OMBUDSMAN
Western Australia

Mr President, Mr Speaker

Annual Report of the Parliamentary Commissioner for Administrative Investigations for the year ended 30 June 1999

In accordance with section 64(1) of the *Financial Administration and Audit Act 1985* (as modified by Part 1 of Schedule 1A) I submit my report for the year ended 30 June 1999, together with copies of the opinions of the Auditor General.

To the extent that my report contains subject matter not required by the *Financial Administration and Audit Act* or by the Treasurer's Instructions made under that Act, it is submitted pursuant to section 27 of the *Parliamentary Commissioner Act 1971.*

Murray Allen
Parliamentary Commissioner for
Administrative Investigations

18 November 1999

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CHAPTER 1

THE YEAR'S WORK

The year ended 30 June 1999 was a very busy one for my Office.

During the year a total of 3031 complaints involving 3827 allegations were received. This represents the highest number of complaints and allegations ever received by my Office in a single year. Also, a record number of complaints (3 070) involving a record number of allegations (3 910) were finalised during the year.

My staff continued their efforts to deal with complaints as quickly as possible and I believe we were largely successful despite the record number of new complaints which were received. Details of complaints received, how we dealt with them and the outcomes we were able to achieve are set out later in this chapter.

The year was one of hard work and consolidation rather than change. However, the prisons area attracted more attention than in past years. As I highlight in Chapter 4, the continuing increase in the State's prison population in already crowded prisons placed the prison system under greater pressure and resulted in a significant rise in the number of complaints submitted to my Office by prisoners. The riot in Casuarina Prison on Christmas Day 1998 also contributed to the increase. My investigation into deaths in prisons continued during the year and required the full time services of several of my senior staff.

Complaints and allegations received

As I have pointed out in previous reports, when examining the statistics relating to the work of my Office it is important to bear in mind the following –

- The amount of work involved in an investigation varies considerably from case to case. Records are kept on the basis of both complaints and allegations (i.e. a complaint can involve one or more allegations) in an attempt to partly reflect the differing amount of work involved. However, there is no quantitative or qualitative weighting of the relative importance or complexity of allegations. This means that allegations requiring major investigations are treated the same way, statistically, as brief, straightforward ones.

- Unlike most other Ombudsman legislation, the Parliamentary Commissioner Act 1971 does not provide for the receipt of oral complaints. This, together with other variations in jurisdiction, and the differences in recording criteria, makes valid comparisons between the statistics of Ombudsmen's Offices in Australia or elsewhere difficult. In particular, it should be noted that my Office handles many thousands of telephone enquiries each year, frequently from persons seeking information rather than wishing to make a complaint. Many have a grievance but require assistance to establish how and to whom a complaint can be made. We frequently assist enquirers to prepare written complaints.

- My Office has an important referral role. Even though I am unable to be of direct assistance to persons who approach my Office about matters that are not within my jurisdiction, I am often able to refer them to another appropriate source of assistance. Therefore, an outcome of "no jurisdiction" does not necessarily mean that I have not been of any assistance to the complainant.

During the year a total of 3 031 complaints involving 3 827 allegations were received. These numbers represent substantial increases (18.4% and 12.8% respectively) over the previous year. Table 1 shows the picture over the past five years.

TABLE 1 Complaints and allegations received 1995 to 1999

Complaints received	1995	1996	1997	1998	1999
• Police matters	1 064	1 122	1 077	1 411	1 530
• Westrail special constables	n/a	n/a	n/a	n/a	36
• Other State government departments and agencies and local governments	1 354	1 369	1 142	1 150	1 465
Total	2 418	2 491	2 219	2 561	3 031
Allegations received					
• Police matters	1 723	1 682	1 599	2 180	2 149
• Westrail special constables	n/a	n/a	n/a	n/a	67
• Other State government departments and agencies and local governments	1 542	1 589	1 246	1 213	1 611
Total	3 265	3 271	2 845	3 393	3 827

Table 2 shows the geographical origin of the allegations received on the basis of the electoral districts of Western Australia.

TABLE 2 Geographical origin of allegations received 1995 to 1999

Number of allegations received	1995	1996	1997	1998	1999
Metropolitan electorates	2 327	2 321	2 078	2 593	2 835
Country electorates	886	896	705	738	893
Outside WA	52	54	62	62	99
Total	3 265	3 271	2 845	3 393	3 827
Number of allegations per 10 000 electors					
Metropolitan electorates	30	28	25	31	33
Country electorates	31	31	24	25	30

Matters finalised

During the year 3070 complaints representing 3910 allegations were finalised in the manner shown in Table 3. These were 33.8% and 30.7% higher respectively than in the previous year.

TABLE 3 Manner in which allegations finalised 1998/99

Finalised without completed investigation	Number of allegations	%
• No jurisdiction	150	4
• Discretion exercised not to investigate	384	10
• Discontinued	186	5
• Withdrawn or lapsed	127	3
Finalised by completed investigation or review of internal investigation		
• Totally or substantially favourable to complainant	499	13
• Partially favourable to complainant	196	5
• Not substantiated	1536	39
• Police local resolution judged adequate	832	31
Total allegations finalised	3910	100

My staff and I continued our efforts to finalise as many older cases as possible and to reduce the time taken to complete each matter. Our achievements in this regard are reflected in the performance indicators shown in Chapter 2.

Our aim is to finalise matters as quickly as possible and to achieve this we focus on:

- the average time taken to finalise each allegation;
- the proportion of allegations finalised within three months; and
- the proportion of matters on hand that are less than three months old.

Remedial action

Of most interest to complainants is whether my Office can provide some form of assistance or action to remedy the problem complained about. Table 4 shows the extent to which it was possible to obtain some form of benefit for complainants or a change to the law, or the practice or procedure of a government agency.

TABLE 4 Remedial action from allegations finalised 1998/99

Direct benefit for complainant	Number of allegations	%
• Apology given	34	1
• Act of grace payment	15	1
• Action/decision expedited	169	4
• Adequate explanation given	967	25
• Charge reduced or rebate given	37	1
• Reversal or significant variation of original decision	86	2
• Referred to appropriate alternative agency	168	4
No direct benefit for complainant		
• Police local resolution matters	829	21
• No assistance given	1605	41
Total allegations finalised	3910	100
Changes to law, practice or procedure	60	

Table 5 gives details of allegations finalised in respect of individual government departments, authorities and local governments. In addition, throughout this report are summaries of a number of interesting cases finalised during the year. Obviously, the cases referred to represent only a very small proportion of the matters finalised and, very importantly, they have not been selected because they necessarily reflect particularly poor administration by the government agency or local government concerned. Rather, the cases were selected because they illustrate the wide range of things that can go wrong and the kinds of remedial assistance my Office can provide. In most of the cases the agency concerned accepted my recommendations.

I should also mention that in a high proportion of cases I find that the complaint cannot be sustained. Sometimes this is because there is a conflict of evidence that cannot be resolved. However, in many cases I reach the conclusion that the agency has in fact acted reasonably and within its powers. As much as some complainants are reluctant to acknowledge it, public officers do not ordinarily go out of their way to inconvenience customers or to make unreasonable decisions. Such things do, on occasions, happen – but the system is not always wrong.

TABLE 5 : Outcome of allegations finalised 1998-99, by agencies.

Departments and Authorities	Complaints Received	Allegations Received	Finalised without completed investigation: No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Finalised by completed investigation: Partially favourable	Not substantiated	Police local resolution	Allegations Finalised
Aboriginal Affairs Department	1	1	1	-	-	-	-	-	-	-	1
Agriculture - Department	5	6	1	-	-	1	1	-	2	-	5
AlintaGas	2	2	-	1	-	-	-	-	1	-	2
Builders' Registration Board	3	3	-	1	-	-	-	2	-	-	3
Building Disputes Committee	1	1	-	-	-	-	-	-	1	-	1
Bunbury Health Service	1	1	-	1	-	-	-	-	-	-	1
Central Metropolitan College of TAFE	4	4	-	2	-	-	1	-	-	-	3
Coal Industry Superannuation Board	-	1	-	1	1	-	-	-	-	-	2
Commerce and Trade - Department	1	1	-	-	-	1	-	-	-	-	1
Conservation and Land Management - Department	12	12	1	1	-	-	3	-	6	-	11
Contract and Management Services - Department	3	3	-	1	-	-	-	-	1	-	2
Curtin University of Technology	4	5	-	1	-	-	1	-	2	-	4
Dental Board	1	1	-	-	-	-	-	-	-	-	-
Disability Services Commission	4	10	1	2	-	-	-	-	1	-	4
Edith Cowan University	4	7	1	-	-	-	1	1	3	-	6
Education Department	33	41	4	3	1	2	8	7	12	-	37
Energy - Office of	2	2	-	1	-	-	1	-	-	-	2
Environmental Protection - Department	2	5	-	-	-	-	2	-	4	-	6
Fair Trading - Ministry	9	10	-	1	-	-	-	-	10	-	11
Family & Children's Services - Department	40	75	1	9	5	2	5	2	30	-	54
Fisheries Department	-	-	-	-	1	-	-	-	1	-	2
Government Employees Housing Authority	3	3	-	-	-	-	-	-	2	-	2
Government Employees Superannuation Board	6	6	2	-	-	-	1	-	3	-	6
Guardianship and Administration Board	5	5	-	-	-	-	2	1	1	-	4
Health Department	11	11	1	4	-	-	1	2	2	-	10
Health Review - Office of	7	7	-	-	-	-	-	2	2	-	4
Hospital Boards	3	3	-	1	-	-	-	-	1	-	2
Housing - Ministry	115	121	-	24	2	6	26	15	43	-	116
Industrial Relations Commission - Dept of the Registrar	1	1	-	1	-	-	-	-	-	-	1
Insurance Commission	7	7	1	1	-	1	-	2	2	-	7
Justice - Ministry - Offender Management Division	499	510	1	156	120	16	76	34	107	-	510
- Other	60	71	1	9	7	8	13	9	24	-	71
Kalgoorlie-Boulder Cemetery Board	1	1	-	-	-	-	-	-	-	-	-
Land Administration - Department	6	13	-	1	1	-	1	-	6	-	9
Landcorp	2	5	1	-	1	2	-	-	7	-	11
Legal Aid	8	8	2	2	-	-	-	-	4	-	8
Legal Practitioners Complaints Committee	1	2	-	1	-	-	-	-	-	-	1
Local Government - Department	1	1	1	-	-	-	-	-	-	-	1
Local Government Advisory Board	1	1	-	-	-	-	-	-	1	-	1
Local Government Grants Commission	1	1	1	-	-	-	-	-	-	-	1
Lotteries Commission	3	3	-	-	-	1	-	-	1	-	2
Main Roads	6	6	-	2	-	-	1	-	6	-	9
Medical Board	1	1	-	-	-	-	-	1	-	-	1

TABLE 5 : Outcome of allegations finalised 1998-99, by agencies.

Departments and Authorities	Complaints Received	Allegations Received	Finalised without completed investigation: No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Finalised by completed investigation: Partially favourable	Not substantiated	Police local resolution	Allegations Finalised
Metropolitan Cemeteries Board	1	1	-	-	-	-	-	-	1	-	1
Metropolitan Health Service Board	14	17	1	9	-	-	-	1	4	-	15
Midland College of TAFE	1	1	-	1	-	-	-	-	1	-	2
Minerals and Energy - Department	1	1	-	-	-	-	-	-	1	-	1
Minerals and Energy Research Institute	1	1	-	-	-	-	1	-	-	-	1
Murdoch University	3	3	-	-	-	1	1	1	1	-	4
Museum Board	1	1	-	-	-	-	-	-	-	-	-
National Trust Of Australia (WA)	3	3	-	2	-	-	-	1	-	-	3
Nurses Registration Board	-	-	-	-	-	-	1	-	-	-	1
Occupational Health, Safety and Welfare - Commission	1	1	-	-	-	-	-	-	-	-	-
Peel Development Commission	-	1	-	-	-	-	-	-	1	-	1
Perth Market Authority	1	1	-	-	-	1	-	-	-	-	1
Planning - Ministry	11	13	1	4	-	-	-	3	3	-	11
Planning Commission	2	3	-	-	-	1	-	-	1	-	2
Police Department	1530	2149	7	60	43	65	266	38	988	832	2299
Productivity & Labour Relations - Department	3	3	-	-	-	-	-	-	3	-	3
Public Sector Standards Commission	-	-	1	-	-	-	-	-	-	-	1
Racing, Gaming & Liquor - Office	1	1	-	-	-	-	-	-	1	-	1
Regional Forest Agreement Steering Committee	1	2	-	-	-	-	-	-	-	-	-
Rottnest Island Authority	1	1	-	-	-	-	-	-	2	-	2
Settlement Agents Supervisory Board	1	1	-	-	-	-	-	-	1	-	1
South West Regional College of TAFE	1	1	-	-	1	-	-	-	-	-	1
Sport and Recreation - Ministry	1	1	-	1	-	-	-	-	-	-	1
State Revenue Department	8	8	-	2	-	-	1	1	5	-	9
State Supply Commission	-	-	-	-	-	-	-	-	1	-	1
State Training Board	1	1	-	-	-	-	-	-	-	-	-
Subiaco Redevelopment Authority	-	-	-	-	-	-	-	-	1	-	1
Tertiary Institutions Service Centre	1	1	-	1	-	-	-	-	-	-	1
Tourism Commission	2	2	-	1	-	-	1	-	-	-	2
Training - Department	1	2	-	1	-	1	-	-	-	-	2
Transport - Department	36	39	-	4	-	1	6	6	27	-	44
University of Western Australia	2	2	-	1	-	-	-	-	2	-	3
Veterinary Surgeons' Board	1	1	-	-	-	-	-	-	1	-	1
Water and Rivers Commission	-	2	-	-	-	-	2	-	-	-	2
Water Corporation	19	21	-	13	4	-	1	1	3	-	22
Water Regulation - Office of	6	6	-	1	-	-	-	1	2	-	4
West Coast College of TAFE	1	1	-	-	-	-	1	-	-	-	1
Western Power Corporation	51	51	-	-	-	1	10	3	27	-	41
Westrail	57	79	1	-	2	11	14	2	36	-	66
WorkCover	-	-	-	1	-	-	-	-	1	-	2
WorkSafe WA	4	4	-	1	1	-	-	1	1	-	4
Sub Total	**2649**	**3404**	**32**	**330**	**190**	**122**	**449**	**137**	**1401**	**832**	**3493**

TABLE 5 : Outcome of allegations finalised 1998-99, by agencies.

Local Governments	Complaints Received	Allegations Received	Finalised without completed investigation				Finalised by completed investigation				Allegations Finalised
			No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Partially favourable	Not substantiated	Police local resolution	
Albany - City	6	6	-	-	-	-	3	-	3	-	6
Armadale - City	4	7	-	-	-	-	2	-	6	-	8
Augusta/Margaret River - Shire	2	2	-	-	-	1	-	1	1	-	3
Bassendean - Town	1	1	-	1	-	-	1	-	-	-	2
Bayswater - City	5	7	-	3	-	-	-	-	5	-	8
Belmont - City	2	2	-	1	-	-	1	-	-	-	2
Beverley - Shire	2	3	-	1	-	1	1	-	-	-	3
Bridgetown - Shire	-	1	-	-	-	-	1	-	-	-	1
Broome - Shire	3	3	-	-	-	-	-	2	2	-	4
Bunbury - City	3	3	-	-	1	-	2	-	1	-	4
Busselton - Shire	6	7	-	1	-	-	-	-	3	-	4
Cambridge - Town	5	7	1	1	-	-	1	-	1	-	4
Canning - City	4	4	-	1	-	-	1	1	2	-	5
Capel - Shire	2	2	-	-	-	-	-	-	2	-	2
Carnamah - Shire	1	1	-	-	-	-	-	-	1	-	1
Chittering - Shire	1	1	-	1	-	-	-	-	-	-	1
Christmas Island - Shire	-	-	-	-	-	-	-	-	1	-	1
Claremont - Town	2	2	-	1	-	-	-	-	1	-	2
Cockburn - City	5	6	-	-	-	-	-	-	5	-	5
Collie - Shire	1	1	-	-	-	-	-	-	1	-	1
Cottesloe - Town	2	2	-	1	-	-	1	-	-	-	2
Cue - Shire	2	2	-	1	-	-	-	-	1	-	2
Dardanup - Shire	1	1	-	-	-	-	-	-	1	-	1
Denmark - Shire	1	1	-	-	-	-	-	-	-	-	-
Dowerin - Shire	1	1	-	-	-	-	-	1	-	-	1
East Fremantle - Town	3	4	-	2	-	-	1	1	-	-	4
Fremantle - City	7	7	-	1	-	-	-	1	3	-	5
Geraldton - City	2	2	-	1	-	-	-	-	1	-	2
Gingin - Shire	1	1	-	1	-	-	-	1	1	-	3
Gosnells - City	8	9	-	1	-	-	2	-	7	-	10
Greenough - Shire	1	1	-	-	-	-	1	-	-	-	1
Harvey - Shire	-	-	-	-	-	-	1	-	-	-	1
Irwin - Shire	-	-	-	-	-	-	-	-	1	-	1
Joondalup - City	12	12	-	2	-	-	1	5	4	-	12
Kalamunda - Shire	6	6	-	2	-	-	3	1	3	-	9
Kalgoorlie-Boulder - City	2	2	1	-	-	-	-	-	1	-	2
Katanning - Shire	1	1	-	-	-	-	-	-	1	-	1
Kwinana - Town	2	2	-	-	-	-	-	-	1	-	1
Mandurah - City	6	8	-	2	-	-	2	-	5	-	9
Melville - City	15	16	-	2	-	-	2	-	8	-	12
Moora - Shire	-	1	-	-	-	-	-	-	1	-	1
Mosman Park - Town	1	1	1	-	-	-	-	-	-	-	1
Mullewa - Shire	1	1	-	-	-	-	-	-	1	-	1

TABLE 5 : Outcome of allegations finalised 1998-99, by agencies.

Local Governments	Complaints Received	Allegations Received	Finalised without completed investigation: No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Finalised by completed investigation: Partially favourable	Not substantiated	Police local resolution	Allegations Finalised
Mundaring - Shire	7	8	-	3	-	-	1	1	5	-	10
Murray - Shire	3	3	-	-	-	-	-	-	3	-	3
Nedlands - City	5	6	-	-	-	-	2	-	4	-	6
Northam - Town	1	1	-	-	-	-	-	1	1	-	2
Northampton - Shire	1	1	-	-	-	-	-	-	-	-	-
Perth - City	11	11	-	2	-	-	3	-	5	-	10
Port Hedland - Shire	1	1	-	-	-	-	-	-	-	-	-
Ravensthorpe - Shire	1	2	-	-	-	-	1	-	1	-	2
Rockingham - City	11	11	-	2	-	-	1	4	3	-	10
Roebourne - Shire	1	1	-	-	-	-	-	-	1	-	1
Shark Bay - Shire	1	2	-	-	-	2	1	-	-	-	3
South Perth - City	10	12	-	3	-	-	2	1	5	-	11
Stirling - City	43	45	-	4	-	-	2	29	7	-	42
Subiaco - City	2	5	-	-	-	-	1	-	4	-	5
Swan - Shire	13	15	-	4	-	1	1	2	4	-	12
Toodyay - Shire	2	2	-	-	-	-	-	-	2	-	2
Victoria Park - Town	9	13	-	2	-	-	4	-	4	-	10
Vincent - Town	2	2	-	1	-	-	1	-	-	-	2
Wagin - Shire	1	1	-	-	-	-	-	-	1	-	1
Wanneroo - City	4	4	-	-	-	-	2	1	3	-	6
Waroona - Shire	1	1	-	1	-	-	-	-	-	-	1
Williams - Shire	1	1	-	-	-	-	-	-	-	-	-
Wyndham/East Kimberley - Shire	1	1	-	-	-	-	-	-	1	-	1
York - Shire	4	7	-	-	-	-	1	1	5	-	7
Sub Total	**266**	**303**	**3**	**49**	**1**	**5**	**50**	**54**	**134**	**-**	**296**
Organisations not within jurisdiction	116	120	115	5	-	-	-	-	1	-	121
Grand Total	**3031**	**3827**	**150**	**384**	**191**	**127**	**499**	**191**	**1536**	**832**	**3910**

CHAPTER 2

OUR PERFORMANCE

This chapter contains the material required by the Financial Administration and Audit Act 1985 and Treasurer's Instruction 904 – which require all government agencies, including my Office, to identify desired outcomes and outputs and to measure and report on the extent to which they have been achieved and delivered.

Mission and Outputs

The "mission" of my Office is "to assist the Parliament and the people of Western Australia to be confident that the Public Sector of the State is accountable for, and improving the standard of, administrative decision-making, practices and conduct". To achieve this, my Office aims to provide effective and efficient systems for handling complaints received about the administrative actions and conduct of government agencies, thereby identifying the underlying causes of complaints and making recommendations for changes to procedures, practices, policies or legislation which will prevent similar problems recurring.

Key Performance Indicators

The performance indicators that have been identified for my Office in recent years focus on two key aspects:

- efficiency - in terms of how quickly we are able to deal with complaints; and
- effectiveness - in terms of the extent to which we have been able to provide assistance to complainants and have agencies improve their practices and procedures.

In last year's report I mentioned that I was reviewing the statistical data my Office collects about complaints and that I planned to collect additional data which would result in improved performance indicators. Unfortunately this review has not yet been completed. I hope to be able to report enhanced performance indicators next year.

The key performance indicators for the past year are set out in the following pages, followed by the Auditor General's opinion regarding them. Following the Auditor General's opinion is information about the performance targets which were contained in the 1998/99 Budget Statements. That information is not subject to audit by the Auditor General.

KEY PERFORMANCE INDICATORS

The desired outcome from the activities of my Office is that the Parliament and the community can be confident that the public sector of Western Australia is accountable for, and is improving the standard of, administrative decision making, practices and conduct.

To achieve this outcome my Office aims to provide effective and efficient systems for handling complaints received about the administrative actions and conduct of government agencies, thereby identifying underlying causes of complaints and making recommendations for changes to procedures, practices, policies or legislation which will prevent similar problems recurring.

The work of my Office is performed via the following four output groups:

Police Service

Provide an effective and efficient system of investigating, and reviewing the adequacy of internal investigations of, complaints about the Police Service and Westrail Special Constables.

