementation and effectiveness in relation to the observations made in the investigation.

In addition, significant work was undertaken during the year on a report in relation to the implementation of Ombudsman recommendations arising from own motion investigations.

## Own Motion Investigations in 2015-16

In 2015-16, a report of a major own motion investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities was finalised and tabled in Parliament, and significant work was undertaken on an own motion investigation, into ways to prevent or reduce child deaths by drowning.



## Major investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities

In November 2015, the Ombudsman tabled in Parliament the report of a major own motion investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities.

The Ombudsman undertakes an important responsibility to review family and domestic violence fatalities. Arising from this work, the Ombudsman identified the need to undertake a major own motion investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities.

To undertake the investigation, in addition to an extensive literature review and stakeholder engagement, the Office collected and analysed a comprehensive set of de-identified state-wide data relevant to family and domestic violence and examined 30 family and domestic violence fatalities notified to the Ombudsman.

The Ombudsman found that a range of work has been undertaken by State Government departments and authorities to administer their relevant legislative responsibilities, including their responsibilities arising from the *Restraining Orders Act 1997*. However, there is important further work that should be done. This work, detailed in the findings of the report, includes a range of important opportunities for improvement for State Government departments and authorities, working individually and collectively, across all stages of the violence restraining order process.

The Ombudsman also found that Aboriginal Western Australians are significantly over-represented as victims of family violence, yet under-represented in the use of violence restraining orders. Following from this, the Ombudsman identified that a separate strategy, specifically tailored to preventing and reducing Aboriginal family violence, should be developed. This strategy should actively invite and encourage the full involvement of Aboriginal people in its development and be comprehensively informed by Aboriginal culture.

Furthermore, the Ombudsman identified nine key principles for State Government departments and authorities to apply when responding to family and domestic violence and in administering the *Restraining Orders Act 1997*. Applying these principles will enable State Government departments and authorities to have the greatest impact on preventing and reducing family and domestic violence and related fatalities.

Arising from the findings, the Ombudsman made 54 recommendations to four State Government agencies about ways to prevent or reduce family and domestic violence fatalities. Further details of the report's findings and recommendations are included in the [Family and Domestic Violence Fatality Review section](#).

The full report, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* is available at [www.ombudsman.wa.gov.au/familydomesticviolencereport](http://www.ombudsman.wa.gov.au/familydomesticviolencereport).



Significant work has been undertaken in the 2015-16 year on a report by the Office on the implementation of the 54 recommendations arising from the findings of the investigation. The report will be tabled in Parliament in November 2016.

## Major investigation into ways to prevent or reduce deaths of children by drowning

Through the review of the circumstances in which, and why, child deaths occurred, the Ombudsman identified a pattern of cases in which children appeared to have died by drowning. The Ombudsman decided to undertake an investigation into these deaths with a view to determining whether it may be appropriate to make recommendations to any local government or State Government department or authority about ways to prevent or reduce deaths of children by drowning.

During 2015-16, significant work was undertaken on this own motion investigation. The report of the investigation will be tabled in Parliament in 2016-17.

## Continuous Administrative Improvement

The Office maintains regular contact with staff from public authorities to inform them of trends and issues identified in individual complaints and the Ombudsman's own motion investigations with a view to assisting them to improve their administrative practices. This contact seeks to encourage thinking around the foundations of good administration and to identify opportunities for administrative improvements.

Where relevant, these discussions concern internal investigations and complaint processes that authorities have conducted themselves. The information gathered demonstrates to the Ombudsman whether these internal investigations have been conducted appropriately and in a manner that is consistent with the standards and practices of the Ombudsman's own investigations.

## Guidance for public authorities

The Office provides publications, workshops, assistance and advice to public authorities regarding their decision making and administrative practices and their complaint handling systems. This educative function assists with building the capacity of public authorities and subsequently improving the standard of administration.

## Publications

The Ombudsman has a range of guidelines available for public authorities in the areas of effective complaint handling, conducting administrative investigations and administrative decision making. These guidelines aim to assist public authorities in strengthening their administrative and decision making practices. For a full listing of the Office's publications, see [Appendix 3](#).

## Workshops for public authorities

During the year, the Office continued to proactively engage with public authorities through presentations and workshops.

Workshops are targeted at people responsible for making decisions or handling complaints as well as customer service staff. The workshops are also relevant for supervisors, managers, senior decision and policy makers as well as integrity and



governance officers who are responsible for implementing and maintaining complaint handling systems or making key decisions within a public authority.