Other Public Sector Organisations

Provide an effective and efficient system of investigating complaints about public sector organisations other than the Police Service and Westrail Special Constables.

Information and Advisory Services

A range of activities is undertaken to provide members of the public and personnel of public sector organisations with information about the role of the Ombudsman and advice about good administrative practices.

Telecommunications Interception Audit

Perform the duties of Principal Inspector and Inspectors under the Telecommunications (Interception) Western Australia Act 1996.

KEY EFFECTIVENESS INDICATORS

The key effectiveness indicators of my Office report on the extent to which we have been able to provide assistance to complainants and have agencies improve their practices and procedures.

Police Service

A total of 846 allegations were brought forward from 1997/98 and a further 2,216 were received during the year. 2,352 allegations were finalised, 1,944 by review. Of the remaining 408 finalised allegations, assistance to the complainant (by way of apology, action expedited, act of grace payment, charge reduced or rebate given, reversal or significant variation of original action, or by the provision of an adequate explanation) was provided for 240 allegations.

	1997[1]	1998[1]	1999
• Percentage of allegations finalised where complainants received assistance[2]	67%	83%	59%
• Number of improvements to practices and procedures	17	24	14
• Number of allegations where Police or Westrail took further investigative action at the instigation of my Office	145	86	96

Other Public Sector Organisations

A total of 287 allegations were brought forward from 1997/98 and a further 1,611 were received during the year. 1,558 allegations were finalised and assistance to the complainant (by way of apology, action expedited, act of grace payment, charge reduced or rebate given, reversal or significant variation of original action, or by the provision of an adequate explanation) was provided for 1,173 allegations.

	1997	1998	1999
• Percentage of allegations finalised where complainants received assistance	83%	74%	75%
• Number of improvements to practices and procedures	81	42	46

KEY EFFICIENCY INDICATORS

Key efficiency indicators cover the timeliness with which we deal with complaints and the cost of the various outputs and activities.

Police Service[3] and 4

	1997	1998	1999
• Average time taken to finalise allegations (weeks)	18	18	17
• Allegations finalised per full-time equivalent staff member[5]	130	141	165
• Percentage of allegations finalised in less than three months	56%	58%	51%
• Percentage of allegations on hand at 30 June less than three months old	62%	67%	39%
• Cost per finalised allegation	n/a	n/a	$513

Other Public Sector Organisations

	1997	1998	1999
• Average time taken to finalise allegations (weeks)	19	10	13
• Allegations finalised per full-time equivalent staff member[5]	114	91	112
• Percentage of allegations finalised in less than three months	62%	83%	65%
• Percentage of allegations on hand at 30 June less than three months old	61%	72%	57%
• Cost per finalised allegation	n/a	n/a	$628

Information and Advisory Services

• Total cost of activity	n/a	n/a	$375,295

Telecommunications Interception Audit

• Total cost of activity	n/a	n/a	$70,038

Certification

The above performance indicators are based on proper records and fairly represent the performance of the Office of the Parliamentary Commissioner for Administrative Investigations for the year ended 30 June 1999.

Accountable Officer

1 These years only related to police and did not include complaints about Westrail Special Constables.

2 Allegations where the internal investigation was only reviewed by my Office are not included in the calculation of these figures because the categories of assistance included in the Office's statistical system are not applicable to them.

3 The figures for 1997 and 1998 only related to police and did not include complaints about Westrail Special Constables.

4 Allegations where the internal investigation was only reviewed by my Office are included for the purpose of these calculations.

5 The Full Time Equivalent (FTE) staff figure used for the purpose of this calculation includes investigating officers and a proportion of corporate services staff, the Ombudsman and the Deputy Ombudsman.

Auditor General

To the Parliament of Western Australia

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS PERFORMANCE INDICATORS FOR THE YEAR ENDED JUNE 30, 1999

Scope

I have audited the key effectiveness and efficiency performance indicators of the Parliamentary Commissioner for Administrative Investigations for the year ended June 30, 1999 under the provisions of the Financial Administration and Audit Act 1985.

The Parliamentary Commissioner is responsible for developing and maintaining proper records and systems for preparing and presenting performance indicators. I have conducted an audit of the key performance indicators in order to express an opinion on them to the Parliament as required by the Act. No opinion is expressed on the output measures of quantity, quality, timeliness and cost.

My audit was performed in accordance with section 79 of the Act to form an opinion based on a reasonable level of assurance. The audit procedures included examining, on a test basis, evidence supporting the amounts and other disclosures in the performance indicators, and assessing the relevance and appropriateness of the performance indicators in assisting users to assess the Parliamentary Commissioner's performance. These procedures have been undertaken to form an opinion as to whether, in all material respects, the performance indicators are relevant and appropriate having regard to their purpose and fairly represent the indicated performance.

The audit opinion expressed below has been formed on the above basis.

Audit Opinion

In my opinion, the key effectiveness and efficiency performance indicators of the Parliamentary Commissioner for Administrative Investigations are relevant and appropriate for assisting users to assess the Parliamentary Commissioner's performance and fairly represent the indicated performance for the year ended June 30, 1999.

D D R PEARSON
AUDITOR GENERAL
October 29, 1999

4th Floor Dumas House 2 Havelock Street West Perth WA 6005 Western Australia Tel: (08) 9222 7500 Fax: (08) 9322 5664

Other Performance Measures

The following are the performance targets contained in the 1998/99 Budget Statements and the actual performances achieved.

Police Service[1]	Target	Actual
Quantity		
Allegations finalised	1800	2352[1]
Timeliness		
Average time taken to finalise an allegation (weeks)	16	17[1]
Cost		
Cost per finalised allegation	$618	$513[1]
Other Public Sector Organisations		
Quantity		
Allegations finalised	1600	1558
Timeliness		
Average time taken to finalise an allegation (weeks)	17	13
Cost		
Cost per finalised allegation	$662	$628
Telecommunications Interception Audit		
Quantity		
Audit reports completed in accordance with legislation	1	1
Timeliness		
Statutory time limits complied with	100%	100%

[1] The targets only related to police and did not include complaints about Westrail Special Constables. The actuals include the 53 allegations against Westrail Special Constables which were finalised during the year.

CHAPTER 3

POLICE

The close of the 1998/99 year coincided with two events involving two very senior police officers who have, for the past five years, figured significantly in the working relationship between my Office and the Western Australia Police Service. The first was the retirement in June of the Commissioner, Mr Robert Falconer APM, who has without doubt been the main driving force behind the implementation of the Delta Program designed to achieve organisational and cultural changes in the Police Service. I think it can be fairly said that Mr Falconer, whose determination to equip the Service to meet the challenges of the 21st century did not endear him to some police members, has set the Service well on the way to achieving Delta's goals and objectives.

The second event was the notice given by the inaugural Assistant Commissioner (Professional Standards), Mr Jack Mackaay, of his intention to retire as of August 1999. Mr Mackaay was the most senior officer with whom my Office had most contact in its day to day dealings with the Service about the investigation of complaints about police. Although Mr Mackaay and I were not always of like mind, I must pay tribute to his readiness to accept opinions designed to raise the professional, technical and moral values of the Service, even if those opinions did not always match his own views about a particular issue.

I look forward to sharing a similarly fruitful professional relationship with the new Commissioner, Mr Barry Matthews, and with Mr Graham Lienert who has been appointed to succeed Mr Mackaay.

Overview

The year again saw an increase in the number of people who chose to exercise their right to lodge a complaint about either the way they had been dealt with in the course of some police operation or about the conduct of police officers. However, the increase in complaints made was well down on the 31% rise in numbers that occurred in the previous year and it is interesting to note that the total number of allegations/issues contained within all complaints decreased slightly. The key features of the year were:

- The number of complaints received about police decisions and conduct increased by 8.4% from 1411 to 1530. The number of individual allegations involved decreased – down 1.4% from 2180 to 2149. Included in this number are 363 issues (contained on 338 files) involving matters such as attempts at self-harm by persons in custody or issues of police conduct where there was no complaint by a member of the public but where police initiated their own investigation and then referred the matter to my Office for review.

- The number of allegations finalised increased by 21.7% - rising from 1889 to 2299.

- Reviews of the adequacy of police internal investigations were completed in respect of 1112 allegations – an increase of 52% on the figure of 734 last year.

- Of the total number of allegations dealt with by investigation or review (1297), approximately 24% were resolved totally or partially in favour of the complainant – up from 21% in the previous year.

The nature of the complaints

The 2149 individual allegations contained within the complaints received during the year fell into the categories set out in Table 1.

TABLE 1 Nature of allegations received about police during 1998/99

Failure to comply with police procedure	Number		%
• Improper arrest	51		
• Entry/search and seizure	88		
• Unlawful detention/custodial matters	188		
• Custody/handling of property	48		
• Failure to perform duty	79		
• Inadequate investigation	188		
• Failure to prosecute/improper prosecution	29		
• Treatment of children	24		
• Execution/service of documents	16		
• Other/general	297	1008	47
Assault or excessive force			
• Assault/undue force	257		
• Use of physical measures/batons/handcuffs	19		
• Use of firearms	22	298	14
Verbal abuse or threats			
• Demeanour/incivility	346		
• Harassment	54		
• Threats/intimidation	39		
• Interrogation/conduct of interview	20	459	21
Other misuse of authority			
• Traffic matters/procedures/use of police vehicles	121		
• Records/improper disclosure	60		
• Irregularity in evidence/perjury	38		
• Minor corruption/personal advantage	15		
• Improper exercise of powers	97	331	15
Administration matters			
• Condition of premises/facilities	1		
• Delays	3		
• Employment matters	5		
• Licensing matters	21		
• Records	9		
• Other/general	10	53	3
Total		2149	100

Changes to the police complaints system

Timeliness

In last year's report (at page 23) I mentioned that the Commissioner of Police and I had agreed to abandon the system of police seeking from me extensions of time in which to complete their internal investigations. Instead of monitoring the progress of internal investigations by the extension system, the Commissioner and I had agreed that targets would be set for the time taken to complete internal investigations. The targets agreed were as follows:

TABLE 2 Targets for finalising internal investigations

	Year ending 30 June		
Major complaints	1999	2000	2001
• Within 42 days	30%	35%	40%
• Within 43-90 days	35%	40%	45%
• Within 91-150 days	35%	25%	15%
	100%	100%	100%
Local Resolution complaints			
• Within 30 days	100%	100%	100%

The new procedure came into operation on 1 January 1999. Consequently, for the first six months of the 1998/99 year I was required to continue to grant extensions and a total of 341 extensions were granted in that period. However, that practice ceased after 31 December 1998. Because of the split reporting for the year it is perhaps a little too early to assess the effectiveness of the new procedure. However, Table 3 shows the time taken to complete a sample of 1187 police internal investigations according to data maintained by my Office for complaints about police received and completed during the year 1 July 1998 to 30 June 1999.

TABLE 3	Time to complete police internal investigations		
Local Resolution complaints		Number	%
0-30 days		241	47
31-42 days		35	7
43-90 days		137	26
91-150 days		72	14
More than 150 days		31	6
Total investigations completed		516	100%
Average time to complete	26 days		
Major complaints			
0-42 days		108	16
43-90 days		162	24
91-150 days		204	31
More than 150 days		197	29
Total investigations completed		671	100%
Average time to complete	112 days		

Although police have obviously not achieved the targets set , the average time for completion of Local Resolution complaints is less than the target time of 30 days. I am particularly concerned by the fact that 29% of major matters and 6% of Local Resolution matters took longer than 150 days to complete. I recognise that in some cases there are quite valid reasons why investigations may be delayed, but unfortunately that is not the situation in every case. On two occasions – in March and May 1999 - I wrote to the Commissioner of Police drawing his attention to some of the oldest matters e.g. matters over 270 days old. I am aware from discussions with the Assistant Commissioner (Professional Standards) and monitoring of the older matters that action was taken to address the problem. I am continuing to monitor the situation closely because delays in completing investigations can be an indication that management of the complaints system is failing and that some officers responsible for complaint investigations are not devoting sufficient time, energy and resources to the task. Delays are also unfair, not only for complainants but equally for the officers who are the subject of the complaints.

Quite a few Local Resolution matters are taking longer to finalise than they should. The upper target limit for Local Resolution matters is 30 days and the fact that some matters remain to be resolved after 150 days means, in effect, that they should not have been dealt with as Local Resolution matters. In the absence of appropriate explanations one might argue that the guidelines about what can be dealt with as a Local Resolution matter are being ignored by the officers responsible for dealing with these older matters. If that should be the case it is an indication of a serious problem which needs to be addressed by police management.

Although we have abandoned the extension system my Office has retained the right, at any time during the course of a complaint investigation, to request a report about the progress of an internal investigation. That can be by telephone - normally at about the 90 day mark - or, in the case of the older matters, by letter. To assist in streamlining the progress report procedure my Office has developed a pro forma style of report for use by the investigating officer. As an alternative to a written progress report, my staff may decide to examine the internal investigation file. I prefer that this is done by my staff arranging to visit police in order to examine the file in situ because that achieves my objective without causing too much interruption to the progress of an investigation. However, where my staff find that the matter is one of some complexity I reserve the right to remove the file or ask that the file to be sent to my Office for more detailed review. If a file is removed to my Office, I have guaranteed its return within seven days.

The timeliness of internal investigations remains of major importance and I will continue to monitor the situation and report on it in the future.

Review of completed investigations - Complainant involvement

The police complaint system was described briefly in last year's report at pages 19/20. However, there have been some changes made to it in the past year and, in addition to the abandonment of the extension process mentioned above, the system has also been amended slightly in other respects. Previously, on completion of a major internal investigation, police could not advise the complainant of their conclusions on the matter until my Office had reviewed the investigation file. Police were required to forward the investigation file to my Office for review first and could only write to a complainant after I had advised them that I was satisfied the matter had been adequately investigated. That situation no longer applies and police now notify complainants of the results of their investigations before the file is sent to me. At the same time police are required to advise complainants that the investigation file will be sent to me for independent review and to expect that someone from my Office will contact them to discuss their complaint.

On receipt of the investigation file one of my investigating officers posts a questionnaire to the complainant - inviting him/her to provide their views about both the investigation process and the police conclusions about the merit of their complaint. Where appropriate, my staff will also contact complainants by telephone or will invite them to visit my Office to discuss the matter. The objectives of this amendment to the system are twofold. The first is to attempt to place responsibility on police to ensure that their investigations are completed in as thorough a manner as possible at the first attempt and the complainant notified of the outcome in a comprehensive way. The second is to obtain comment and information from complainants that will facilitate a more complete review and enable me to determine more effectively, at the review stage, whether further enquiries are necessary. If I consider that further enquiries are required the file is either returned to police for further work or I may decide to conduct my own investigation.

Outcomes of matters finalised

Table 4 shows how allegations finalised in 1998/99 were dealt with by my Office.

TABLE 4 Outcome of allegations against police finalised 1998/99

	Number of allegations	%
No investigation required		
• No jurisdiction	7	-
• Discretion exercised not to investigate	60	3
Investigation not completed		
• Investigation discontinued	38	2
• Withdrawn/lapsed	65	3
Completed investigation or review of internal investigation		
• Totally or substantially favourable to complainant	266	11
• Partially favourable to complainant	43	2
• Not substantiated or unable to be determined	988	43
• Local resolution matters judged adequate	832	36
	2299	100

General observations

Because of the increase in the number of complaints about police received during the last two years the Police Section of my Office has concentrated on identifying ways in which its resources can be more specifically applied. The primary objective of this has been to enable the section to respond both to the wider public need for its services and to current trends evident in complaints about the Police Service.

A significant increase in the volume of less significant complaints received and the requirement for a greater output from finite resources within the section prompted me to establish guidelines dealing with what might be considered frivolous and vexatious complaints. Similar guidelines have been instituted for dealing with persistent complainants whose complaints have been properly investigated by police or my Office but who are unable or unwilling to accept an outcome that quite often does not uphold their specific complaints. In short, I have resolved to exercise more stringently the discretion that is available to me under the Parliamentary Commissioner Act 1971 with regard to complaints of that nature. This will allow my officers more time to deal with the more serious complaints and to conduct enquiries into systemic issues which are more likely to result in long term benefits for the administration of the Police Service and for the public.

There has also been an increase in complaints from members of the Police Service, covering a wide and varied range of concerns. Utilisation of my Office by police officers to raise matters of concern to them is encouraged and illustrates one way in which my Office is providing support for the Police Service objective of achieving greater openness and accountability within its ranks.

It would be remiss of me not to acknowledge and commend the Police Service on two particular areas of positive change established within the Service over the past year. First, I am impressed by the new procedures for the management of self-harm investigations. In my view the standard of those enquiries reflects the application of sound management principles and an investigative rigour that has resulted in an elevated level of enquiry. Second, during the year police introduced the Blueline and Supported Internal Witness Programs that provide the means for police personnel to report the misconduct of other police personnel without the fear of personal reprisals that may previously have been perceived. I view these initiatives as positive steps towards breaking down cultural barriers with regard to the reporting of serious misconduct or corruption within the Police Service.

Investigation standards

In last year's report (at page 25) I commented on the standard of internal investigations that had been undertaken by officers in District Offices. I said that although this arrangement was in line with the Police Service objective of making district managers more accountable for the conduct of their officers (a goal with which I agree), I had some concerns about it. Those concerns relate to the potential for conflicts of interest to arise; the demands of normal policing duties impacting on the competent, timely and professional resolution of complaints, and problems that I perceived relating to quality control and the uncertainty about where accountability for those district level investigations actually lies.

I have already commented above in relation to ongoing problems with the timeliness of both major internal investigations and some Local Resolution matters and my intention to continue to monitor progress in that area. Matters of quality control and accountability were the subject of discussions throughout the year designed to clarify and improve the overall position. As I understand it primary responsibility for the conduct, management and quality of a district level internal investigation rests with the officer in charge of the district to whom it is sent for investigation. The Internal Investigations Unit ("IIU") of the Police Service retains responsibility for conducting the more serious and complex investigations as well as setting standards and providing training and advice for officers from the districts who undertake an internal investigation. IIU also retains some responsibility for overall quality control. The message does seem to be getting through to the districts, because the perception from reviews that I have conducted of investigation files is that district managers are now more actively involved in the management of internal investigations - quite often referring files back for further work to be done by their staff. It is also encouraging to see the involvement of Regional Commanders in the system. The outcome of this is evident in a further reduction in the number of investigation files that have been returned to police for further work to be done, with 71 files only (down from 86) needing to be returned.

The most significant advances, however, have stemmed from my completion of the investigation referred to as "Case One" of my 1998 report (at page 26). This matter was about a complainant who alleged that he had been denied his rights at the East Perth Lockup, in particular that he was denied medical attention and was improperly refused bail. Despite there being video evidence which supported the complainant's allegations the matter had taken over thirteen months to bring to a conclusion. My investigation of that matter resulted in me making four recommendations:

1. That the complainant should receive a written apology from the Commissioner of Police acknowledging that the internal investigation of his complaint and its supervision was inadequate;

2. That the Commissioner of Police or the Assistant Commissioner (Professional Standards) should provide written apologies to the officers involved – for the delay in finalising the matter;

3. That, in consultation with my Office, the Professional Standards Portfolio should develop a district level investigators kit, which should be given to all officers who are required to conduct district level internal investigations and should at least include the following:-

- A full and clear explanation of the internal investigation process, including the roles and powers of my Office, the Anti-Corruption Commission, the Internal Investigations Unit and the Internal Affairs Unit.
- A flow chart explaining the various stages of the complaint handling system.
- An explanation of the expectations the Commissioner of Police has of district level internal investigators.
- An explanation of my expectations of district level internal investigators.
- Contact telephone numbers for relevant personnel at IIU and my Office, and advice on the types of assistance that can be obtained from those sources.
- A clear explanation of internal investigation review protocols.
- A clear explanation of the rights and obligations of officers subject to internal investigations.
- A clear explanation of the powers available to internal investigators and guidance as to how such powers should be exercised.
- A clear explanation as to the meaning of the terms "impartiality", "accountability" and "transparency", and how to give effect to those notions.

4. That, in consultation with my Office, the Commissioner of Police should devise a system of accountability and responsibility for the supervision and review of district level internal investigations that will enable all people involved in the system, including my Office, to determine precisely where responsibility lies in any given matter. Further, that the system devised should be widely published within the Police Service.

I am pleased to be able to report that the Deputy Commissioner has written to me advising "I concur wholly or in part with all four of your recommendations, albeit in some instances for different reasons" and that the various matters agreed had been referred to the Acting Assistant Commissioner (Professional Standards) to ensure implementation of my recommendations. Discussions on implementation are ongoing.

The following cases are further examples of my involvement with police internal investigations.

Case One

I received a complaint from a company alleging that police had failed to investigate adequately allegations of fraud arising from a business arrangement. The allegations had originally been made to and investigated by police, following which an internal investigation was conducted. The internal investigation was reviewed by my Office and the investigation was deemed adequate. However, a solicitor for the complainants subsequently notified me that his clients were dissatisfied both with the criminal investigation and the later internal complaint investigation. I interviewed the complainants and identified additional lines of enquiry. I decided that I should investigate the matter.

At the conclusion of my investigation, which included re-examining the information considered by the original criminal investigation and interviewing a number of the parties involved in the matter, I formed the view that the investigation conducted into the allegations of fraud had not been of an acceptable standard. In my view this had occurred because of a lack of adequate supervision, the failure of investigators to properly document and record the investigation as it progressed, and the failure to bring it to a conclusion in a timely manner. I made a number of recommendations in my report on the matter to the Commissioner of Police. These included:

- That an apology be given to the complainants for the poor standard of the original investigation;
- The recommendations identified by the Investigative Practices Review relating to improvements in case and investigation management should be implemented;
- The development of a policy governing the engagement of independent outside experts;
- Review of the COPS Manual relating to the submission of offence reports; and
- That consideration be given to some form of disciplinary action against the case officer involved in the original investigation.

My recommendations were accepted by the Commissioner and I am monitoring their implementation.

Case Two

The complainant told me that he had been arrested by police in the early hours one morning and charged with disorderly conduct and resisting arrest. He said that the arrest occurred when his friend, who was quite drunk, got involved in a fight with four young men. Seven police officers arrived at the scene but when he tried to tell them that the young men had started the fight the police arrested him. He considered that this action was unreasonable. In accordance with the legislation I forwarded his complaint to the police for investigation.

At the completion of the internal investigation the file was sent to my Office for review. I was not satisfied that the matter had been adequately investigated in that the evidence was confined, in the main, to the accounts of the police and there was nothing from any possible independent witnesses who might have been at the scene. These witnesses included a busker and four young women who, along with the complainant and his friend, had been listening to the busker prior to the fight starting. I asked the police to conduct further enquiries to establish whether or not there was evidence available to either support or rebut the complainant's version of the incident. However, apart from identifying the busker – who was unable to assist police – those enquiries were unsuccessful.

In the meantime the complainant had appeared in court and the disorderly conduct charge had been dismissed. Nevertheless, the magistrate found the resisting charge proven and a conviction was recorded. The magistrate commented that the arrest was lawful because when it happened the police were unaware of the alleged assault on the complainant's friend and could only base their decision on the complainant's own conduct at the time.

After reviewing the police internal investigation file in light of the court's decision, I formed the view that the police internal investigator had failed to consider the failure of the officers to obtain the names of independent witnesses who might have been available to give evidence about the incident at the complainant's trial. I returned the file to police and requested them to consider this aspect. I told police that I was of the opinion that a reasonably competent standard of police work demanded that when officers attend public disturbances at which there are several witnesses, some effort should be made to ensure that at least the names and addresses of those witnesses are sought and recorded. I said that I considered that such details were required in this case because the complainant contested the charges preferred against him at trial and many aspects of the incident were in dispute. In these circumstances the availability of the testimonies of independent witnesses would have assisted the court to better determine the facts of the matter.

After reconsidering the matter police agreed with my views and provided instruction to the officers concerned.

Local Complaint Resolution

Approximately half of the complaints about police received during the year related to less serious matters such as the attitude and language of police officers or other issues of inadequate explanation for police actions or inadequate service.

Since 1 July 1998 these types of complaint have been dealt with by police at a district level using a less formal system of inquiry known as Local Complaint Resolution. I outlined the system in place for local resolution in last year's report (at pages 20/21) but it is worth repeating the main aspects of it.

Complaints suitable for local resolution must be dealt with speedily (usually within 14 days) and informally, at a local level, by trained police resolving officers. The process is explained to the complainant at the outset and he or she is asked what type of outcome is sought. The resolving officer has both a fact finding and dispute resolution role and may present options and suggestions for resolution to both the complainant and the police officer involved in the complaint. All parties to the complaint are asked to sign a complaint resolution form which sets out the details of the complaint, the issues identified and dealt with and the outcome of the resolution process. Some typical examples of local resolution outcomes are:

- the complainant accepted an explanation of police actions;
- an apology was given by the police officer concerned or on behalf of the Police Service;
- although the complaint could not be resolved because of a conflict of account, the complainant accepted that all possible action had been taken to resolve the matter and did not require further action.

When the local resolution process has been completed a copy of the complaint resolution form is sent to my Office for review of the adequacy of the police investigation. To assist in this review a questionnaire is sent to the complainant asking whether he or she is satisfied with the resolution process. Any comments made are taken into account in my review of the local resolution. If I am not satisfied with the handling of the complaint I can ask police to investigate further or I may decide to carry out my own investigation.

Early indications were that the local resolution system was being well accepted by both police officers and complainants and that the majority of complaints were being dealt with in a timely way. This trend has continued with the local resolutions dealt with during the year.

From the questionnaires returned to my Office by complainants it seems that the majority of them (76%) were satisfied with the local resolution process and the time taken by police to deal with their complaint (79%). Although slightly fewer respondents (70%) were satisfied that all of the issues they had raised were properly considered in the resolution of their complaint and that an appropriate resolution had been reached, the response overall is encouraging.

The following case note illustrates how the local resolution process is working.

Case Three

A computer was seized by police following an allegation that the owner was involved in "computer hacking". The computer owner's mother complained about the continued delay by police in returning the computer as she believed it was unjustified and having an adverse affect on her son's schooling. The original resolving officer could not resolve the complaint as the Major Fraud Squad was not able to investigate the allegation and return the computer within a reasonable time due to their workload. A second resolving officer intervened and arranged for the complainant, at her request, to provide a separate hard drive to police so it could be installed onto the seized computer and for all files to be copied to it. The seized computer, containing a new hard drive and copies of all original files, was returned to the complainant and the original hard drive was retained by the Major Fraud Squad for investigation. Both the police and the complainant were happy with the outcome.

Reform of the Police Act - police powers of detention and search

In March 1996 my Office was invited by the then Commissioner of Police to comment on a number of draft Bills making up the proposed reform of the Police Act 1892. The opportunity to comment on the Bills was welcomed in view of my Office's involvement in complaints that have raised the issues of police powers of detention, search and seizure.

The draft Bill that directly concerned the issues raised by complaints to my Office was the Criminal Investigation and Procedure Bill. Comments on the draft provisions in this Bill were provided with particular emphasis on those provisions dealing with the power of arrest and detention of a suspect for the purposes of questioning, and the power of search (including a strip search or intimate search) of persons and premises.

Three years later, I continue to receive advice from the Police Service that the proposed new legislation is still being developed. The slow progress of this and the other Bills making up the reform of the Police Act is disappointing.

I understand that part of the reform of the Act is a proposal to give police the power, in particular circumstances, to detain suspects for questioning. In principle, I support changes to the existing legislation that will better define a police officer's ability to detain a suspect for questioning and the rights of the suspect in those circumstances. While this reform is delayed the legal position remains uncertain and I continue to receive complaints about the length of time persons are held in custody before they are either released or processed to bail.

In last year's report I referred to the issue of unlawful or improper detention and the examples I gave of cases dealt with during that year illustrating that police continue to detain persons for questioning in circumstances where they have no authority to do so. I have continued to monitor the position and propose to publish a separate report highlighting the inadequacies of the protection available under the current legislation - both for the police and for persons who, rightly or wrongly, become the focus of police attention.

The same position of uncertainty exists with police powers to search persons. I continue to receive complaints concerning the manner in which searches of the person are carried out. I believe it is important to set out clearly in legislation the circumstances in which police may conduct a personal search, the extent of the search and the circumstances which require a medical practitioner to carry out the search.

Subsequent to March 1996 and in the light of the fact that the proposed reform of the Police Act in this area had not taken place, my Office recommended that police put in place interim procedures dealing with strip and intimate searches of persons. However, the implementation of these procedures has also been slow as the following example illustrates.

Case Four

The complainant was at work when police executed a search warrant under the Misuse of Drugs Act at her house. In the house at that time were the complainant's 20 year old son, a friend of his, and the complainant's 11 year old daughter. The police search had been underway for some 30 minutes when the daughter asked police if she could go to the toilet. A female police officer was summoned to the scene to supervise this request. The daughter was taken to a toilet adjacent to the laundry area, out of the view of any male persons at the scene. Prior to using the toilet the daughter was requested to undress by the female police officer and a visual search was made. A cursory examination was made of the inside of her clothes after which she was allowed to re-dress. Questions were raised as to whether the complainant's son was informed of the intention to search his sister, and why a request allegedly made to police for the complainant to attend the scene to supervise the search of the daughter was not actioned when the mother was at work just five minutes by car from the house.

Overall, my investigation found that the police search was conducted lawfully and with adequate concern for the young girl's privacy and sensitivity. However, it was discovered that although police had some time ago prepared draft operational procedures in relation to strip searching – including the searching of juveniles - they had yet to be implemented. It is unfortunate that they were not implemented because if followed they would have avoided this complaint being necessary. I recommended to the Commissioner of Police that the draft procedures should be implemented as a matter of urgency.

The Commissioner has accepted my recommendation and advised that the Detective Training School had been given the task of implementing the draft procedures.

Proposals for changes to legislation that will assist police to investigate offences, but at the same time clarify the legal position and provide adequate safeguards to the persons affected by police actions, are well overdue and should be given priority.

Police policy & procedure

In recent times the Police Service has undertaken a program of reform under the 'Delta Program' which is the spearhead of change in the management and delivery of police services in Western Australia. It is evident that the Service is striving continually to modify and improve its service to meet the needs and requirements of its officers and the public that it serves. The Delta Program has generated numerous ideas and proposals, many of which are still in the draft stage and are yet to be officially adopted and implemented. Other everyday working practices have yet to be officially implemented. The challenge to continue the good work and changes initiated by the Delta Program is an ongoing one for the Service and I support its efforts and will follow progress with interest.

Throughout the year my Office has dealt with matters concerning police policy and procedure. The term "police policy and procedure" is often quoted by police officers in relation to certain aspects of their duty when addressing issues under review by my Office. It is sometimes the case, however, that when police are requested to provide details of the policy and/or procedure, it is found that the policy or procedure document is either in a draft form which has not been ratified or does not exist. Similarly, police officers often perform their duties in line with "accepted practice" or "standard procedure"; i.e. methods of working that are unofficially sanctioned and have been adopted by police over the years as everyday routine.

No doubt there are many situations facing police where it would be impractical or impossible to have a prescriptive policy or procedural document in place. By its nature policing is often subjective and police officers are frequently called upon and expected to exercise judgement and discretion. However, where there are issues

that are fundamental to the effective operation of everyday policing, and which impact on and affect routine policing issues, I would expect there to be policies in place and those policies to be formally documented – and, preferably, incorporated into the Commissioner's Operating and Procedures Manual ("COPS Manual"). The objective of this is twofold - first to ensure that there is consistency in policing and officers are aware of the requirements placed on them and, second, so that officers' behaviour can be measured against the stated policy.

My Office will continue to monitor the situation and draw attention to instances where policy, procedure and practice are applied but not officially recognised or approved by the Commissioner. In this way it is hoped that my Office will help to ensure procedural consistency and standardise everyday policing practices.

The following case investigated by my Office serves as an example of the need for definitive policies in critical areas of police work.

Case Five

I received a complaint from a solicitor representing a man who had been arrested and charged with loitering following a plain-clothes police surveillance operation targeting allegedly unlawful activity at a "gay beat". One of the issues raised in the complaint was that police had not acted in accordance with the Police Service policy for similar operations – which policy had previously been outlined in a letter from police to the solicitor in respect of another, earlier matter.

During examination of the complaint I was concerned that the relevant operational police did not appear to be aware of the existence of this policy. I raised this issue with the Police Service and sought access to the policy document in order to assess whether the officers had complied with the requirements set down and also to consider whether the policy was adequate. However, the Police Service advised me that there was no official policy and that they did not intend formulating a general policy on dealings with the gay and lesbian community. To do so, they said, would limit the ability of police to exercise discretion and would set a precedent requiring the Police Service to formulate policies dealing with each one of the various minority groups in the community. I was also informed that the previous advice to the solicitor had been a general statement of principle rather than an official policy.

I met with the Acting Commissioner of Police and one of his Assistant Commissioners and we discussed the need for an appropriate policy on the subject. We agreed that we would give further consideration to the issue by forming a working party to consider options ranging from a general policy to a set of specific guidelines applicable to police operations targeting unlawful activity at gay beats. Guidelines have now been approved by Police Service Command for incorporation in the Commissioner's Orders and Procedures Manual. Although I believe that the Police Service still has further work to do to fully address this issue, I consider the guidelines to be a step in the right direction which, if followed in spirit by police officers, goes some way towards meeting the needs of both police and the gay community as well as wider community expectations.

Firearms

As in past years I again received a number of complaints about how the Police Service, in particular the Firearms Branch, administers the *Firearms Act* and *Regulations*.

Individually most of these complaints were quite different because they each raised specific issues requiring consideration of factors unique to the case as well as various issues concerning the actions of the police officers involved in each case.

However, a number of the complaints fell into two broad categories:

- matters involving allegations of undue delay in the processing of the various applications, renewals and changes required under the legislation; and

- issues of inconsistency in the application of the various discretionary powers available to police under the legislation.

The processing of various firearms licensing and renewal documents by police is shared between the Firearms Branch and operational police officers located in police regions and districts, with each having responsibility for various aspects of the process. The size of Western Australia makes that approach quite reasonable. However, this often leads to inconsistency in decisions made by the various areas and locations relating to the conditions, requirements and restrictions which are imposed on licence applicants. Also, depending on the priority given to firearm matters and the availability of resources, the time taken to process applications varies from district to district and between the regions.

I have no doubt that these factors and others combine to increase the number of complaints received by my Office. I also believe that both the community and those persons who have an interest in the licensing of firearms have a right to expect a consistent level and standard of service.

As with almost every other aspect of policing, the administration and application of the firearms legislation should, as much as is reasonably possible, be consistent throughout the State. In other words if an application is made at a metropolitan police station I would expect that generally the same licensing requirements would be imposed there as would happen at a remote country police station – subject only to any necessary differences due to geography and the proposed use of the firearm. I would also expect all applications to be processed in a similarly expeditious manner.

My officers have held informal discussions throughout the year with representatives of the Police Service regarding many of the specific matters highlighted by individual complaints and a number of improvements have been made. However, in recent times the nature and number of complaints received suggest that there may be systemic problems in the way police administer the relevant legislation. There may be a need for the Commissioner of Police to consider whether a review is required of the various legislative and procedural aspects governing how the Police Service administers and exercises the various discretionary powers available to it and to also consider whether the licensing system could be improved. I intend to maintain an interest in these matters during the next year and may involve myself much more in the issues.

The case notes below illustrate some of the types of matters concerning firearms which I considered this year.

Case Six

The complainant's firearms had been seized in October 1996 under a warrant issued pursuant to sections 26(2) and 24(2) of the Firearms Act 1973. At that time the legislation did not contain any further direction as to what procedure police should then follow to deal with the firearms but in December 1996 both the Act and the Firearms Regulations were amended. One of those amendments contained a directive outlining procedures for police to follow where firearms are seized in similar circumstances – viz. s.24(8) and Regulation 22A.

In February 1997 the Firearms Branch wrote to the complainant advising him that consideration was being given to revoking his firearm licence. However, he was subsequently able to satisfy them that he was a fit and proper person to hold a firearm licence and the Firearms Branch wrote to him in April 1997 advising of their intention

not to proceed with revocation proceedings. He was told, however, that his firearms would be retained by police until the expiration of various restraining orders taken out against him by his ex-wife and the position would be reviewed at that time. The complainant's firearms were eventually returned to him in February 1998.

Following my consideration of this matter I formed the view that despite the fact that the complainant's firearms had been seized prior to the implementation of the December 1996 amendments, the Firearms Branch should have complied with the requirements created by those amendments. The letter of February 1997 suggested police had gone some way towards following the required procedure but the decision to continue to hold the firearms until the expiration of the restraining orders was not supported by any legislative authority. It appeared to me that the options available to police at that point were to either revoke the licence, return the complainant's firearms, or impose a condition or restriction on his licence. Instead, police had retained the complainant's firearms for a period of almost 10 months without legislative authority.

I recommended that the complainant be informed of the position in a suitably worded letter acknowledging that the correct procedure was not followed and offering an apology for this oversight. The Commissioner of Police accepted my recommendation and the complainant expressed satisfaction with that outcome.

Case Seven

Three complaints were received which involved the seizure of firearms by police either by virtue of a warrant pursuant to s.26 of the Firearms Act 1973 or seizure under the general power given to police by s. 24 of the Act.

In each case I considered that, although police had acted in good faith, they had retained the seized firearms for an unreasonable length of time before taking action to either return or dispose of the firearms as required by the Act. In addition, my investigation revealed that police were using outdated search warrant application forms and search warrant forms and that the amended forms as prescribed by the Firearms Regulations 1974 were imprecise about procedures to be followed. The problem was compounded by the fact that the Police Service Firearms Licensing Procedures Manual incorrectly interpreted the legislation and the procedures that must be followed by police.

I recommended to the Commissioner of Police that:

1. all outdated forms be withdrawn from police use and destroyed; and

2. consideration be given to amending the wording of the new forms (by amending the relevant Regulations) and the Licensing Procedures Manual to make clear how police were required to deal with firearms.

My recommendations were accepted and an undertaking was given by police that they will recommend appropriate amendments to the Act and Regulations. I intend to monitor the implementation of the proposed amendments.

Case Eight

In the course of making a series of complaints about a range of matters involving mainly non-police personnel, the complainant alleged that some twelve months earlier an on-duty police officer had purchased a firearm from a person at the counter of a police station when the owner arrived at the station to hand over the firearm for destruction. Police decided (correctly, in my view) that the allegation was sufficiently serious to warrant an investigation. That investigation revealed that not only had the purchase been made but that the officer buying

the firearm had subsequently arranged for a junior officer to witness and grant his application to add the firearm to his existing licence and then signed the "checking" portion of the application himself. The application was then forwarded to the Firearms Branch who added the firearm to the police officer's licence.

When the police internal investigation was forwarded to my Office for review I concluded that the investigator had not dealt with the matter as fully as he should. In my opinion he had failed to appreciate the fact that the officer concerned was a person of relatively senior level with many years experience. Consequently, I returned the file to police with a request that further work be done. I told police that I was of the opinion the police officer had a duty to comply with the person's request to dispose of the firearm and not use his position as a police officer to obtain the firearm for his own use. I also said that I considered that the manner in which the officer had acted in arranging for the firearm to be added to his licence was inappropriate in that, in addition to the shortcomings of procedure noted above, he had also failed to comply with relevant provisions of the Commissioner's Orders and Procedures Manual.

Police reconsidered the matter and agreed with my views. I was advised that the officer was to be formally counselled.

Use of force by police

There can be no doubt that from time to time police officers will find themselves in situations where they are confronted with people who become violent. Dealing with such situations is fraught with difficulty and may well result in police having to resort to the use of reasonable force when the lesser options available to them have failed. Such lesser options include their mere physical presence, the use of words (verbal judo) and the use of empty hand tactics such as arm and hand restraints. In some cases they may have to go beyond these basic tactics - but in all cases it is important that they are properly trained to use all of the various options and that they are both required and given the opportunity to maintain their skills levels in any use of force techniques.

In last year's report (at page 34) I commented on an investigation I had conducted about the use of head and neck restraints by police. Also under investigation at the time that report was published was a complaint about the use of force by police in effecting the arrest of a man which had resulted in that person suffering quite serious injuries, including a fractured kneecap. That investigation has since been completed and I am now able to report on my findings and recommendations in the matter.

Case Nine

Police attended at a residence early one evening in response to a telephone call that a man was making threats and was in possession of a knife. Two officers attended and were met at the front door by the female owner of the residence and the male who was the subject of the phone call. The male was not a resident of the house but had been a regular visitor. One officer stayed to talk to the owner and the other went with the male through to the kitchen to discuss the matter. They were joined a short time later by the second officer. Police alleged that during the discussion the man asked the officers to leave the house and began to threaten self-harm with a kitchen knife. It was also said that he had advanced towards the officers waving the knife at them in a threatening manner, but when the officers put their hands on their firearms the man retreated and again threatened to harm himself. The man denied threatening the officers but admitted that he had threatened to harm himself. He also said that he had eventually put the knife away in a drawer.

Police called for back up and two more officers attended at the house. In the meantime, the first officer had continued to talk to the man and seemed to have established some rapport with him. He was able to move a knife

out of the man's reach and to close the kitchen cutlery drawer. Shortly after the other three officers appeared in the entrance to the kitchen the first officer moved swiftly to effect an arrest. The man resisted strongly - although seemingly without attempting to harm the officer - and the other officers moved in to assist. After a brief struggle, during which the man was kicked by one of the officers, the man was brought to the floor. He was then carried bodily from the house and placed on the ground to be handcuffed before being placed in a police van.

The man, who subsequently became my complainant, made a number of allegations about police conduct in effecting his arrest that included a claim his broken kneecap was caused by a police baton. He also claimed that because of his injuries he had been unable to work for about eight months. Complicating the matter from a police perspective was the fact that the man was subsequently found not guilty by a court of the charges resulting from his arrest, the principal one being that he had remained on premises after being warned to leave by police.

My investigation of the matter involved conducting interviews with the complainant and the four police officers involved in his arrest, obtaining medical evidence with respect to possible causes of kneecaps being broken, and examining both the court transcript and the police internal investigation file. My staff also spoke to officers from the Police Academy's Tactical Training Unit about the training given to police in the use of restraint and compliance holds.

There was no independent evidence available to support either the accounts of the police officers involved or the account of the complainant, and my conclusions on most of the issues raised by the complainant generally found in favour of the police. For example, I found that the police had not refused to leave the premises and they remained there at the express wish of the owner. Furthermore, I found that the police had acted reasonably when they moved to arrest the complainant to ensure the safety of the owner and her family.

I was, however, critical of police for the level of force used in effecting the complainant's arrest. In my view, the way police had gone about the arrest was primarily responsible for the injuries he suffered. Although I did not uphold his allegation about the baton – the use of which may have been justified in the circumstances (although all the police officers involved denied that a baton had in fact been used) - I considered that the police actions were inconsistent with what I consider police training should expect of them. Instead of a controlled situation involving the four officers acting in concert and using appropriate restraint and compliance holds, the arrest had deteriorated into an undisciplined melee, involving kicking and punching, which was likely to, and did, result in injury to the complainant. The officers submitted in their defence that the tactical training they had received as recruits, in the use of restraint and compliance holds, was limited and follow-up training was negligible. In my view the case provided further support for the recommendation I mentioned in last year's report about the need to reintroduce regular follow-up training in the use of restraint and compliance holds.

I therefore recommended that the Commissioner of Police cause a review to be undertaken of the procedures used by, and the training given to, police in physically restraining people who are violent. Such procedures should ensure as far as practicable that physical control of violent persons can be achieved without causing serious injury. I also suggested that the review should determine whether or not the retraining of police generally in such procedures is necessary. Regardless of the outcome of such a review I also recommended that the officers involved in this matter be retrained in such procedures.

I am pleased to report that the Commissioner of Police accepted my recommendations and a comprehensive review is now under way.

Child Abuse Unit

I dealt with several complaints during the year that identified shortcomings in the powers and resources available to police to deal with allegations of sexual or other abuse of children.

Case Ten

A man was committed to stand trial on charges of sexual abuse following allegations made by his former wife that he was interfering with two of his children. The prosecution of the charges was subsequently not proceeded with on the advice of the Director of Public Prosecutions.