The workshops are tailored to the organisation or sector by using case studies and practical exercises. Details of workshops conducted during the year are provided in the [Collaboration and Access to Services section](#).

## Working collaboratively

The Office works collaboratively with other integrity and accountability agencies to encourage best practice and leadership in public authorities. Improvements to public administration are supported by the collaborative development of products and forums to promote integrity in decision making, practices and conduct. Details are provided in the [Collaboration and Access to Services section](#).

## Inspection and Monitoring Functions

### Telecommunications interception records

The *Telecommunications (Interception and Access) Western Australia Act 1996*, the *Telecommunications (Interception and Access) Western Australia Regulations 1996* and the *Telecommunications (Interception and Access) Act 1979* (Commonwealth) permit designated 'eligible authorities' to carry out telecommunications interceptions. The Western Australia Police (**WAPOL**) and the Corruption and Crime Commission are eligible authorities in Western Australia. The Ombudsman is appointed as the Principal Inspector to inspect and report on the extent of compliance with the legislation.

### Infringement notices

The *Criminal Code Amendment (Infringement Notices) Act 2011* amended *The Criminal Code* to introduce a new scheme into Western Australia for the issue of infringement notices by WAPOL for certain offences.

The *Criminal Code Amendment (Infringement Notices) Act 2011* amended *The Criminal Code* to include Chapter LXXIII – Infringement notices (**the Infringement Notices provisions**). Regulations may be made pursuant to section 721 of *The Criminal Code* to allow infringement notices to be issued for Code offences, being the *Criminal Code (Infringement Notices) Regulations 2015* (**the Regulations**), and that *The Criminal Code* is to be taken as a prescribed Act for the purposes of Part 2 of the *Criminal Procedure Act 2004*.

Together, *The Criminal Code*, the *Criminal Procedure Act 2004* and the Regulations allow authorised officers to issue Criminal Code infringement notices with a modified penalty for prescribed offences. The Infringement Notices provisions and the Regulations came into operation on 4 March 2015.

The Ombudsman has an important function to keep under scrutiny the operation of the Infringement Notices provisions. Under section 723 of *The Criminal Code*:

- (1) *For the period of 12 months after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Chapter and the regulations made under this Chapter and the Criminal Investigation (Identifying People) Act 2002 Part 7 and section 67.*



- (2) *The scrutiny referred to in subsection (1) is to include review of the impact of the operation of the provisions referred to in that subsection on Aboriginal and Torres Strait Islander communities.*
- (3) *For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operation of the provisions referred to in subsection (1).*
- (4) *The Ombudsman must, as soon as practicable after the expiration of that 12 month period, prepare a report on the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister for Police and the Commissioner of Police.*
- (5) *The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of the provisions referred to in subsection (1).*
- (6) *The Minister is to lay (or cause to be laid) a copy of the report furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.*

The period of 12 months referred to in Section 723(1) of *The Criminal Code* commenced on 5 March 2015.

The Ombudsman is undertaking a range of work as part of this monitoring role, including critically, a wide range of consultative activities regarding the operation of the Infringement Notices provisions. An important part of these consultative activities is that the Ombudsman has consulted members of the community who have had experience with the operation of Criminal Code infringement notices. In particular, the Ombudsman has consulted Aboriginal and Torres Strait Islander communities.

This included the development of a Consultation Paper, which was placed prominently on our website as well as being distributed to relevant State Government agencies, non-government organisations and community groups, for their response. The Consultation Paper was also advertised in *The West Australian* newspaper, community newspapers, the *Koori Mail* and on Aboriginal radio stations. In addition, a Community Consultation Forum, specifically focused on consultation with Aboriginal and Torres Strait Islander Communities, will be undertaken in August 2016.

In accordance with section 723 of *The Criminal Code*, the report on the Ombudsman's work and activities will be completed and provided to the Minister for Police and the Commissioner of Police in 2016-17.

## Criminal organisations control

Under the *Criminal Organisations Control Act 2012*, the Ombudsman scrutinises and reports on the exercise of certain powers by WAPOL, for a five year period commencing in November 2013.

In accordance with the *Criminal Organisations Control Act 2012*, a report was prepared by the Ombudsman for the monitoring period ending 1 November 2015. A copy of this report was provided to the Minister for Police and the Commissioner of Police on 20 November 2015 and was tabled in Parliament on 16 February 2016.