The man complained that the detectives who investigated the allegations had failed to consider relevant evidence he had brought to their attention and to pursue all reasonable avenues of inquiry before charging him. He said that the detectives should have looked at the history of the allegations made and noted that similar unsubstantiated allegations had been made before to the Department of Family and Children's Services (FACS) and that some had previously been investigated by police without action being taken. He also said that the detectives should have interviewed his mother and grandmother who were present in the house at the time the alleged incidents of abuse occurred.

I concluded that, although there was a *prima facie* case against the man at the time the charges were laid, the detectives should have interviewed the mother and grandmother and should have spoken to the police officers involved in the earlier investigation of allegations made by the former wife. The information gained may or may not have altered the detectives' view of the situation but taking these steps represented reasonable avenues of inquiry. The detectives had not examined the FACS file relevant to allegations made by the man's former wife because it was not able to be readily accessed by them without a warrant or subpoena and there were no protocols or directions in place for police to access these files. They also said that their workload did not allow them the time to sit and wade through a lengthy FACS file or to interview every possible witness.

I recommended that the staffing levels at the Child Abuse Unit be reviewed to determine whether they were adequate, having regard to the volume of allegations the officers were expected to deal with. I also suggested that there was a need for the Unit to have greater access to information held by FACS for the purposes of investigating child abuse offences.

Case Eleven

A woman contacted FACS to report some unusual sexual behaviour between two young foster children in the care of her and her husband. A Child Abuse Unit investigation was carried out and during the course of inquiries two detectives interviewed the husband and their 12 year old son.

The husband later complained that information he had shared in confidence with the detectives during his interview was used against him and his wife in their dealings with FACS as registered foster carers. He said that the detectives had misled him about the use of that information because, at the end of the interview, he had asked them what information would be shared with FACS and was told that they would only advise FACS that an interview had been conducted and no charges had been laid.

One of the detectives did advise FACS on the day of the interview that no charges would be laid but that she was very concerned about the sexual behaviour of one of the children and the fact that the husband regarded the behaviour as normal. She also made an oral recommendation that this child not be returned to the husband and wife.

Although the detectives had misled the husband about the use of the information given by him in the interview, and the oral recommendation made was arguably inappropriate, I considered that this was not done deliberately or recklessly. Rather, it occurred because the detectives were not sufficiently aware of the extent to which information obtained during such an investigation could be shared between the Police Service and FACS. In addition, the existing guidelines for the exchange of information between the Police Service and FACS did not give sufficient guidance. In my view there was a need for police to review the working arrangements between the Child Abuse Unit and FACS to examine what operational or legislative changes might be necessary.

Since these complaints were made the Police Service has established a joint working group with FACS which is considering partnership and information gathering strategies relating to the investigation of child abuse allegations. Police have now adopted "Joint Response Teams" for the investigation of allegations of child abuse, which comprise both Child Abuse Unit and FACS staff. Officers are now receiving formal training in such joint investigations and the Police Service is pursuing legislative change to allow improved information sharing between all agencies involved in child protection. The Commissioner of Police also informed me that a review of the Child Abuse Unit had resulted in changes to management and work practices at the Unit and that improvements had been made in the areas of supervision and training. It was said that the continued rationalisation of resources to the Unit was also being considered as part of the general Investigative Practices Review now being undertaken by the Police Service. I will continue to monitor the position.

Traffic crash investigations

The Major Crash Investigation Section (MCIS) is a specialist police unit that provides expertise to other parts of the Police Service and investigates the causes of major motor vehicle crashes. As part of my consideration of a complaint I had cause to consider the role of the MCIS and the relevant instructions and procedures that police officers are required to follow regarding notification of a traffic crash to the MCIS.

In so doing I reviewed the relevant sections of the Commissioner's Orders and Procedures Manual ("COPS Manual"), in which the subject of traffic crashes is part of the Operational Procedures section. This review identified an apparent ambiguity and perhaps inconsistency in the orders relating to the role and involvement of the MCIS in the investigation of traffic crashes and the circumstances in which police officers initially attending at the scene of a crash are required to notify them.

I wrote to the Commissioner of Police suggesting that he review the role of the MCIS and clarify, if necessary, the instructions so that police officers attending traffic accidents are in no doubt about whether or not it is necessary to notify the MCIS. I am pleased to say that the Police Service agreed with my suggestion and, following their consideration of the matter and consultation with me, the relevant parts of the COPS Manual were amended.

Case Twelve

The complainant's husband was killed and she was seriously injured when, through no fault of their own, their motor vehicle was involved in a head on collision with a truck. Following a Coronial Inquiry, which returned a verdict of accidental death, the police internal investigation file was forwarded to my Office for review. When my Office contacted the complainant about the matter she expressed dissatisfaction with the police investigation conducted into the crash.

My review of the police internal investigation file caused me to be concerned about certain aspects of the matter. I therefore called for and examined the Major Crash Investigation Section file which revealed that some of the parties directly involved in the accident had declined to speak to police about the matter. I was also concerned that police had not examined the brake lights of one of the vehicles which contributed to the accident.

Enquiries of the Coroner's Office disclosed that the witnesses who had previously declined to speak to police had been examined by the Coroner, although one had refused to answer some of the questions put to him.

The file was returned to police with a request for further facts to be established and enquiries to be made. A recommendation was also made that when the further information was to hand consideration should be given to sending the file to the Director of Public Prosecutions ("the DPP") for consideration of any possible criminal charges.

Further enquiries were conducted by the Major Crash Investigation Section and the file was then forwarded to the DPP. After consideration the DPP recommended that two persons who were considered to be responsible for causing the fatal crash should be charged with dangerous driving causing death and dangerous driving causing grievous bodily harm.

Case Thirteen

The owner/driver of a motor vehicle (in which the complainant's 21 year old son was a passenger) was arrested at the roadside for a drink driving offence and conveyed to a metropolitan police station for a full blood alcohol test. The arresting officers left the complainant's son, who was also intoxicated, by the roadside and in charge of the keys to his friend's vehicle. The officers said they did so at the owner's direction and on the understanding that the passenger was intending to walk to a nearby service station to make a phone call and arrange a lift home. Unfortunately, when the officers departed the scene, the complainant's son decided to drive the vehicle home and was subsequently involved in a near fatal accident.

It was my opinion that, although they did not breach any of the Commissioner's Orders and Procedures relevant to the particular situation, the officers failed to exercise a proper duty of care towards the complainant's son. That failure, in my view, arose mainly from their understanding that they were limited in what action they could take by the legislation, which did not specifically authorise them to confiscate vehicle keys that are in the custody and control of an intoxicated person.

I wrote to the Commissioner of Police recommending that he review the police policy dealing with drunk drivers and their passengers. I also asked him to consider whether there is a need to strengthen the legislation to allow police officers to retain vehicle keys where they form a reasonably based view that not to do so might result in the commission of an offence. The recommendation is presently being considered.

Case Fourteen

A car struck an 11-year-old girl when she was crossing the road on her way home from school. Although the driver was suspected of drinking and speeding the evidence was not considered sufficient to allow criminal charges to proceed. I was concerned about the investigation of the accident - particularly the instruction and training police officers are given to ensure that a full record of the accident scene is made. I was also concerned about the timeliness of taking witness statements and the need to ensure that vital information be preserved for later analysis. At my recommendation police have now reviewed their investigative practices and identified the need for more comprehensive instructions about action to be taken at crash scenes. An excellent, comprehensive, 'Aide Memoir' has been produced which is a practical guide for police officers who have to attend fatal and other serious road traffic crashes.

Talks to police

Part of the philosophy of my Office is to try to ensure that people are informed about the Ombudsman's role and function. It goes without saying that the police, who contribute significantly to the workload of the Office, should be a primary focus of information about my Office. Since taking on the police jurisdiction in 1985 we have tried to ensure that all police recruit training courses receive some information about the Ombudsman and how his Office is likely to affect them. Talks at those courses are an ongoing commitment.

In the past year, following discussions with the Police Academy and the Detective Training School, we have expanded the range of talks we provide to police to take into account both introductory and advanced detective training courses as well as Brief Managers' courses. These talks differ from those given to police recruits in that, instead of providing general information about the work of my Office, they involve discussion about studies of actual cases that my Office has dealt with and which have resulted in significant recommendations being made. Through the use of practical, real life examples, I and my staff are able to point out to police officers shortcomings in the way those cases were dealt with and how the pitfalls encountered might have been avoided. Five such talks were given during the year.

In February 1999 the Professional Standards Portfolio conducted an internal investigation introductory course, both for new members of its staff and for officers from regional and district offices involved in conducting internal investigations of complaints about police. My Office was invited to address this course – only the second of its type of which I am aware – and did so willingly. The focus of our talk was different from those mentioned above in that, again through the use of case studies, we concentrated on making officers aware of what we expect of an internal investigation and the things we look for in conducting our reviews of the adequacy of such investigations. A further course was held in September 1999 and my Office again participated.

During the year I also had the opportunity to address a conference of Police Executive Management which was attended by senior police officers from throughout the State. I concentrated particularly on the problems arising from delays in the completion of internal investigations and the important question of just where does accountability lie for the management of internal investigations. Hopefully, I was able to provide those present with some thought-provoking comments about the importance of dealing effectively and efficiently with complaints about the Police Service and the benefits for management, members and the community that can flow from a complaint that is well-handled.

Research project

One of the objectives of the Delta Program is to improve ethical standards and minimise corruption through organisational change. In 1997/98 the Standards Development Unit of the Police Service, with the co-operation of the Police Union, conducted a Practical Ethics Survey to assist the Police Service to meet its objective. I was aware of other significant surveys into police conduct carried out elsewhere in Australia and it seemed to me that it would be useful generally and would also assist the Police Service if my Office undertook research designed to build upon the survey work police had already done.

Discussions were held with the Professional Standards Portfolio and with the Centre for Police Research at Edith Cowan University and agreement was reached on a collaborative approach to managing a joint research project to study the factors that prevent police officers from reporting serious misconduct and those factors which encourage them to report serious misconduct. The main purpose of the research is to assist in the design of improved police training packages regarding professional conduct.

A survey questionnaire was developed and distributed to 1500 police officers. A large number of responses have been received and are now being analysed. I hope to be able to report on the findings of the survey later in the year.

CHAPTER 4

MINISTRY OF JUSTICE

This chapter deals with complaints about the Ministry of Justice and is in two parts. The first part deals with complaints about the Offender Management Division which is responsible for the operation of the State's adult and juvenile prison systems and community corrections and is the focus of the vast majority of complaints within the Ministry. The second part deals with complaints about other areas of the Ministry.

Offender Management Division

Events in the prison system continue to cause serious concern. Steadily increasing prisoner numbers in already overcrowded prisons and a riot on Christmas Day 1998 at Casuarina maximum security prison saw a very large rise in the number of complaints made to my Office and in the extent of its interaction with the prison system generally. I have commented briefly about this situation in Chapter 1 and further comment is made in this chapter.

Complaints received

The dramatic increase in complaints referred to in last year's report escalated in 1998/99 with the number of complaints received during the year rising from 297 involving 303 allegations to 499 involving 510 allegations. If compared with 1996/97 (when 198 complaints involving 210 allegations were received) this represents a rise in complaints of almost 150%. However, it is important to recognise the marked effect on complaints that the Casuarina situation has had. The riot and the aftermath, with a lock- down and restrictive regimes, shows in the level of complaints from that particular prison.

The riot aside, it would appear that the continuing increase reflects not only the problems the Ministry has with prison overcrowding but also with more structural and systemic issues within the Offender Management Division.

In considering other factors contributing to the current complaints trend it is worth mentioning again that in the past two years prisoners' awareness of my Office has increased as has prisoners' access to my Office - while at the same time more informal procedures for complaint enquiry and resolution have been adopted. I believe this is also playing a significant part in the number of prisoners now approaching my Office.

TABLE 1 Matters complained about 1996/97 - 1998/1999

	Number of allegations		
	1996/97	1997/98	1998/99
Prisoners' rights and privileges	50	64	127
Harassment by prison officers	52	63	82
Medical issues	26	47	76
Prison conditions	15	21	56
Transfers and security classifications	22	29	52
Prisoners' property	16	26	37
Visits	8	20	26
Separate confinement	3	3	18
Mail	5	12	16
Complaints by prison officers	3	1	5
Community corrections	3	3	-
Other	7	14	15
	210	303	510

TABLE 2 Source of allegations received 1996/97 - 1998/99

	Number of Allegations		
	1996/97	1997/98	1998/99
Prison			
Albany	21	14	24
Bandyup	4	33	41
Banksia Hill	-	-	2
Broome	-	1	7
Bunbury	35	24	63
C W Campbell Remand Centre	12	20	17
Canning Vale	43	39	69
Casuarina	55	97	161
Eastern Goldfields	-	4	6
Greenough	7	20	20
Karnet	8	9	8
Nyandi	-	-	2
Pardelup	5	2	7
Riverbank	-	-	8
Roebourne	6	7	9
Wooroloo	7	13	21
Not allocated to a prison	7	20	45
	210	303	510

Those prisons generating the largest number of complaints, namely Casuarina, Canning Vale, Bunbury and Bandyup have had prison musters well in excess of their optimum operating levels during the year. Complaints from these prisons covered the range of everyday aspects of prison life but were in the main concerned with rights and privileges issues, medical matters, living conditions and facilities and prisoner/prison officer relations.

Allegations finalised

Enquiries into 510 allegations were completed this year (this figure coincidently corresponds with the total number of allegations received during the year). Given the exceptional volume of new complaints received, this was a very satisfactory result. Because of the continuing need to dedicate several staff members to the deaths in prisons inquiry, arrangements were made for additional staff to be engaged on general prison complaints handling which, together with the more informal enquiry procedures adopted, enabled the situation to be managed effectively.

Tables 3 and 4 show how the finalised allegations were handled and the outcomes and assistance provided.

Table 3 Outcome of allegations finalised 1998/99

	Number ofAllegations	%
Finalised without investigation		
• No jurisdiction	1	-
• Discretion exercised not to investigate*	156	31
• Discontinued , withdrawn or lapsed	136	26
Finalised after completed investigation		
• Totally or substantially favourable to complainant	76	15
• Partially favourable to complainant	34	7
• Not substantiated	107	21
Total allegations finalised	510	100

* "Discretion exercised not to investigate" does not necessarily indicate that no enquiries about the matter raised were undertaken, nor does it imply that no assistance was provided

Table 4 Assistance provided for allegations finalised 1998/99

	Number of Allegations
Benefit to complainant	
• Act of grace payment	2
• Action expedited	48
• Adequate explanation given	277
• Reversal or significant variation of original action	26
• Referred to other appropriate agency	34
No assistance provided	123
Total allegations finalised	510
Changes to law, practice or procedure	11

Casuarina Prison riot and lock-down

On Christmas Day 1998 a sizeable proportion of the prisoner population at Casuarina maximum security prison (reportedly in the order of 200 prisoners) rioted, resulting in injury to a number of prison officers and prisoners and serious damage to prison buildings. As a result a lock-down period began that, in varying degrees of intensity, has continued for the majority of the prison population.

Introduced on the basis that the prison was no longer secure internally or safe for prison staff and to allow for repairs and security upgrades to be made, the lock-down regime initially required that prisoners spend up to 23 hours each day in their cells. In approximately the middle of the year that was amended to 21 hours each day. Time out of cells only allowed prisoners access to the confined common area immediately outside their cells (an area of approximately 3m x 20m). They were not permitted in the wing recreation areas except to use the telephone and generally only leave the unit buildings for visits. Those who could leave the units for work or education for part of the day (most of the prison industries and educational facilities operated at minimum levels) were similarly confined for the part of the day that they were back in their units.

On my most recent visit to the prison (in August 1999) I spoke with prisoners in several units who all wanted, essentially, the same things – namely the opportunity to get out of the units for some of the day to work and to "get some sunshine". At that time many prisoners had not had exercise, sunshine, work or recreation for in excess of eight months. Part of the security upgrade required that "yards" be constructed outside each unit building (the prison has an open campus style layout) and the Ministry has maintained the position that until these are completed it is not possible to permit greater time out of the cells or time out of the units. Indications at the time of my visit were that the completion of the yards was still some way off.

As a result of my visit I had a number of concerns about the situation at Casuarina in terms of both the current functioning of the prison and what might occur in the future. Underlying these concerns was my long-held concern about the need for a high degree of positive interaction between prisoners and prison staff of all types if the concept of unit management is to have any real meaning. My observations at Casuarina left me with a significant sense of unease about the future culture of the prison. This unease was that once the "yards" were in place and operating, not only would there be physical barriers between prisoners and prison staff but also attitudinal barriers that have been allowed to develop because of the lock-down regime - of such a nature and magnitude that the kind of positive interaction that is desirable will not be possible to the necessary degree.

Despite assurances from prison administration that steps were being taken to avoid this situation arising, I raised my concerns with the Director-General. I indicated to him that my observation of certain aspects of prison management left me unconvinced with the assurances, in particular that after eight months little had really been done to "normalise" the prison or to take what seemed to be fairly obvious steps to improve the regime.

I pointed out several of my observations:

- the lock-down regime applied to all prisoners whether or not they were suspected of any involvement in the Christmas Day riot; it included prisoners who were not even in the prison at the time;

- significant numbers of prison officers were seen present in the units without any apparent duties which involved engagement with prisoners and who seemed in the main to be occupied in a "watching" role;

- no good reason had been advanced for not allowing prisoners to access the wing recreation areas given the presence of these officers or for not engaging officers in managing prisoners in small groups out of the units for attendance at education, work or recreation.

I expressed the opinion that the continuing restrictive regime at Casuarina was unduly punitive despite the circumstances from which it had arisen and in terms of prisoner/prison officer relations it was not conducive to future unit management. I recommended that there should be an immediate abandonment of most aspects of the present lock-down regime and that a concerted effort be made to get prisoners out of their cells and out of the unit buildings. I also expressed my concerns about the possible impact the lock-down might have on the physical and mental well-being of individual prisoners given the nature of the regime and the length of time that it had been in place, particularly as the overcrowding situation means that many prisoners are locked up for most of each day sharing a cell designed for one person. I was surprised that in such circumstances there had been no apparent overall assessment made from a health and future management perspective to determine the extent of the impact on prisoners, their families and prison staff.

Many other persons and groups with an interest in prisoner welfare have expressed somewhat similar concerns. I certainly do not underestimate the traumatic effect of the Christmas Day riot on some prison officers and, indeed, some prisoners. Likewise, I do not underestimate the task the Ministry had to confront in returning the prison to normality and making it secure against future such incidents. Nevertheless, the continuation of the lock-down regime, even in modified form, seemed to auger badly for the future management of the prison along unit management lines (which assumes a high degree of positive interaction between prisoners and prison officers).

The Director General of the Ministry assured me that great efforts were, and would continue to be, made to ensure that the management of the prison was based on positive interaction between prisoners and prison officers. Shortly after my views were conveyed to the Director General steps were taken to increase work and education opportunities at Casuarina and for prisoners to leave the unit buildings for recreation. Regardless of whether or not those changes or their timing were influenced by my involvement, they were positive steps. I will continue to monitor the situation.

Investigation into Deaths in Prisons

In last year's report I wrote about my "own motion" investigation into deaths in prisons in Western Australia. When I announced the investigation in February 1998, I estimated that it would take seven or eight months to complete. However, this turned out to be a significant under-estimate of the time required to carry out a thorough investigation of the issues involved, many of which are complex. The main investigative part of the project has been completed although information which had been requested from the Ministry regarding a number of issues arising from deaths in prisons continues to be received and assessed and, in numerous instances, further enquiries need to be carried out. Furthermore, Coronial inquests into individual prison deaths continue to take place and the findings need to be noted and analysed in order to identify any recurrent issues from previous deaths.

During the course of the investigation complaints from prisoners increased dramatically, as described elsewhere in this chapter, and it became necessary to redeploy staff who had previously been involved in the investigation to deal with complaints. This was an unforeseen consequence of the investigation, which arose from the increased presence of my staff and myself in prisons and a greater awareness on the part of prisoners of the role of my Office, both of which are generally to be welcomed. I also came to realise that there were significant groups of people such as prison visitors, chaplains and Visiting Justices, who had generally not responded to my advertisements inviting submissions and I felt it necessary to actively canvass their views during the investigation.

The riot at Casuarina Prison on Christmas Day 1998 also temporarily diverted my staff from the investigation, since it gave rise to many complaints from prisoners about the conditions imposed at the prison after the riot, and the manner in which individual prisoners had been treated. These complaints had to be responded to urgently, involving the unforeseen diversion of staff resources.

For all of these reasons, the investigation has taken longer than I expected. At the time of writing I expect to give a draft to the Ministry for a response in the near future, as I am required to do under section 25(7) of the Parliamentary Commissioner Act 1971. The Ministry's responses to my conclusions and recommendations will then be set out in the final report which will be tabled in Parliament.

Prisoner visits

In last year's report I wrote about the importance to prisoners of visits from family and friends. I referred to an issue that had arisen as the result of a complaint from a male prisoner that he was being discriminated against because he was not allowed the same visits with his children as female prisoners were. The Ministry had confirmed that female prisoners were permitted an additional visit per week with their children - the rationale being that it was in the best interests of the child and that mothers were generally regarded as the primary care givers for young children. I questioned this philosophy in terms of the importance of the child's relationship with the father and I recommended that the Ministry's policy be reviewed to avoid discrimination.

Since then the Ministry has responded, but only conceding that there was an argument that the additional visit may be discriminatory and, in essence, arguing that if the same arrangement was extended to male prisoners prison resources would not manage with the numbers likely to be involved - and therefore the same visits could not be granted.

My opinion about the matter remained the same, that without doubt the arrangement was discriminatory - whatever the reason for it - and a lack of resources was not an acceptable justification for perpetuating a clearly discriminatory practice. In addition, recent changes to visiting arrangements at a number of metropolitan and regional prisons that had come to my notice caused me to have some doubts that resource constraints were the real difficulty. Many prisons now allow up to four hours of visits per week while at Casuarina Prison only two hours are allowed; Albany prisoners in the more independent living units are able to have six hours; Riverbank, in addition to regular four hours of visits per week also allows an extra two hours for those weeks that have a public holiday and an extra 'privileged' family visit of two hours per month for prisoners who have served more than twelve months. Although the differences that exist between the prisons is of concern as a general issue, the significance of the changes and the extent of the visiting arrangements indicates that individual prisons seem to have a capacity to allow and manage increases in visits.

I expressed the view to the Ministry that prisoners at all prisons should be allowed more or less the same opportunity to receive visits from family (including their children) and friends subject to any exceptional, over-arching management considerations and excluding any discrimination whether by prison location or because of a prisoner's gender or security/supervision rating. I recommended: -

1. A review, as a matter of priority, of the philosophical stance held on visits and a clear statement about the future approach to the issue.

2. Male prisoners at all prisons who are fathers or care givers to be offered the same opportunities for extra visits with children as are available to female prisoners.

3. Consideration to altering the visits arrangement at Casuarina Prison (and any other prison where only two hours of visits per week is allowed) to extend the hours to be consistent with other prisons which have four hours of visits.

This matter is continuing.

Prison Justice – discipline, punishment and Visiting Justices

For some time now I have made my views and concerns known about the Visiting Justice function and its part in the prison discipline and punishment process (see page 50 of my 1997 Report and page 50 of my 1998 Report). As in previous years a number of complaints about this aspect of prisoner management were received. These continue to strengthen my belief that the current prison discipline regime is unsatisfactory. The complaints received raise much the same issues as in the past and include the way prison charges are laid; the basis for the charge; the relevance of the charge to the alleged offence; the manner in which the proceedings are conducted; the decision itself; and the nature and extent of the punishment imposed. These complaints cause concern about natural justice and other procedural aspects of the hearings, the consistency and relevance of the decisions and the effect of these on the management of the prisoner.

In deciding to approach the Ministry with my concerns about this issue in the broader sense there was also a need to review the question of my jurisdiction in relation to Visiting Justices and their actions and decisions. As there has long been an element of uncertainty in respect of this, an opinion from the Crown Solicitor was sought. Two questions needed to be answered: - (1) whether the office of 'Visiting Justice' was an 'authority' to which the Parliamentary Commissioner Act 1971 applied; and (2) would a complaint about the conduct of a hearing by or the decision of a Visiting Justice relate to a 'matter of administration' as is referred to in the Act - or should such a hearing be considered a judicial matter over which I have no investigatory powers. In short, despite an opinion and a subsequent qualifying comment from the Crown Solicitor's Office the position remains unclear - with the general understanding being that the position could be reasonably argued either way.

I subsequently met with Ministry officials to discuss the general topic of Visiting Justices in the hope of identifying the relevant issues and reaching some broad agreement about how we might proceed to improve the current disciplinary process, regardless of the legal position. An independent review of the process and the principles upon which the prison disciplinary system is based has since been commissioned by the Ministry. I welcome that development.

In the meantime it is my intention to select a small number of complaints involving Visiting Justice issues and commence investigations of them. My Office will continue to work with the Ministry in an effort to bring about necessary changes in this area.

Case One

A prisoner at Casuarina Prison was charged with misconduct after he was seen to throw the medication he had just been issued into the waste bin in the infirmary. According to the prisoner he had taken his anti-inflammatory medication but because he believed that the two Panadol were ineffective for his pain he had thrown them into the bin with the plastic cup they were issued in. He claimed that he always did this and said that he had explained this to the prison officer who had witnessed the incident and who later charged him with the offence of having "Used a drug otherwise than as prescribed". The prison officer's report in essence confirmed this account of events although there was a difference of view about whether the anti-inflammatory had been taken or was also thrown away.

The offence charged is an 'aggravated' or major (rather than minor) prison offence and was referred to the Visiting Justice by the Superintendent. The Visiting Justice found the prisoner guilty and awarded him seven days separate confinement in a punishment cell and 28 days loss of remission – the maximum penalties that can be awarded under the Prisons Act.

The Ministry explained that the charge was laid to prevent prisoners hoarding medication and that in this case another prisoner could have removed the tablets from the bin for later use. While these concerns are certainly quite real in the current prison environment and the Ministry's responsibility in the circumstances is recognised, I am not at all satisfied that in this particular instance the charge, the basis for it or the penalty are appropriate. My enquiries are continuing.

Case Two

A prisoner complained about the circumstances in which he had been charged and found guilty for having made a 'false complaint' about a prison officer.

The prisoner had initially appeared before the Visiting Justice on a charge of having allegedly used abusive language towards a prison officer. In the course of that hearing the prisoner had made the claim that it was the prison officer who had used the language in question and not him. The hearing was subsequently adjourned and at the request of the prisoner an investigation of his claim was conducted by the Ministry's Internal Investigations Unit. The investigation finding was an open one, concluding that no evidence could be found to support the prisoner's account of events. No recommendation was made by the IIU investigator for any charges to be made against either the prison officer or the prisoner over the alleged incident. Nevertheless, the original charge was proceeded with and the Visiting Justice found the prisoner guilty, awarding seven days separate confinement in a punishment cell and fourteen days loss of remission. On the basis of this and the investigation report, the prison officer involved then requested that the prisoner be charged for having made a false complaint. The Superintendent referred the second charge to the Visiting Justice. In prosecuting the charge the prosecuting officer referred to the IIU report in his evidence. The prisoner was again found guilty and was awarded a further seven days separate confinement in a punishment cell.

In my view, charging a prisoner with making a false complaint about the alleged actions of a prison officer in these type of circumstances is, in terms of prisoner management and prison discipline, a very serious step for a superintendent to take at any time - even more so when an IIU investigation had been carried out (at the prisoner's own request) and an open finding had been made. Not only am I concerned with the apparent unreasonableness of the whole process but also the likely damage that is done to the confidence and trust that prisoners should have in the process and in the involvement of the IIU.

In my opinion, to decide to charge this prisoner would suggest that there were some extraordinary circumstances involved. As I found no such circumstances I sustained the prisoner's complaint that he had been unfairly charged.

This case is of significance in respect of my concerns about the Visiting Justice function and with the administrative issues relating to the practice of charging of prisoners for this type of offence. The matter is continuing.

Health Services – difficulties in obtaining medication

Providing health services in the current over-crowded prison environment is an aspect of prisoner management that shows very clearly the strain imposed on the prison system by the growing prisoner population. With such a high percentage of prisoners not only in genuine need of - but 'demanding' regardless - medication, treatment or 'attention', what should be a function where efficient and absolutely reliable procedures are the norm now often shows signs of failing completely. The following cases are indications of the stresses that exist.

Case Three

A prisoner complained that after arriving at Casuarina Prison from the C W Campbell Remand Centre he had not been receiving his prescribed medication. On enquiry this was found to be correct and it was not until my Office contacted the prison six days after the prisoner arrived that the problem was identified and his medication was recommenced.

I considered this situation to be most serious and wrote to the Ministry expressing this view. Clearly the required procedure was not followed in the first instance by staff at the Remand Centre when the prisoner's medical records were not faxed to Casuarina Prison. Procedures again failed when the admitting nurse at Casuarina did not follow up on the prisoner's medication even though his need for prescribed medication twice daily was noted. At the time my Office contacted the prison it appeared that the prisoner's medical records were still at the Remand Centre. My concern was not only that the standard procedures at both prisons had not been followed but that procedures were not in place to ensure that any such oversight was immediately identified and remedied. The situation was made worse because two days prior to my involvement a nurse from Casuarina, acting on a complaint from the prisoner, had contacted the Remand Centre and requested his medication details.

In responding to my enquiries the Ministry was unable to explain why the problem had occurred but informed me that steps had been taken to avoid a repeat of the situation. I was not satisfied with the Ministry's advice nor certain as to the adequacy of the measures referred to and sought clarification and reassurance. This matter is continuing.

Case Four

This case is similar to the previous one. The prisoner, on transferring to Casuarina Prison from Canning Vale Prison shortly after the Casuarina riot, was without his prescribed medication for four days. However, on this occasion it appears that the medical documentation was faxed but, for unknown reasons, was apparently not received at Casuarina. In such circumstances the admitting nurse would usually refer the prisoner to the prison medical officer but this did not occur. The prisoner claimed that he had brought his need for medication to the attention of his unit staff during that time and, although this seemed likely, enquiries with staff and a check of unit records failed to confirm this. The prisoner's situation was identified after four days during a routine review of admissions by the mental health nurse specialist. It was then arranged for the prisoner to see the medical officer and his medication was recommenced.

The nurse involved in this case was counselled about procedures and the Ministry advised me of the appointment of a Nurse Co-ordinator at the prison to avoid further problems of this nature. I was satisfied in this instance that the Ministry was sufficiently aware that the system had failed at Casuarina and that adequate measures had been taken to remedy the position.

Inspector of Prisons

During the year the Government proposed the creation of a new statutory officer to be an "Inspector of Custodial Services". The main functions of the Inspector would be to inspect prisons in the State and prepare reports about the findings of the inspections, including any advice or recommendations the Inspector considers appropriate. The proposal is similar to the inspectorial model that has existed in the United Kingdom for some years – and which is regarded as having been an important element of the process by which the prison system is held accountable and required to demonstrate compliance with appropriate standards.

I support the establishment of such an Office – because I believe that it will complement my own role and will also assist the Ministry of Justice in improving the standards of prison services in this State. The Inspector will not be able to deal with individual grievances and will be able to refer them to my Office. The existence of the Inspector would not limit my ability to examine systemic issues relating to prisons that I identify.

At the time of preparation of this report the legislation to create the position of Inspector was before the Parliament.

Other parts of the Ministry

The Ministry consists of a number of other divisions and associated specialist offices which, for convenience, are grouped together and considered in this part of the report. I should make it clear that many of the entities referred to below are quite independent of the Ministry in terms of their functions and operations.

During the year I received a total of 71 allegations relating to these areas compared with 55 allegations received last year. Although only six written allegations were received about fines enforcement matters my officers received quite a number of enquiries over the telephone about this area and many of these were resolved without a written complaint being lodged.

TABLE 5 — Allegations received about Ministry of Justice (other than the Offender Management Division)

	Number of Allegations	
	1997/98	1998/99
General administration	4	22
Public Trustee	5	14
Parole Board	8	10
Courts administration	22	7
Public Advocate	2	6
Fines enforcement	4	6
Criminal injuries compensation	1	2
Strata Titles Referee	-	2
Small Claims Tribunal	7	1
Coroner	-	1
Registrar General	2	-
	55	71

I commented in my 1998 report about the number of complaints about workplace matters received from officers employed by the Ministry. I did not receive many such complaints during the past year but the following case fell into that category.

Case Five

The complainant was a prison officer who had been disciplined for failing to be available to work a prepaid "Z" shift. He was supposed to have been available if called upon to work but could not be contacted. The Executive Director accepted a recommendation from the prison Superintendent that the officer be given a compulsory transfer at his own cost.

It was open to the complainant and his union to have made application to the WA Industrial Relations Commission in relation to the disciplinary action. Consequently, I did not consider the merits of the Executive Director's decision, although I noted that the Ministry did not have the power to require the complainant to relocate at his own cost. What concerned me about this matter was the inadequacy of the documentation kept by the Ministry in relation to a formal warning previously given to the officer and also in relation to the investigation and consideration of the charge about the prepaid shift. This deficiency made it impossible for the Ministry's decision-making processes to be reviewed. Since the matter involved a possible breach of Public Sector Standards in respect of documentation, natural justice and consistency, I referred it to the Public Sector Standards Commissioner for his further consideration.

Case Six

The complainant made an application to the Small Claims Tribunal in respect of an allegedly deficient product provided by a contractor. However, the Referee ruled that the matter was out of the Tribunal's jurisdiction because the product had been provided more than two years previously. The complainant pointed out to me that the relevant section of the Small Claims Tribunal Act referred to the date when the dispute arose, and he argued that the dispute did not arise until the fault was discovered.

My Office made informal enquiries and I was advised that the Tribunal's Referees were divided about the interpretation of this section of the Act. It is not my role to question decisions made by Referees but I was concerned about the apparent inconsistency and, accordingly, I suggested that the Ministry seek a legal opinion in relation to the matter. The Crown Solicitor's Office agreed that the Act was ambiguous and suggested that the intention was likely to have been to afford applicants the opportunity to complain within two years of the fault being discovered. This information was made available to all the Referees and I advised the complainant of steps he could take to have his application reheard.

Case Seven

A Ministry employee believed he had served the qualifying period for long service leave and approached the Human Resources Section to verify this. He was told that he was entitled to three months and so he applied to take one month. His application was approved and he went on leave.

Soon after returning from leave the employee decided to resign, expecting to receive payment for the two months long service leave he had not taken. However, after he had ceased work he was told that a mistake had been discovered and he was not entitled to long service leave at all. An audit of his leave records had revealed that a period of leave without pay some years earlier had not been taken into account in previous calculations. In fact his service was a few months less than required.

The employee told the Ministry that he would have worked the extra few months to qualify for long service leave had he been given the correct information by the Ministry. However, he was told that nothing could be done and that he would have to repay the Ministry for the month of leave he had taken. In the employee's view the Ministry's approach was unfair and so he lodged a complaint with my Office.

I made enquiries with the Ministry and suggested that it re-employ the complainant. However, it was not prepared to do so even though it acknowledged that the employee would have been given incorrect information about his entitlement because its human resource information database was wrong. The Ministry was prepared to write-off the amount the complainant had been paid for the leave he had taken, but in my view this was not sufficient.

I was satisfied that the complainant could not have been reasonably expected to have known the correct position regarding his long service leave entitlement (especially as the Ministry had approved him taking leave) and that he would have delayed his resignation had he been given correct information by the Ministry.

I recommended that an act of grace payment be made to the complainant calculated on the basis of the ratio of his actual service to the required qualifying period. This pro rata figure amounted to over $10,000.

The Ministry accepted my recommendation.

CHAPTER 5

LOCAL GOVERNMENT

I continue to receive many complaints about local governments which in my view could be avoided through better communication, the giving of reasons, and greater emphasis on timeliness, accessibility and the manner of treatment of ratepayers and residents.

Many complainants approach my Office after receiving a response from a local government in the form of a standard letter which did not address the real matters of concern. On the other hand many people dealing with local governments seem to have their concerns dismissed due to their failure to fully explain their case.

Most local governments spend a considerable amount of time and effort listening to their ratepayers and trying to communicate with them. However, the clear message coming from what complainants to my Office are saying is that there is a real expectation gap.

If local governments are to keep conflict situations to a minimum, they will need to find ways of enabling people to exercise their rights and at the same time make it clear that expectations may not always be met. They must offer people full and proper reasons or explanations for their actions or inaction. In my view, residents and ratepayers should be informed, consulted and advised of their rights and obligations in all forms of communication from local governments both large and small.

During the year a total of 266 complaints involving 303 specific allegations were received about the actions or decisions of 64 of the State's 144 local governments. This represents an increase of 23% compared with the 246 allegations contained in 233 complaints which were received in 1997/98.

Of the 296 allegations finalised during the year 58 were resolved without an investigation. Of the 238 allegations that were finalised after an investigation, 104 were found wholly, substantially or partly in favour of the complainant and 134 were not substantiated. Table 1 shows the type of assistance that was provided in respect of the 296 allegations that were finalised.

TABLE 1 Assistance provided to local government complainants 1998/99

	Number of Allegations	%
Apology	4	2
Action expedited	64	22
Act of grace payment	7	2
Adequate explanation given	174	59
Charge reduced or rebate given	7	2
Reversal or significant variation of original decision	16	5
Referred to other appropriate agency	3	1
No assistance given	21	7
Total allegations finalised	296	100
Changes to practice/procedure	8	

In a high proportion of the allegations finalised (174 or 59%) it was possible to assist the complainant by providing an explanation about the actions of the local government complained about and/or the basis of the reasons for those actions. The comments made at the beginning of this chapter suggest that better communication by local governments with citizens may have meant that many of these complaints could have been avoided.

The following table shows the nature of the 303 allegations received about local governments during the year.

TABLE 2 Nature of allegations about local governments 1998/99

Building Control Refusals, conditions of application, objections, construction/demolition matters	19
Community Services Parks and recreation reserves and facilities. Cultural and community services and facilities	6
Contracts and Property Management Tenders and contracts for goods and services, resumption of property, leases, other property transactions	11
Corporate and Customer Service Complaint handling, provision of information, liability claims, meetings/elections, conduct of officers and elected members, staffing issues	49
Development Refusals, conditions of application, objections, home occupations	47
Enforcement Enforcement of development and building conditions, unauthorised development, parking and traffic, control of animals, fire control and other statutes and local laws	52
Engineering Roads, footpaths, rights of way, construction/maintenance, traffic management, road closures, access	26
Environmental Health Issues Noise and other pollution, public health issues, waste disposal and other environmental issues	20
Other Approvals and Licences Refusals, conditions/objections	1
Rates and Charges Valuations and ratings, payments, collection, rebates, other charges	29
Town Planning Subdivision, land use, town planning schemes, rezoning	43
TOTAL	303

Table 3 shows how the local governments which were the subject of complaints this year are distributed across the broad categories into which local governments are classified according the Australian Classification of Local Governments.

TABLE 3 Complaints about local governments by population category 1998/99

Category	% of total local governments in category	% of the 64 local governments subject of complaint	% of complaints received
Urban – metropolitan developed	13%	27%	48%
Regional town/city	7%	16%	8%
Fringe developing urban or regional	6%	14%	27%
Rural – significant growth	6%	9%	5%
Rural – agricultural	52%	28%	9%
Rural – remote	16%	6%	3%

This result reflects the trend that the greater number of complaints are made about local governments in urban metropolitan areas and those in developing fringe areas of urban or regional centres.

Further details of the complaints received about individual local governments and how they were resolved are set out in Table 5 in Chapter 1.

As shown in Table 2, complaints about enforcement matters continue to be one of the major types of complaints received.

Parking infringements

Over 6% of the allegations received this year related to complaints about parking infringements. The figure could have been higher, but if complainants contact my Office before submitting a written complaint and their complaints are of a minor nature, they are frequently resolved by telephone contact with local government officers without the necessity for a written complaint.

I believe that there are a number of reasons for the increased number of complaints being made to my Office about parking infringements. One reason is that the increase in the level of penalties has caused complainants to pursue matters where in the past they might have simply paid the fine.

The inclusion of prohibitions in local laws such as verge parking and the use of area signs rather than by the proliferation of individual signs, and the use of Australian Standard signs may also have contributed to the level of complaint. Although these signs have now been in use for many years, some motorists still do not appear to understand their meaning.

Other complaints received about signs included damaged, obstructed and poorly worded signs.

Case One – City of Perth

A driver complained to me that she had parked beside a sign as shown below on a Thursday afternoon believing that there was no fee payable. However, on returning to her car some 20 minutes later found that she had been issued with a parking infringement notice for "standing at expired meter".

The City advised her that it considered that the sign clearly indicated meter parking 8:00am to 5.30pm Monday to Friday with no fee payable on Saturday and Sunday.

However, the City accepted my view that the sign, in attempting to show paid parking periods and only some of the times for free parking, could be confusing. The infringement was withdrawn.

Bush fire control

Many complaints are received from people who have received infringement notices for not installing a firebreak when they claim they were not even aware of the requirement. Most local governments rely on pamphlets distributed with annual rate notices to inform people of fire hazard reduction requirements. Although this practice fulfils the requirements of the Bush Fires Act to serve notice, it does not appear to be an adequate means of drawing the requirement to the attention of all landowners. To overcome this problem a number of local governments now issue warning notices after the first firebreak inspection in order to give non-complying landowners the opportunity to undertake any work required prior to a penalty being imposed.

The second reason for complaints relates to differences in opinion between residential block owners and fire control officers as to what constitutes "flammable" material. Many complainants claim to have cleared their properties only to receive an infringement notice for failing to meet the requirements. In my view it would be helpful if local governments were to include practical descriptions of "flammable" materials and emphasise the need to maintain properties free of such material throughout the whole of the bush fire season, in the pamphlet issued with the rate notice and in the warning notice issued after the first firebreak inspection.

Local laws

A number of complaints during the year have involved situations where local governments have chosen not to enforce a local law. In other cases the complainants have perceived that local governments, in enforcing a local law, were acting unfairly or unreasonably by acting on complaints which appear to be without substantiation.

Case Two – City of Cockburn

A flower seller who held a street trader's licence complained to me that the City had failed to police other traders who operated without a permit, particularly on special days such as Mothers' Day.

The City advised that it did not have rangers operating on public holidays and only one ranger available at weekends and therefore it was not within its resources to effectively police the sale of flowers, particularly on "special days".

It was also confirmed that the City had a long standing tradition of taking no action against flower sellers on Mothers' Day due to the sheer volume of numbers of market gardeners and flower growers in the district who sold flowers on that day.

I advised that, in my view, it was not reasonable for the City to require people to obtain permits at a cost of some $1,100 per annum when it considered it was unable to fully control those who chose to operate without a permit. I also considered that a local government cannot simply choose to ignore its local laws on the basis of "tradition" or volume of numbers.

The City is currently reviewing its policy with a view to enforcing the provisions of its local laws.

Case Three – City of Stirling

The City received a complaint that a resident was keeping bees on his property. The City advised the resident of its local law which stated that "No person shall keep bees unless within a Rural Zone" and required removal of the beehives within 14 days.

It was acknowledged that the complainant had been a registered bee-keeper for over 48 years and had been keeping bees in the backyard of his home for over 30 years, well before the promulgation of the original by-law, without incident. However, the City considered that it had no option but to take action to enforce its local law when a breach was brought to its attention.

The City advised that it was reviewing its local laws and suggested that, given the resident's particular knowledge and expertise in the field of bee-keeping, he may wish to make a submission regarding the scope and content of any future local law. The resident accepted the City's invitation and although he was disappointed that he had to remove his beehives he was pleased that his concerns about the fairness of the local law were to be taken into consideration in the review process.

Prosecution and legal costs

Many complaints are received about the legal costs which are incurred when local governments take prosecution action or take recovery action for valid charges. In many cases the recovery costs are out of proportion to the offence or the amount being recovered. I believe that even where the legal grounds exist for taking legal action, local governments must bear in mind the underlying objective for the prosecution or the recovery action and ensure that the cost of the action taken is kept within reason and is not disproportionate to the amount to be recovered.

Town Planning Schemes

My experience is that the discretionary powers of local governments, particularly in relation to planning matters, are not widely known or understood.

Community participation in local governments' decision-making processes is becoming more widespread and often more focused. How local governments manage the increasing level of community participation by individuals, ratepayer groups and other community groups will often determine the level of acceptance of those decisions in the community.

It is often almost impossible to rectify the kind of situation that can arise from a potentially contentious development about which residents and ratepayers have not been regularly and consistently informed and may not support.

The case study below illustrates the kind of problems that can arise when affected community groups do not support a local government's well intentioned desire to see new development occur.

Case Four – City of Stirling

In March 1999 I received 27 individual complaints about a guided development scheme promoted by the City. The scheme involved the rezoning of areas of land and road and other works to be carried out by the City. Owners of land within the scheme area were required, by the scheme documentation, to contribute to the costs of the works and scheme administration. The complainants had received accounts ranging from $384 to $918 depending on the size of their properties and had been requested to make payment arrangements within 35 days. They were also advised that, based on cost estimates, two further annual payments which together would range from $440 to $1060 would be required as the owners' contribution towards the scheme costs. The scheme documentation permitted the City to register caveats against the land concerned to secure payment of the contributions.

The owners claimed that the local government had not advised them that they would be required to make such contributions. They had advised the Council that they had strived to obtain clear title to their properties and resented the imposing of caveats as a means of securing payment for a debt which they considered they had not incurred; which some did not have the ability to pay; and from which no benefit would be gained until any capital gain from the rezoning was realised by a sale of the land.

In an endeavour to reach a compromise, the Mayor met with the affected residents and offered a subsidy of the general scheme costs which would effectively involve no further commitment to the scheme costs by owners. The owners rejected the proposal and requested that the Council consider the option of removing the affected residential properties from the scheme area or remove the costs associated with these properties. The City's solicitors recommended that the City not depart from the current scheme provisions in that it provided its own legal framework to resolve disputes about costs through an arbitration process.

I advised the Council that, in my view, requiring property owners to contribute to scheme costs prior to receiving any positive benefit was not in accordance with the intent of a guided development scheme. I was also critical of the City in relation to the adequacy of its consultation with the owners, given the number of years taken to design and implement the scheme. However, there was nothing more I could do to directly assist the complainants.

Insurance liability

Many complaints are received about situations where a person believes that a local government has been negligent in some way and claims some compensation. In most of these cases local governments refer the claims to their insurers who then often write direct to the claimant stating, in effect, that "as there is no evidence of negligence on the Council's part the claim is denied". In my view this is a totally inadequate response. Although I accept that providing further details might compromise a local government's position if the claimant decided to commence legal action, I consider that claimants are entitled to receive a statement of reasons why liability is denied. I do not believe it is in a local government's best interests to allow its insurers to try to seek some sort of advantage by withholding reasons for meeting claims. This approach effectively penalises claimants from making claims and discourages potential claimants. In my view, both the local government and the local government's insurer should be participants in the mediation process.

Case Five – City of Joondalup

A number of property owners complained about a refusal to pay claims arising from property damage allegedly caused by a road construction project. They complained that the City had distanced itself from the matter and referred them to its insurer - who had denied liability on the City's behalf. The complainants maintained that cracks in walls, ceilings and floors of their homes had only appeared when the road surface was being compacted and they could not understand how the City could justify its insurer's response.

I advised the City that although I understood that its insurers had declined to provide details of the reason for denial of liability I did not consider that the response provided to the City or the City's responses to the complainants reflected sufficient focus on customer service.

The City responded with a more detailed assessment of the position, including details of an independent structural engineer's evaluation of the alleged damage undertaken at the insurer's request and the precautions taken in regard to the use of the road surface rollers.

I accepted the reasons given for the denial of the claims and advised the complainants that although I had not attempted to form a definitive view about the cause of the alleged damage, from the information provided I was unable to conclude that the City had caused or contributed to their loss through any maladministration.

Case Six – Town of East Fremantle

A woman visiting her son's new home fell on the footpath which had been damaged by building contractors during development of the site and was not due to be repaired until construction was completed. She sustained lacerations and bruising and broke her glasses. The Town's insurers advised that local governments "possess, at common law, a special immunity from civil liability in relation to highways under their control by virtue of the non-feasance rule. Furthermore, the immunity applies even in circumstances where the authority fails to act notwithstanding that it is fully aware of the presence of the danger" and denied liability on the Town's behalf. The Town advised that although it was obliged to accept the advice of its insurers, it was prepared to make an ex-gratia payment of $100 toward replacing the complainant's broken glasses.

The offer was accepted by the complainant. I consider the Town's response to be highly commendable.

Tenders and contracts

The letting of contracts by local governments is often a source of dispute and complaint to my Office by unsuccessful tenderers. The complaints often relate to the tendering process, particularly the way in which, and the criteria upon which, the decision was made.

To ensure a fair process, sufficiently detailed tender specifications must be developed by local governments and proper assessments must be made when the tenders have been received. The criteria on which tenderers are judged must be transparent, applied consistently and be available for all to see. Many of the complaints received by my Office relate to evaluation processes which complainants perceived to be unreasonable and unfair.

Case Seven – City of Subiaco

The City called for tenders for painting services for its building maintenance and works program. The specification for the contract provided for a six-year period. In addition to the six conforming tenders received, one tenderer submitted an alternative offer based on a seven-year period. In assessing the tenders the second lowest was selected as the preferred tenderer. The preferred tenderer had submitted the alternative offer and the officers considered that the seven-year proposal offered better value for money than the conforming tender and was recommended for acceptance by the Council.

One of the unsuccessful tenderers complained to me that the City had failed to comply with the Australian Standard (Code of Tendering) in not providing the other tenderers with the opportunity to submit alternative proposals by specifying the conditions under which they could be submitted.

Clause 6.5 of AS 4120-1994 (Code of Tendering) recognises that the submission of alternative proposals can be part of the tender process and states that "tenderers may be encouraged to offer alternative proposals which shall satisfy the principal's requirements. Principals shall specify the conditions under which alternative proposals are to be submitted."

The City maintained that the predominant legislation in this case was Regulation 18(2) of the Local Government (Functions and General) Regulation 1996 which implies that local governments have a discretion in accepting tenders that are non-confirming.

I expressed my concerns about the differing expectations of local governments and tenderers to the Western Australian Municipal Association and suggested that some of the confusion could be alleviated if local governments addressed specifically the acceptance of alternative offers in the tender process and included the selection criteria in the specification documents.

WAMA addressed these concerns in its Model Code of Tendering and has suggested to the Department of Local Government that the legislation be amended to require that local governments adopt a code of conduct for tendering

Case Eight – Shire of Shark Bay

In March 1996 the complainant, a university student, contracted with the Shire to research and collate information on the history of the region for use in a book to be written about the history of the Shire. The fee was set at $6000, a motor vehicle was to be provided for travel within the Shire in connection with the project and reimbursement of "other reasonable expenses incurred for items such as fuel used outside the Shire and telephone calls" was to be paid by the Shire.

In September 1997, having completed the research, the complainant submitted a claim for the fee plus expenses of $1,590 for photocopying and fuel costs. The Council rejected the claim on the basis that the research undertaken had not been completed to its satisfaction and agreed to pay only $5000 of the contract sum and reimbursement of fuel and telephone costs of $702.

I advised the Shire that it may have been prudent for the appointment of the researcher to have been delayed until after the author had been commissioned, thus ensuring that both the Shire's and the author's requirements were known. Given the circumstances, I considered that the Council's decision to reduce the agreed fee for the contract by $1000 on the basis that it was incomplete for the author's needs was unreasonable.

I recommended that the Council should honour its contract and pay the $1000 deducted from the fee.

The Shire acknowledged that had it drawn up a detailed written contract identifying the parameters for the research to be undertaken, a timeframe for the completion of the project, the requirement for progress reports, and the composition of "reasonable" expenses, the dispute would not have arisen. The Shire agreed to honour its obligation to pay the total contract fee but considered that there was no justification for the payment of any additional costs incurred over and above what had already been paid.

Given the circumstances, I accepted that this was a reasonable outcome.

Rates and charges

In addition to receiving many telephone enquiries relating to rating matters, each year I receive a number of complaints regarding the imposition of penalty charges on unpaid rates.

Case Nine – City of South Perth

A property was the subject of a strata title application in 1994. The street numbers were allocated to reflect the two residences, being "A" and "B". Rate assessments for the years 1994/95, 1995/96 and 1996/97 were sent to the complainants at the B address and the rates were paid by instalments. The 1997/98 and 1998/99 rate notices were sent to the same address but the accounts were not paid. A final notice which included penalty interest was then sent which prompted the complainants to advise that they lived at the A address, not the B address.

Notwithstanding the fact that some of the correspondence addressed to the B address had in previous years been received by the complainants, the Council agreed that the rate notices had not been correctly addressed.

The rates notices were reissued without any penalty charges.

Case Ten – City of Gosnells

A rate notice for 1998/99 was forwarded to an absentee landowner at an address (not that of the rated property) to which the two previous years' notices had been directed. However, no response was received. A final notice and a subsequent personal letter warning of possible legal action was then sent. A summons was ultimately issued. The summons was delivered to the complainants at the address of the rated property, at which address the complainants had been resident for some eighteen months.

Although the notice had been forwarded to the address which appeared in the rate book at the time, I advised the City that further checks using easily available information - in this case the Telstra White Pages - appeared to be worthwhile in terms of customer relations and in facilitating the collection of outstanding rates. I recommended that to bring the matter back to the only outcome which needed to be achieved – the full settlement of the rates – the City should cancel all other collection costs.

The City accepted my recommendation and is reviewing its debt collection practices for absentee owners.

Case Eleven – City of Rockingham

The complainant owned a block of units for which he applied for strata titles with the intention of selling the units separately. However, after three years the complainant had the strata plan cancelled and at the same time received a rate notice showing backdated rates for each of the strata titled units and associated rubbish charges totalling some $16,000.

Enquiries made of the Valuer General revealed that the procedure used in dealing with strata plans relied on a combination of actions by both the Valuer General's Office and the Water Corporation of WA. However, as the Water Corporation did not separately rate strata lots until registration (rather than at approval) reference numbers were not available until that time and were therefore not provided to the Valuer General's Office. This shortcoming in the Valuer General's system was identified in 1996 and the use of the Water Corporation referencing system ceased in April 1998.

The City advised that the schedule of values forwarded by the Valuer General's Office included a number of other properties apart from that owned by the complainant. It maintained that the complainant had not been treated unfairly as it had always applied the practice of back rating of similar developments in a consistent manner. However, it agreed to waive the rubbish charges and recalculated the 1998/99 rates on the single valuation. This resulted in a saving to the ratepayer of more than $8000.

As I understand the situation, strata plans are now dealt with directly by the Valuer General's Office upon receipt of advice of approval from the Department of Land Administration. However, with some 40,000 strata plans in existence, it may be that there are others that are still outstanding and local governments should check their records.

The Valuer General's Office has also advised that it is probable that any further early strata plans that do materialise would have values applied from 1 July of the current year rather than the historic date of approval.

Development

Decisions made by local governments about how land may be developed and used have considerable potential to generate complaints from dissaffected applicants and from unhappy neighbours and others who may be affected by a development. As in previous years complaints about these issues were one of the largest categories.

Case Twelve – City of Joondalup

When subdivision approval was granted to a developer, the upgrading of a minor road within the subdivision to match the ultimate road levels of a district distributor road was imposed as a condition of subdivision. However, nine days prior to the approval being given for the engineering drawings for this upgrading, Telstra advised the City of proposed works to be carried out in the minor road to complement the subdivision. Particular mention was made in Telstra's letter that "it must be noted that Telstra understand that existing alignments and levels of roads, paths, land etc. are permanent, unless the authority specifically informs Telstra otherwise." The local government did not respond to Telstra and a Remote Integrated Multiplex (RIM) box was duly installed. However, the RIM box was installed some two metres above the new finished road levels set by the City and as a result required lowering or relocation. The cost to lower or relocate the equipment was estimated to cost $35,291 plus earthworks and the City would not release the subdivision of eight lots until the relocation costs were paid.

In an endeavour to resolve the problem Telstra suggested that each of the parties contribute one third of the cost of relocating the RIM box, to which the City agreed. However, the developer complained to me that he was never made aware of the proposed works nor of any need to liaise with Telstra prior to the work commencing and did not consider that he should have to contribute to the cost.

In my view, the City could not hold the developer responsible for costs incurred as a result of its inaction. Had it advised either Telstra or the developer of the proposed works the relocation may not have been required. I recommended that the City meet the costs apportioned to the developer.

The City accepted my recommendation.

Case Thirteen – Shire of Beverley

The Shire's town planning scheme requires that a cash bond be lodged with the Shire and an agreement entered into to reinstate a relocated second hand dwelling to an acceptable standard of presentation within twelve months of the issue of a building licence. It further provides that second hand dwellings are prohibited within the prescribed town site.

The initial application for the relocation of the second hand dwelling was refused by the Shire on the basis that the site would be within the amended town site boundary, receipt of approval for which was apparently "imminent". The complainants appealed to the Minister that their site was not within the town site and relocated dwellings were not prohibited. The appeal was upheld.

The Shire then advised the complainants that a $2000 bond would be required. However, subsequent to the building application being approved the complainants received notification that the bond required was $5000.

In responding to the complaint made to my Office, the Shire conceded that it had acted inappropriately and agreed to reimburse the $220 appeal cost and refund the additional $3000 required for the bond.

Case Fourteen – Town of Bassendean

An application was received by the Town to construct a limestone retaining wall and fill a lot on which the land fell by approximately 4 metres from the road frontage to the rear. To provide a level building envelope, which extended into the lot by some 29 metres, 3 metres of fill/retaining at its highest point and a retaining wall of approximately 1.5 metres on the side boundary was required. The Council approved the level of fill - which was higher than that recommended by the Town's professional staff - and assumed, incorrectly, that a fence would be erected on top of the retaining wall. However, its approval did not require any form of screening between the two properties. No reasons were given for overriding the officers' recommendation.

A complaint was made to my Office by the adjoining landowner about the implications of this development in relation to his swimming pool, the adequacy of the retaining walls and the loss of amenity and privacy. The complainant also advised that the neighbour operated a heavy commercial vehicle that would utilise the driveway proposed for the length of the property along the boundary.

One of my staff inspected the site. It was seen that the ground level had been raised to the top of the existing dividing fence, resulting in a total loss of amenity and security to the neighbouring property. In the circumstances, I considered that the Council had an obligation to take the necessary steps to mitigate the damage done by providing appropriate screening between the two properties.

I recommended that the Council give consideration to devising a systematic approach towards developments involving significant alterations in grounds levels, with a view to protecting neighbours' amenity when necessary. I also recommended that controls relating to the parking of commercial vehicles in residential areas be introduced.

The Town acknowledged that the development of the lot and the method of construction had an impact on the complainant and his family beyond that which was considered to be acceptable. An apology was given. The height of freestanding fences and the effect of raised ground levels on the privacy of adjoining properties were accepted by the Town as legitimate planning issues and policy changes are being introduced together with planning controls to address these concerns.

Case Fifteen – Shire of Mundaring

In January 1996 two professional artists made application as owners/builders for planning approval for an art studio adjoining their home in which they proposed to hold public workshops and exhibitions in addition to producing their own work. The Shire granted planning approval subject to an application being made for each individual exhibition. A building licence was issued for the art studio. In June 1996 a further application was made for planning approval for an increased number of workshops and for an increase in the number of persons who could attend them. As the Shire had not made a decision within the specified 60 days an appeal was lodged with the Minister for Planning. The Minister upheld the appeal to increase the size and number of workshops and to allow the appellants to hold two major exhibitions per annum.

In the interim, Shire officers had determined that as the art studio was to be used for educational purposes (i.e. public workshops) then the building was required to be classified as a "public building" in accordance with the Health Act and would therefore require reclassification of the home/studio to a Class 4/9b building necessitating compliance with additional requirements of the Building Code of Australia.

The Shire advised the complainants that at that time the entire building was classified only as a detached house (Class 1a under the Building Code) and therefore the previously issued planning approvals could not be acted

upon in the terms for which they had been issued unless the building was "brought into compliance with the requirements of the Local Government (Miscellaneous Provisions) Act and the Building Code of Australia."

The artists complained to me that the Shire had effectively revoked their planning approvals and were imposing retrospective building requirements. Effectively they were unable to open their gallery to the public or conduct public workshops until such time as an application for a change of use had been made and a new certificate of classification had been issued by the Shire. They considered that in requiring them to apply for a new certificate of classification, with which the buildings did not comply and therefore the Shire could not approve, the Shire was refusing to take responsibility for the initial error in classification and causing them undue inconvenience, financial loss and hardship.

Investigations revealed that much of the confusion, inconvenience and frustration expressed by both the complainants and the Shire staff could have been avoided had the building been correctly classified at the time the initial application was made. In my view, had the correct classification been identified at the outset the complainants would have been aware of the need to comply with the Building Code requirements, particularly in relation to the provision of access and facilities for people with disabilities and could have met these requirements more cheaply. They would also have been aware of the need to employ a registered builder to undertake the construction of a "public building" or obtain the approval of the Builders Registration Board.

I advised the Shire that it was its responsibility to determine the classification of the buildings when processing building licence applications and I did not consider that a further application was required from the complainants.

In an effort to resolve the situation, I and members of my staff met on several occasions with personnel from the Shire, the Department of Local Government, the Health Department, the Minister for Local Government and the complainants. Ultimately, I met with the Shire President and it was agreed that the complainants be offered an ex-gratia payment of $4000 to facilitate the construction of toilet facilities for people with disabilities. The complainants accepted the Shire's offer.

The implications of this case on artists and other craftspeople who have studios or workshop areas within their residences appear to be far reaching. Under the Building Code each part of a building must be classified separately where parts have a different purpose. If more than 10% of the floor area of a Class 1 building (residence) is used for a purpose other than residential it may need to have a multiple classification.

The conduct of public workshops or other classes may constitute an "assembly" within the meaning of the definition provided for the guidance of local governments by the Health Department of Western Australia. If a building is one where "numbers of persons occasionally assemble" it would be required to be classified as a "public building" and would then be required to comply with the relevant provisions of the Building Code particularly in relation to safety, access and egress and the provision of facilities for people with disabilities.

Pecuniary interests

I remain concerned that the comprehensive regulation of pecuniary interests in the Local Government Act 1995 has resulted in an increased number of complaints about non-pecuniary conflicts of interest. The Department of Local Government's model code of conduct sets out requirements for dealing with non-pecuniary conflicts of interest. Most councils have adopted the model code as their own with or without amendments. However, the requirements contained in codes of conduct are not mandatory and as the subject of conflict of interests is a complex one there is a need for local governments to establish clear guidelines for the practical guidance of council members and executives.

Case Sixteen – City of South Perth

I received a complaint that some members of the community considered that an elected member had a conflict of interest in chairing an electors' meeting called to consider a fencing proposal submitted by a club to which the elected member belonged (but of which he was not an officer holder). It was considered that the elected member's membership of the club, which had been made known at the meeting, might have influenced his consideration of the issue.

Although I did not consider that the elected member's consideration or decision-making on the issue was affected by his membership of the club, given the differing points of view about the issue and the heightened emotions raised about the proposal it did not appear to be an unreasonable perception amongst residents.

The Local Government Act essentially deals only with interests than can be regarded as financial or pecuniary and there is a specific exemption where an elected member of a local government is an ordinary member of a non-profit making body. However, I believe that the concept of conflict of interests is one that is very important for local governments and all elected members need to be conscious of situations of conflict – whether real or perceived.

On a lighter note

Case Seventeen – City of Bunbury

The complainant, while working at a wildlife park, witnessed one of the red kangaroos throwing her joey out of her pouch. Having unsuccessfully tried to restore the joey to its mother's pouch, on the park operator's suggestion she took the 400g joey home to hand-rear as her own. The required licence to keep the joey at her home was obtained by the complainant from the Department of Conservation and Land Management. The joey survived and when old enough was put into an outside enclosure at the park along with two other joeys she had hand-reared. About a year later the complainant requested the City, which had taken over the management of the park and wished to dispense with her services, to allow her to take the joey home. The City refused on the basis that the stock returns showed that seven red kangaroos had been recorded since July 1997.

I advised the City that it appeared that the ownership of the joey could not be conclusively proved and the City was unable to disprove the complainant's claim that she was given the kangaroo to hand-rear by the previous operator of the park. Given the circumstances I thought it appropriate for the City to allow the complainant to keep the kangaroo provided it could be accomplished in compliance with the City's local laws. The City accepted my recommendation and transferred the joey to the satisfied complainant.

CHAPTER 6

MINISTRY OF HOUSING

As I noted in last year's report, and as Table 1 shows, the number of complaints about the Ministry of Housing has fluctuated in recent years. The substantial increase in complaints this year contrasts with the reduction noted last year.

The majority of complaints about the Ministry are handled by its internal appeal process and only a small proportion come to my Office. The Ministry informs people of their right to approach my Office if they are dissatisfied with the result of their appeal. In doing so, it adopts best practice in complaint management. The Ministry's continued professional response to enquiries and requests for information from my Office is acknowledged and appreciated.

TABLE 1 Complaints and allegations received 1995-1999

	1995	1996	1997	1998	1999
No. of individual complaints	124	142	99	66	115
No. of allegations	135	154	104	67	121

Attempting to draw conclusions about the reasons for the increase in complaints is less important than analysing the statistics for any patterns which might indicate an underlying problem. Table 2 shows the nature of the complaints received during the year.

TABLE 2 Nature of allegations received 1998/9

	Number of Allegations	%
Allocations and transfers	53	44
Tenant liability	24	20
Actions of Ministry officers	13	11
Property condition and maintenance	10	8
Property purchase	6	5
Behaviour of tenants	3	2
Rental Assistance	1	1
Other	11	9
	121	100

Although the overall number of complaints has increased in the past year, the range of issues complained about is broadly similar to previous years. This year a number of people who had had difficulties in previous tenancies complained to my Office about their lack of access to accommodation. This resulted in an increase in the "allocations and transfers" category.

During the year 116 allegations were finalised in the manner shown in Table 3.

TABLE 3 Outcome of allegations 1998/99

	Number of allegations
Finalised without investigation	
•Discretion exercised not to investigate	24
•Discontinued, withdrawn or lapsed	8
Finalised with investigation	
• Totally or substantially in favour of complainant	26
• Partially favourable to complainant	15
• Not substantiated	43
	116

Of the 84 allegations finalised after an investigation, 41 (49%) were resolved in favour of the complainant.

Case One

The complainant, an elderly woman who speaks limited English, was at risk of falling due to her deteriorating medical condition. Her GP advised her to seek a transfer to a ground floor unit so that she would no longer have to climb stairs. She applied for a transfer and in due course the Ministry located a suitable ground floor unit. Ministry staff informed the complainant that her rent would rise from 22% to 25% of her income after she moved to the new unit as she had initiated the transfer. Her family advised her that her medical condition gave her no choice but to accept the new unit even though they considered the rent increase was unfair.

Once the complainant was settled in the new unit she sought to lodge an appeal through the Ministry's appeals mechanism. The Regional Appeals Officer wrote to inform her that the Appeals Committee could not hear the issue of the rent increase but that she could apply to the Small Disputes Division of the Local Court - and a guide to the procedure was enclosed to assist her. The letter also included information about her right to seek an investigation of her complaint by my Office.

After paying the court fee and attending the hearing, the Magistrate informed the complainant that he had no jurisdiction to hear the matter. The complainant's family then rang my Office and submitted a complaint on her behalf.

The Ministry advised me that although it had informed the complainant orally of the rent increase, it had not informed her in writing. In consideration of this it was prepared to not apply the rent increase in her case. However, the Ministry did change its processes so that future letters about transfers would include this information.

The Ministry extended an apology to the complainant for the incorrect advice about the Local Court's jurisdiction and made an act of grace payment to her for the costs and inconvenience involved.

The Ministry gave me the following background to the policy which was applicable in this case:

"As you may be aware, in recent years there has been ongoing discussion between the Commonwealth and the respective State Governments in relation to long term housing reform.

As part of this wider housing reform agenda, Commonwealth and State Housing Ministers agreed to move toward a common rent structure. A major concern of the reform is to reduce the disparity in housing subsidies provided to tenants renting in the public and private sectors. Agreement was reached that State Housing Authorities move toward a rent structure where the proportion of income assessed for existing tenants would be 23% and new tenants will be at 25%.

From a Homeswest perspective, these changes were introduced on 21 July 1997 and impacted on less than half of the tenants in Homeswest rental properties.

When the increased charges were introduced Homeswest effectively had a three tier rent structure and as such the increases were introduced in the following manner:

- Existing tenants whose rent was previously assessed at 21.2% will move to 22.5% over a two-year period.
- Existing tenants whose rent was previously assessed at 22.5% will remain at that rate.
- All new tenants' rent will be assessed at 25% of income.

The rate of 25% for new tenants is set within the tenant's capacity to pay according to accepted affordability measures.

Where tenants transfer at their own request, they are considered to have a new tenancy and are charged at the rate of 25%."

Although this policy is quite reasonable, I have difficulty accepting that tenants forced to transfer because of health reasons should be categorised as tenants transferring at their own request.

Case Two

The complainant, a single mother with four children, believed that the Ministry had not taken her problems into account sufficiently when it declined her application for priority assistance. She and her children were receiving treatment from teaching hospitals and staff had provided medical evidence to support her case for urgent housing. The complainant stated that her lack of accommodation had forced her to sleep in cars and on the floors of relatives' houses. Her complaint noted that she had a debt from a previous tenancy but she had been repaying it at $50.00 per fortnight for over six months.

The Ministry responded that the complainant had actually had five previous tenancies and that there were several thousand dollars in outstanding debt. In addition it had needed to take action against the complainant in all of the tenancies due to antisocial behaviour and poor property standards. Under these circumstances it was not prepared to reconsider her application until she had made more substantial reductions to her debt. Given her need the Regional Manager was reviewing her case regularly to ascertain if her case could be reconsidered.

I could not conclude that the Ministry had followed incorrect administrative procedures or acted unfairly in this case. However, it was recognised that the complainant and her children were facing considerable hardship and had living circumstances which could well make any health problems worse. As a number of complainants in similar circumstances have contacted my Office I have commenced a review of these complaints. The purpose is to ensure that there is no action which my Office should take to have any underlying systemic issues addressed.

CHAPTER 7

EDUCATION – SCHOOLS, UNIVERSITIES AND TAFE COLLEGES

During the year a total of 54 complaints were received, involving 66 individual allegations, about the Education Department, individual schools, universities and TAFE Colleges, and a total of 62 allegations were finalised. Table 1 shows details of allegations received and finalised during the year compared with the previous year together with the institutions the allegations concerned.

TABLE 1 Allegations received and finalised

	1997/98		1998/99	
Agency	Allegations Received	Allegations Finalised	Allegations Received	Allegations Finalised
Education Department (administration and individual schools)	40	34	41	37
Curtin University	2	3	5	4
Edith Cowan University	1	-	7	6
Murdoch University	6	8	3	4
University of Western Australia	1	-	2	3
Central Metro College of TAFE	6	6	4	3
Midland College of TAFE	2	-	1	2
South East Metro College of TAFE	1	-	-	-
South Metro College of TAFE	4	4	1	1
West Coast College of TAFE	-	-	1	1
Tertiary Institutions Service Centre	-	-	1	1
	63	55	66	62

The 62 allegations finalised during 1998/99 were dealt with as follows:

- No jurisdiction 5
- Discretion exercised not to investigate 9
- Discontinued or withdrawn 5
- Finalised by investigation 43

Of the 43 allegations finalised by the completion of an investigation, 22 were resolved totally, substantially or partly in favour of the complainant with the balance not being sustained.

The assistance that was able to be provided in the matters finalised is shown in Table 2.

Table 2 Assistance for allegations finalised 1997/98

	Number of Allegations
Apology given	2
Action expedited	6
Reversal or significant variation of original decision	10
Adequate explanation given	24
Referred to other appropriate agency	8
No assistance provided	12
Total allegations finalised	62

EDUCATION DEPARTMENT

School charges

In my reports for the two previous years I mentioned complaints I had received from parents who questioned the legal basis of schools to make certain charges. The issue continues to receive publicity in the context of debate about the fees provisions of the School Education Bill 1997.

As indicated in my last report, I suggested to the Director General in February 1998 that the Department consider making a public announcement setting out fees which can be compulsorily charged and outlining approved recovery methods. I was of the view that if this were done parents would know their compulsory obligations and be in a position to question schools which exceeded their statutory powers or did not otherwise comply with departmental guidelines. The Director General agreed to make such an announcement "when Parliament has agreed to those aspects in the Education Bill, which is currently being debated". She envisaged that this would be before the beginning of the 1999 school year.

As the School Education Bill was still before Parliament at the end of 1998 and did not appear likely to be finalised in the near future, I wrote to the Director General suggesting that further complaints were likely to arise in 1999 if the current position was not made clear to parents. I strongly recommended that before schools resumed for the 1999 academic year she make a public announcement setting out the fee arrangements in force under the current Education Act and Education Regulations. My recommendation was accepted and an appropriate article appeared in the Education Today section of The West Australian on 4 February 1999.

Staff salaries

At the beginning of the 1999 academic year I received a significant number of complaints from temporary and casual Education Department staff who had been waiting a considerable amount of time to be paid their salaries. Some were the principal breadwinners in their families and going several weeks without any income placed them in severe financial difficulties.

In an attempt to resolve the situation as quickly as possible I made arrangements with the Department's Director of Human Resources under which he nominated a member of his staff to whom I could refer complaints by telephone for immediate follow up.

The Department informed me that the delays in payment were caused by problems associated with the introduction of a new computer system. It apologised for the inconvenience caused to the staff concerned and gave an assurance that the problem had been rectified and would not happen again.

I also contacted the Acting Auditor General who told me that issues relating to payroll were being addressed as part of his audit of the Education Department. In the circumstances I did not pursue the matter further.

Examples of other matters finalised

Case One

The President of a Senior High School Council complained to me about the Local Area Education Planning (LAEP) process for the western suburbs of the metropolitan area. LAEP was defined by the Education Department as involving 'groups of school communities planning together to provide their students with access to a better range of curriculum choices, specialist programs and quality facilities, through the improved use of current and future educational resources."

An important issue addressed in the LAEP process was where schools were needed and this involved consideration of whether particular schools should be closed - with the final decision to be made by the Minister for Education. Closing a particular senior high school was identified as an option during the LAEP process.

The complainant believed that the Minister for Education had "pre-empted the process by announcing his preferred option in the media" which included closing the school. In her view insufficient consideration had been given to proposals put forward by her Council to retain the school. She maintained that procedures set down and endorsed by the Minister in a Local Area Education Planning Framework document had not been followed.

Section 14(3) of the Parliamentary Commissioner Act 1971 specifically excludes me from investigating the merits of actions taken and decisions made by Ministers of the Crown. I therefore informed the complainant that I could not address aspects of her complaint concerning alleged actions of the Minister or the concept of LAEP. My role was limited to a consideration of administrative issues such as whether the LAEP process had been carried out consistently and fairly within the parameters set by the Minister and his Department.

I obtained reports from the Education Department and one of my staff perused the relevant departmental files as well as interviewing three senior Education Department staff involved in the LAEP process. I found no evidence that the process had been administered inconsistently or unfairly. However, in my view, the Local Area Education Planning Framework document conveyed an ambiguous message as to the degree of involvement it intended schools, parents and local communities to have in Education Department decision making. The Director General agreed to my recommendation that the document be revised to remove the ambiguity.

Case Two

The parents of a fifteen-year-old high school student complained to me that the Deputy Principal had arranged for a police officer to come to the school to administer a breathalyser test to their son. This had occurred after their son had boasted to fellow students during recess that a bottle he was drinking from contained vodka and orange. When confronted, their son had denied that the bottle contained alcohol but the Deputy Principal was not satisfied this was the case because she believed that the orange juice would have masked the smell of any spirits. The test registered a nil result.

The student had consented to being breathalysed after the police officer concerned had informed him that he was not obliged to do so because he was a minor and not in control of a vehicle. However, the parents believed that this should not have occurred without them being contacted and their consent obtained.

I made enquiries with the Education Department which acknowledged that the Deputy Principal had responded over-zealously to the alleged consumption of alcohol by the student. It apologised for her actions including not contacting the parents before arranging the breathalyser test. In order to reduce the possibility of such circumstances recurring, the school's student code of conduct was amended to stress the requirement to contact parents wherever possible whenever a child is suspected of a serious breach of behaviour.

Case Three

Over a period of two school years a student received several suspensions for alleged grossly insolent and defiant behaviour towards teachers including both written and oral abuse. On one of these occasions the student signed a behaviour contract stating he was on probation and would leave the school if he acted inappropriately again. He regarded the contract as applying for only the balance of that school year but school staff believed that it was not time limited.

The student allegedly behaved inappropriately towards teachers again the next year. On being told he would be suspended he is said to have threatened to kill one teacher and to have orally abused another. He was suspended for ten days with the suspension notice including a notation that his enrolment at the school was no longer acceptable. After ten days the student returned to the school and the Acting Principal requested him to leave. When he refused to do so she telephoned the student's mother asking her to come to the school. A confrontation occurred while he was waiting for his mother during which the student was alleged to have physically restrained the Acting Principal when she attempted to call the police. The student subsequently left the school after speaking to his mother on the telephone.

The student and his mother then made enquiries about him attending another school but did not sign an enrolment form. Nevertheless, the other school sent a transfer note to the school that had suspended the student which treated this as terminating his enrolment with them. The student and his parents made approaches to the first school seeking his return but this was refused on the grounds that the transfer note had been received and that the student no longer lived within the school's boundaries (his family had lived within the school's boundary at the time of his original enrolment). At this time, teachers at the first school expressed concern about the student returning, indicating that they believed that he was a potential risk to them. The School Occupational Health Safety and Welfare Representative formally advised the Department that should the student return 'a school closure on grounds of safety … [was] … possible".

The student's parents continued to press for his return to the first school including providing letters of support from professional persons involved with their son. In order not to cause a break in his education they enrolled him as a correspondence student as an interim measure. The matter continued to remain unresolved at the end of that school year. The next year the student enrolled at his local school. He settled in well there and did not want to move. However, he believed he had been poorly treated the previous year and through his legal representative lodged a complaint with me.

I made enquiries with the Education Department which advised that:

- The school did not wish to subject the student and his parents to the formal exclusion process and preferred him to be in a position to make a fresh start at a new school. In keeping with this the Acting Principal (whom the student had allegedly assaulted by restraining her from phoning the police) and the teacher the student had allegedly threatened to kill did not press criminal charges against him.

- The exclusion process was made redundant by receipt of the transfer note.

- It was not considered to be in the student's educational interests for him to re-enrol at the first school.

- The student's alleged threatening and aggressive behaviour continued to have a serious impact on teaching staff at the first school.

- The student's parents had not objected when the first school reminded them of their son's "agreement" to transfer if there was a repeat of his inappropriate behaviour. (As mentioned above the student and his parents denied that there was such a long running agreement or that they had not objected to him leaving the school.)

My enquiries concentrated solely on the procedures used to exclude the student from the first school. I did not consider it appropriate for me to consider whether or not exclusion was warranted – that was a matter that should have been considered by an Exclusion Review Panel (which includes a community representative) in accordance with the provisions of the *Education Act and Regulations*.

I was satisfied that the prescribed procedures were not followed and that the comment on the suspension notice that the student was no longer acceptable at the school had no legal effect. Consequently the Acting Principal had no legal authority to order the student off the premises when he returned to the school. Although it may have been justified on technical legal grounds, I did not believe it was reasonable for the student's enrolment as a correspondence student to be taken as cancelling his enrolment at the first school.

Although I accepted that the Acting Principal was placed in a very difficult situation in which the student's views and his parents' concerns and those of the first school's staff were probably irreconcilable, she was, in my view, obliged to follow the provisions of the *Education Act and Regulations* if she wished to exclude the student from the school against his wishes. For this reason I believed I would be justified in recommending that the student be offered a place at the first school. However, in view of the fact that the student was well settled at his new school it was not necessary or appropriate for me to make such a recommendation. It was also not appropriate for me to make any other recommendations because the Acting Principal had retired since the events complained about and, as well, the *School Education Bill 1997* which was before the Parliament contained new exclusion procedures.

UNIVERSITIES

Case Four

Edith Cowan University advertised in the press short courses in Indonesian which it said "were suitable for beginners through to advanced speakers" and were conducted at three levels – Elementary, Intermediate and Advanced. A high school teacher proficient in other languages made enquiries about the course and was sent an information sheet which indicated that the elementary level course was for "elementary level learners who have mastered the basic structures of the language."

The teacher enrolled for the elementary course and when she attended the first lecture found that the majority of the students had completed prior courses and that the lecturer presented the course at their level. Even though she had general experience with foreign languages, she found that this was not enough to make up for the fact that she had no prior knowledge of Indonesian. When she queried the way the lectures were being conducted with the lecturer and other staff, she was offered additional study materials and assistance so that she could catch up with the others or a transfer to another class which contained a majority of students at her level.

Neither of the options offered was acceptable to the teacher - she had other commitments at the alternative class time and she believed it was unreasonable that the course was not suitable for complete beginners as the advertisement had described. She therefore decided to withdraw from the course and asked for a refund of her fees. The University agreed to refund only 50% on the basis that it had incurred significant set up costs for the teacher including the preparation of learning resources and handouts which it could not recoup. It did not believe that any misrepresentation had occurred because of the statement in the information sheet that the elementary course assumed students had a basic knowledge of the language.

I made enquiries with the University, pointing out the clear indication in the advertisement that the course was for beginners which I believed implied persons with no prior knowledge of the language. After some initial hesitation the University agreed to refund the fees in full. To prevent similar problems recurring it also agreed to review its advertisements to make them consistent with the content of information sheets.

Case Five

In 1994 a temporary resident married to an Australian citizen undertook a Mature Age Tertiary Entrance course through TAFE and sat for the required two Tertiary Entrance Examinations (TEE) subjects. The conditions of her entry permit allowed her to study in Australia while her application for permanent residence was being processed. Permanent residence was granted six months after the examinations.

The person did not immediately seek university entrance because she had a young child. However, two years later, by which time she had moved interstate, she applied for entry to a New South Wales university. The New South Wales University Admission Centre informed her that she would have to provide details of her Tertiary Entrance Score (TES) in Western Australia. However, when she approached the Western Australian Tertiary Institutions Service Centre (TISC) it refused to calculate a TES for her because she had not been a permanent resident at the time she sat for the TEE subjects. The New South Wales University Admission Centre therefore refused to consider her for admission to a university in that State.

Feeling caught between two admission systems, she then complained to my Office. I made enquiries with TISC which informed me that the Mature Age Entry procedures in Western Australia are not available to overseas students or temporary residents in Australia. Such persons were required to complete the standard school leaver requirement of four or five TEE subjects in order to "demonstrate a capacity for university-level study". The mature age arrangements were a "concession" from the normal "breadth of study" available as a privilege to local students (which includes New Zealanders).

TISC indicated that the fact that the complainant obtained permanent residence soon after sitting for TEE subjects was not relevant, as it could not make "retrospective changes to historical data when changes in non-academic circumstances of students occur." The reasons for this were:

> "The data we hold is clearly understood by all users to reflect a set of circumstances and requirements in place at a particular time. As explained previously, one way of ensuring that the joint university application system is fair and equitable is to have the rules clearly described and applied consistently. To change historical data in an ad hoc fashion could lead to difficulties in interpreting the data and undermining of people's confidence in the integrity of the data. It could also be seen as inequitable to change data for one person because we were made aware of a particular set of circumstances and not for another in similar circumstances of which we are not aware."

I was also informed that the university admission agencies in all States share information and that the New South Wales University Admission Centre, as well as the complainant, had the necessary data to calculate an "unofficial" TES. Although TISC was sympathetic to the complainant's position, it was of the view that it was up to the New South Wales University Admission Centre to decide the basis on which it would assess her application. I passed this information on to the complainant and suggested that she recontact the New South Wales University Admission Centre. She did so and informed me that she was confident of being offered a place.

In the circumstances it was not necessary for me to take any further action concerning the complainant's particular situation. However, I remained concerned about the general issue of mature age students who become permanent residents after sitting for TEE subjects. It seemed somewhat illogical that a person who obtains permanent residence shortly before sitting for TEE subjects can have a TES calculated as a mature age student whereas a person who obtains permanent residence shortly after sitting cannot. In my opinion all mature age students who sit for the prescribed number of TEE subjects should be able to have a TES calculated upon notification to TISC that they have been granted permanent resident status. I recommended to TISC that it liaise with its member universities with a view to them reconsidering the policy on this issue. TISC has agreed to do so and I await with interest the views of the universities.

Case Six

An Associate Professor at Murdoch University complained to me about his unsuccessful application for promotion to full Professor. The Divisional Advisory Committee had not recommended his application even though it had given him a very positive assessment and supported his application in the previous promotion round. This time the Committee identified "limitations" in his application, referring to aspects of his teaching and research that had not changed since the previous round. It also referred to difficulties in collegial relationships in the programme the Associate Professor was involved in, suggesting that this cast doubt on his performance with respect to university management. The complainant believed that the Committee's assessment of his performance with respect to university management had coloured its assessment of his teaching and research. He also indicated that he had been involved in an unresolved dispute with one of the members of the Committee and believed that this caused her to be biased against him. He suggested that the Committee's unfavorable assessment resulted from this alleged bias.

The complainant also raised issues concerning the gender balance, employee representation and procedure adopted by various committees involved in consideration of his application and appeal. One committee's membership was 80% female. The complainant contrasted this with a second committee which had its membership numbers increased to raise its female representation with the result that there were two nominees of the Vice Chancellor and only one of the President of the Academic Staff Association (in normal circumstances there was only one nominee of each). He also alleged that committees had based their decisions on unsubstantiated allegations which he had not been given an adequate opportunity to respond to.

I made enquiries with the University and was informed that:

- There was no evidence that a member of the Divisional Committee had acted in a biased manner. Although the Chairperson was aware of conflict between the member and the complainant he did not perceive it as being problematic and was confident that she had not acted in a biased manner towards the complainant.

- It had a policy of increasing the percentage of females on committees to 40% and did not regard exceeding the target as a negative equity issue.

- It did not regard the make up of the second committee as having had any significance because its decision was unanimous.

- One of committees had given the complainant the opportunity to comment about relationships within the programme but he declined to elaborate on why he saw the Divisional Committee's recommendation as being motivated by bias. Committee members were aware in general terms of disputes between some staff in the programme because they were common knowledge. However, details of these disputes were not discussed because it was felt that, "whatever the detailed rights and wrongs in individual cases, the evidence of three such disputes with different staff members could be seen as throwing some doubt on … [the complainant's] … relationships with his colleagues".

I did not believe that the University's response recognised the significance of the potential bias that arose from unresolved disputes between the complainant and a committee member. The issue was not whether the member concerned actually acted in a biased manner, but whether a reasonable person might believe that she may have done so. The rules of natural justice (procedural fairness) provide that no administrative decision can stand where there is bias or suspicion of it. The test is in terms of possibility rather than probability of bias.

In my view the member should not have played any part in the consideration of the complainant's application for promotion – the Chairperson should have asked her to withdraw.

Although I agree with the concept of gender balance on committees, it seems to me that having female representation significantly greater than 50% defeats the purpose of the exercise. I believe that gender imbalance of all forms in committee membership warrants consideration or remedial action and I informed the University of my view. I also recognise that it is difficult to achieve both "gender equity" and "appropriate employee representation" at times. However, in this particular case I considered that both could have been readily achieved if one of the members had withdrawn and been replaced by his female deputy. I informed the University of my view, pointing out that 'justice must be seen to be done'. However, I did not pursue the issue any further because I did not believe that the make up of the Committees invalidated their decisions.

Detailed records were not kept of the Committee meetings and so it was not possible for me to determine precisely what occurred. However, I was not satisfied that the complainant had been adequately told about, and given the opportunity to respond to, adverse information the Committee had about him. Nor was I satisfied that the committees had given this aspect proper consideration. In my view the committees were obliged to consider the rights and wrongs in the disputes if they intended to use them as part of their assessment of the complainant's application. The very existence of disputes was not in itself evidence of deficiencies in management – consideration needed to be given to the possibility that the complainant's actions in all three cases were quite reasonable.

I concluded that the above significant procedural irregularities warranted the complainant's application being reconsidered by differently constituted committees. However, it was not necessary for me to recommend this because after lodging his complaint the complainant had left Western Australia to accept a full Professorship at an overseas university. I therefore recommended that the University send a letter of apology to the complainant formally acknowledging that procedural deficiencies had occurred in the consideration of his promotion application which raised the possibility that it had not been treated entirely on its merits. I also recommended that the Chairpersons of all selection and promotion committees should be made aware (by formal training sessions where necessary) of the need to maintain adequate records of meetings and the practical requirements of natural justice in such proceedings.

The University accepted my recommendations. The Vice-Chancellor also informed me that Divisional Advisory Committees have since been abolished and one byproduct of this is that the potential for conflicts of interest and bias is significantly reduced.

TAFE COLLEGES

Case Seven

In 1997 Midland TAFE conducted aviation courses at two locations - the Midland campus and at Jandakot Airport. Following a complaint from a private flying school to the Minister about unfair competition, courses at Jandakot were charged on a fee for service (full fee paying) basis - i.e. there was no "government subsidy". Following that complaint, Midland TAFE has been consistently scrutinised for any cross subsidisation of the Jandakot course.

Courses conducted at the Midland campus were theory only - students had to make their own arrangements for flight training ("flying") if they wanted this (apparently some students only want to do the theory and don't go on to actual flying or at least not as far as getting a licence). The fees at the Midland campus (which did not include any mentoring by the lecturing staff, as was the case at Jandakot) were at usual TAFE rates which are "government subsidised". The 1997 maximum rate for courses available at Midland Campus was under $300.

In 1997 a Commercial Pilot Licence/Diploma in Aeronautics course which incorporated both theory and flying (Midland TAFE contracted with several private flying schools to conduct the flying component) commenced at the Jandakot Airport campus, the total cost of which, including books and equipment, was over $24,000. The theory component of the Jandakot course covered the core curriculum of courses at Midland, but also included additional subjects.

A student complained to me about the level of fees the College was charging her for the theory component of the Jandakot course and the charges for books and equipment provided during the course. She maintained that she had been told that she could do theory studies for the same fee at either Midland or Jandakot and produced papers she said she had received from the College which supported this.

I carried out extensive enquiries which involved interviewing senior College staff as well as obtaining written reports. Staff denied informing the complainant that theory studies could be undertaken for the same fee at either campus and said that the papers she had supporting her case were old draft documents prepared before the decision was made to conduct the Jandakot course on a fee for service basis. I was given a copy of correspondence that the College said it had sent to the complainant - but none clearly indicated that the course at Jandakot was conducted on a fee for service basis. They contained no cost breakdown and, based on them alone, it was easy to understand that the student and her parents could have been under the impression that common elements of the Midland Campus and Jandakot courses were charged on the same basis.

Very late in my enquiries the College provided me with a copy of another letter it said had been sent to the complainant which stated that the Jandakot course was charged on a fee for service basis. The complainant denied receiving this letter but the College said that she would have needed it to apply for Austudy assistance from the Commonwealth Government. In order to resolve whether or not she had received the letter I obtained the complainant's permission to approach the relevant Commonwealth department for a copy of her Austudy application. There was a copy of the letter in question with her application and so I was satisfied that she had received it and should have known that the course was a fee for service one.

Although I did not sustain the complaint about this issue, I was of the view that offering similar courses at significantly different fee rates, albeit at different locations, provided considerable scope for confusion amongst students as to fees, especially those students who did not intend to complete all of the components of the Jandakot course. In order to decrease the likelihood of similar complaints arising in the future I recommended that the College make changes to all its brochures and enrolment forms to clearly indicate that courses at Jandakot were conducted on a fee for service basis.

The complainant's grievances about books and equipment concerned the amount she was charged (she believed that the items could be purchased cheaper privately and maintained that she had not been told she had this option) and whether or not she had been issued with some items. My enquires resulted in a reduction in some of the charges. In order to prevent the likelihood of similar problems recurring I recommended to the College that it introduce a practice of requiring students to sign for all items issued to them as well as clearly advertising the option students have to purchase items privately if they wish.

All my recommendations were accepted and implemented by the College.

CHAPTER 8

WESTRAIL SPECIAL CONSTABLES

Last year I reported that the Commissioner of Railways and I had entered into a Memorandum of Understanding (MOU) concerning how complaints about Westrail Special Constables would be handled by our respective Offices. The MOU, which came into effect on 3 November 1997, established a system that enables me to monitor and review the adequacy of all internal investigations undertaken by Westrail into complaints about the conduct of its Special Constables. During the past year I have had further discussions with the Commissioner of Railways because of problems identified by my Office during reviews of Westrail internal investigation files and as a result of investigations my Office conducted into some matters. We agreed to make changes to the MOU, including bringing Westrail's internal investigation processes more into line with the processes used by the Western Australia Police Service. These changes were designed to improve timeliness in the completion of Westrail's internal investigations and to increase accountability and transparency in its dealings with complainants and my Office.

1998/99 was the first year in which I have received notification of complaints about Westrail Special Constables for an entire twelve months. Tables 1 and 2 set out details of the allegations received and dealt with during the year and the nature of the allegations received.

TABLE 1	Allegations received and finalised 1998/99
Number of allegations received	67
Number of allegations finalised	53

TABLE 2	Nature of allegations received 1998/99	
	Number of allegations	%
Assault or excessive force	33	49.3%
Wrongful arrest/Failure to comply with procedure	25	37.3%
Verbal abuse or threats	9	13.4%

The system for dealing with complaints

Complaints about Westrail Special Constables are normally investigated by Westrail's Patrol Supervisor under the supervision of Westrail's Patrol Manager. Previously, as with the police jurisdiction, Westrail had to apply to my Office for extensions of time to complete internal investigations into complaints that had gone beyond an initial 42 day period. This procedure placed unnecessary administrative burdens both on my Office and on Westrail and prolonged the time taken to complete investigations. During the year this process was abolished and a system of performance targets for the completion of investigations was introduced similar to that introduced in the police jurisdiction.

Further amendments to the MOU included changing the practice of Westrail waiting until after I had completed my review of internal investigations before it sent a letter to a complainant informing him or her about the outcome of its internal investigation of their complaint. A new system has been introduced giving complainants a greater opportunity to provide their views to my Office at the review stage. This new system involves the following procedure:

- All complaints made direct to me concerning the conduct of Special Constables are forwarded to Westrail. Westrail also receives complaints direct from complainants and complaints made to police about Special Constables.

- All complaints received by Westrail are recorded in a register and are categorised as either "criminal", "major" or "minor". The categorisation process may involve consultation with police and/or my Office. I am notified of all complaints.

- If a complaint involves an allegation of a serious criminal nature, such as assault occasioning bodily harm, under the terms of a separate MOU between police and Westrail it must be referred to police for investigation. Westrail notifies me of the outcome of all complaints investigated by police and provides me with relevant documentation relating to those matters should I request it.

- Westrail is expected to complete investigations into minor complaints within 21 days from the date of receiving them. The target times for completion of major complaints are set out later in this chapter.

- Upon completion of an internal investigation into a complaint, whether major or minor, Westrail notifies the complainant about the outcome of the investigation and of my Office's review role. At that stage Westrail notifies me of the complaint and sends the relevant papers to my Office for review of the adequacy of the Westrail internal investigation.

- Upon receipt of the internal investigation file I send a questionnaire to each complainant inviting them to provide their views about the adequacy of Westrail's investigation into the complaint. Those views are then taken into account by my Office when the adequacy of the internal investigation is being considered.

- If I consider that an investigation is inadequate I can return the file to Westrail and request that further enquiries be conducted or I may commence my own separate enquiries.

- On the completion of any further enquiries by Westrail the file is returned to me for further review as to the adequacy of the internal investigation.

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- When I am satisfied that the matter has been adequately investigated I send a letter to the complainant advising him or her of the outcome of my review.

Allegations of assault

I stated in last year's report that I was concerned that approximately half of all allegations made against Westrail Special Constables involved allegations of assault and/or excessive force. Table 2 shows that there has been no improvement this year – which is of concern.

I suggested in last year's report that Westrail Special Constables needed more regular refresher training and that an effective supervisory structure needs to be implemented to better equip Westrail Special Constables to avoid using force whenever possible. Following discussions during the year between our respective Offices, Westrail advised that it intends to provide regular refresher training for Special Constables. Currently, our Offices are considering the appropriate intervals of time between such courses. During those discussions I was informed that one Special Constable had been appointed to a full time supervisory position thereby increasing the number of full time Westrail Supervising Officers to three. I am encouraged by this development and hope that more Special Constables will perform supervisory roles as they develop the necessary skills and experience for such work.

Improvements in the frequency of refresher training and better supervision will hopefully result in a reduction in the number of allegations of assault being made. I will continue to monitor the situation.

Case One

During the year I finalised a matter involving a complaint concerning allegations that an assault had occurred or excessive force had been used during the arrest and detention of two juveniles and one adult. The complainants also expressed doubts about the adequacy of the Westrail internal investigation.

I conducted an investigation into these matters and produced a report that highlighted concerns that I held about the behaviour of the Special Constables and the appropriateness of their actions. I also recommended that:

- Action be taken against the Special Constables involved which should include consideration being given to taking criminal and/or disciplinary action where appropriate;
- Improvements were needed to Westrail's internal investigation processes including the development of relevant policies and practices to ensure impartial and effective handling of complaints;
- The training of Special Constables in the areas of conflict resolution and the use of force needed to be improved and conducted on a regular basis;
- A review be undertaken of the contractual arrangements with outside organisations under which Westrail obtains and employs Special Constables; and
- An apology be given to the complainants for the inadequacies in the internal investigation of their complaints.

These recommendations are the subject of discussions between Westrail and my Office. It is pertinent to note, however, that at the time the investigation of these matters was conducted by Westrail its internal investigation process was in its infancy. By the time I wrote my report identifying deficiencies in the handling of this case Westrail had already effected improvements to a number of the identified areas of concern. For example, in the interim Westrail had appointed an internal investigator to conduct enquiries such as this and this officer was receiving ongoing training and development.

Timeliness of investigations

The performance targets set during the year for completion of internal investigations are as follows:

- 35% within 42 days from the date of receipt of the complaint;
- 40% within 43-90 days from the date of receipt of the complaint; and
- 25% within 91-150 days from the date of receipt of the complaint.

Table 3 sets out details of the number of allegations finalised during the year and the percentage of allegations completed in relation to the performance targets set for the year.

TABLE 3 Number and percentage of allegations finalised - 1998/99

	Number	Percentage
0 to 42 days	1	2%
43 to 90 days	8	15%
91 to 150 days	6	11%
over 150 days	38	72%
Total	53	100%

As can be seen from Table 3, Westrail fell well short of reaching the performance targets set for the year. One possible reason for this was that Westrail's Patrol Supervisor was not employed as a full time internal investigator until mid August 1998 - resulting in a backlog of work. The Patrol Supervisor has now been given access to his own interview room and audio taping facilities and is supported by a part time/temporary typist. It was hoped that these advancements would reduce the backlog of complaints and result in complaints being completed in a more timely manner. Unfortunately, the situation has not yet improved to any significant degree and I anticipate that the finalisation of internal investigations will continue to be delayed until at least one more internal investigator is employed to assist the Patrol Supervisor.

A particular reason why Westrail should employ an additional full time investigator is the necessity for two investigators to be present when interviewing witnesses and persons complained about. Such a practice has been adopted by the Police Service and most other investigative bodies to ensure that all relevant issues raised in complaints are adequately addressed and all interviews are conducted as fairly and impartially as possible. I endorse this practice and it is one that I urge Westrail to adopt.

Investigative methods

Westrail's management structure and its handling of complaints

At present there are 101 Special Constables working for Westrail. Of these, 85 are employed by a private contractor and are provided to Westrail under a contract and 16 are employed directly by Westrail.

Westrail's Patrol Manager is responsible for the general management and supervision of all Special Constables and, until recently, was also responsible for the Patrol Supervisor's handling of all internal investigations. This arrangement had the potential to affect the independence and impartiality of Westrail's internal investigations. This potential could be limited by a separate management structure which separates those investigating complaints from those responsible for the day-to-day supervision of Special Constables. I am therefore encouraged by recent advice from Westrail that it has relocated its internal investigator to the headquarters office complex, where he is directly responsible to Westrail's executive management. Westrail is also actively pursuing the appointment of a second, experienced, internal investigator. Hopefully, this appointment will be made sooner rather than later.

Case Two

A complainant expressed concerns that her complaint about eight female children being ordered off a train had not been investigated adequately by Westrail. She told me that she became involved when she and her partner met the eight distressed girls (6 to 15 years) at a suburban train station. The children had been travelling home on a train after a school holiday outing to a beach. By their own admissions, they had been laughing loudly and making noise on the train. A passenger, disturbed by the noise, rang Westrail on his mobile phone, prompting a Westrail employee to board the train at the next stop. Although the children were quiet when he arrived, the employee still ordered them off the train. The children walked between train stations but the same employee rode the train back and, by his actions and demeanour, prevented them from re-boarding subsequent trains.

The complainant also alleged that no discretion was exercised to allow the children to continue their journey despite the complainant's intervention. Further, a male Westrail employee 'interviewed' one of the older girls in a closed office, declining an offer made by the complainant's partner to accompany the girl as a 'responsible adult'.

My investigation disclosed that Westrail had, when investigating the complaint:

- failed to interview the complainant, her partner, the children and key witnesses;
- not conducted recorded interviews with the employees involved;
- not properly analysed and reported on the incident;
- failed to identify that the officer concerned had not acted in accordance with Westrail policy of not putting minors off a train service; and
- incorrectly informed the Equal Opportunity Commission ("EOC") that the children were not put off the train.

I sustained this complaint and recommended that Westrail:

- apologise to the complainant, her companion, each of the children and their parents;

- reimburse the complainant for the expenses (taxi fares and food) she incurred in looking after the children and escorting them to their homes;
- advise the EOC of, and rectify, the inaccurate information given;
- review and update its policy on dealing with minors, emphasising the desirability of having a "responsible adult" present whenever practicable; and
- ensure that its policy concerning minors was brought to the personal attention of all Westrail staff and they be reminded of the need to exercise discretion in ways that give effect to Westrail policies and the duty of care towards juveniles.

I was satisfied, however, that recent and proposed changes to Westrail's method of investigating complaints meant that no specific recommendations needed to be made to rectify the deficiencies in Westrail's investigative practices that had been identified by my investigation into this matter.

Compelling Special Constables to answer questions during internal investigations

In last year's report I commented that Westrail did not have regulations compelling Special Constables to answer allegations put to them by internal investigators during internal investigations. Police officers are compelled to answer such questions pursuant to police regulations.

During the year Westrail obtained legal advice about this issue. The advice referred to section 74(1) of the Government Railways Act 1904 which provides that Special Constables shall not be members of the Police Service but, within the limits of the Government railways, shall have, ... "all such powers, authorities, and immunities, and be liable to such duties and responsibilities as any duly appointed member of the Police Force now has by law". The legal advisers were of the view that the effect of this provision is that the existing police regulations that compel police officers to answer questions during internal investigations also apply to Westrail Special Constables.

It should be noted that when a police officer is forced to give evidence pursuant to the Police Service's regulations this evidence can not be used in criminal proceedings against that police officer. This same situation would apply to Westrail Special Constables.

Despite this legal advice, I consider the current position to be unsatisfactory. In my opinion the position of Westrail Special Constables should be quite clear - either the Government Railways Act 1904 should be amended or alternatively new regulations should be created to compel Special Constables to answer questions during internal investigations.

Retention of video tapes

Video tape recordings of incidents on Westrail trains and stations can be both a vital part of the available evidence to support prosecution matters and of assistance in complaint resolution. Such recordings can also be a valuable management tool in assessing staff performance.

Westrail's current practice concerning the use of video tapes involves retaining tapes for a period of seven days. After that time the video tapes are then reused. During the course of the year it became apparent that some incidents came to Westrail's notice after the seven day period and the tape had been reused. I have suggested that Westrail take steps to improve its system of reusing and storing video recordings. Although Westrail has expressed some reluctance about proceeding down this path – due to the number of video cameras and tapes in use already within its system – I am hopeful that it will see the advantages not only for complainants but also for its own staff.

CHAPTER 9

OTHER AGENCIES

There are many hundreds of government agencies in Western Australia, ranging in size from extremely large to very small. During the course of a year some agencies have many thousands of contacts with members of the public, while others have very few. Although my Office receives several thousand complaints each year, for many agencies there are no complaints made and for most there are only a few. A list of all the agencies which were the subject of complaints during the past year are set out in Table 5 in Chapter 1.

This chapter contains information about some of the areas which individually do not warrant a separate chapter in this report but which nonetheless involved my Office in a considerable amount of work during the past year. Notes on a variety of cases are presented which show the range of issues which can arise.

DEPARTMENT OF TRANSPORT

I received 36 complaints containing 39 allegations about the Department. This was a similar number to last year. Most complaints related to licensing matters and the taxi industry. Few complaints were received about the operation of bus services, notwithstanding the initial problems resulting from the privatisation of Perth metropolitan bus services, about which I commented in my last report.

One regular source of complaint about licensing matters has been the problem of correspondence being sent to addresses at which licensees no longer reside. This is particularly serious in cases where the correspondence comprises a renewal notice, an infringement notice or an advice about unpaid fines. The onus rests with licensees to advise the Department of changes of address both in respect of their driver's licence and all vehicles they may own. Problems arise when not all these records are amended, as evidenced in the following case.

Case One

The complainant owned two motor vehicles and two trailers and provided written advice to the Department of a change of address. However, the address in respect of one of his trailers was not changed and consequently he did not receive the renewal notice which was sent to his former address. The Department does not retain change of address advices after they have been processed and it was not possible to confirm that he had listed all his vehicles when he gave the advice. However, it seemed more likely that the failure to update all the associated records was the result of an administrative error than that the complainant had forgotten to list one of his trailers.

In the circumstances, I considered it was very reasonable that the Executive Director decided to waive the infringement which had been issued in respect of the complainant's failure to return the licence plates for the trailer and he also allowed the trailer to be re-registered without having to be inspected. I was also pleased to note the Executive Director's advice that the Department's licensing system was being redeveloped as a "client-centric" structure which linked all vehicle and driver's licence records to the licensee's record. This is expected to streamline the maintenance of address details and reduce the number of problems of this type.

In some cases, complainants find themselves in situations which are largely or solely of their own making and not all complaints which I receive are reasonable. Although I consider all complaints on their merits, there are other occasions when I feel very concerned about the hardship being suffered by complainants who are the victims of "tough" decisions and have exhausted every means of coping with the consequent problems and seeking relief from the underlying cause. The following is such a case.

Case Two

The complainant was the mother of a four year old boy who had been diagnosed as having a severe permanent hearing deficiency which would likely impede his ongoing education and social development. The local school psychologist strongly recommended that the boy continue twice weekly attendance at the early intervention centre in Perth but the family lived in a country town some 300 km away, had two other children including a baby, and ran a family business. They had been coping by means of the mother taking the boy to Perth for three days per fortnight and staying with his grandmother, thereby allowing him to attend the centre twice per visit. However, the financial burden was proving excessive and the family could no longer sustain the effort.

For about twelve months the family had persistently sought to obtain a conveyance allowance of 9.4c per kilometre from the Department. However, they had been told that although some families from country areas were receiving the allowance and fresh applications were still being approved from metropolitan families, the Department's current practice was not to allow further applications from country areas pending a review of its policy. The family had been strongly supported by their local Member of Parliament, who happened to be a Cabinet Minister, but the Department had not replied to his letter after some four months. In desperation, the mother complained to me.

In response to my request that the matter be urgently reviewed, the Acting Director General advised me that the Department was prepared to approve the family's application and backdate payments to the date of the original application. I was later advised that no similar cases were current and on that basis I discontinued my enquiries. The complainant was kind enough to take the trouble to write and thank me for my assistance and I was particularly pleased to hear that attendance at the centre was having a very positive effect on her son's development.

The following case is relatively simple but I mention it because it depicts a situation which resulted in an unnecessary stand-off.

Case Three

The complainant had sent a cheque to the Department for the registration of her brother-in-law's boat trailer and was then advised by her bank that the Department had mislaid the cheque. At the bank's request she forwarded a further cheque and cancelled the original payment. The Department then located the original cheque and presented it to the bank, which dishonoured it. The Department asked the complainant to reinstate the original cheque and, although she was understandably reluctant to do so, she complied. However, the bank refused to fax confirmation of the reinstatement of the first cheque to the Department on the basis that it was the bank's property. The Department refused to present the second cheque to the bank, advising the complainant that the registration would be cancelled if she did not make payment within 24 hours.

My Office made informal enquiries and was advised that the Department's policy was intended to avoid incurring bank costs for its customers by presenting cheques which would likely not be honoured. In itself, the policy was well-intentioned but it had resulted in an unfortunate stand-off on this occasion. The Department accepted the oral assurance from the bank, conveyed via my Office, that the original cheque would be honoured and re-presented it, thereby bringing the matter to an end.

Case Four

The complainant was the holder of a pensioner concession card and was entitled to a concessional licence fee and exemption from paying stamp duty on one motor vehicle. However, when he bought a new car and sold his old car some 14 days later, he found that he was not eligible for these benefits on the basis that they were available only in respect of one vehicle at a time. He wrote to the Department on two occasions but was told that he would have to pay the full duty on the new car.

I suggested to the Department that the complainant seemed to have complied with the spirit of the regulations and that it might use its discretion to extend him the exemption, as I understood it had done in some similar cases. The Acting Executive Director agreed to refund $567 to the complainant and apologised to him for the inconvenience caused. He also stated that all officers dealing with and reviewing such matters would be reminded of the proper procedure.

DEPARTMENT FOR FAMILY AND CHILDREN'S SERVICES

Case Five

Most of the children of a very long-term involuntary client of the Department were under its care and protection (wards). The Department was taking action in the Children's Court intended to make the client's most recently born child a ward as well. The Department believed that the client had a severe alcohol abuse problem.

The client obtained a job as a crosswalk attendant (traffic warden) with the Police Service which she told two departmental staff about when they visited her at her home. One of the staff (the Case Manager) contacted the Police Service which subsequently dismissed the client. She took an unfair dismissal case to the Industrial Relations Commission and it was during a compulsory conference at the Commission that she first learned that the departmental staff member had contacted the Police Service about her. The client then complained to my Office that FACS staff had unreasonably breached her confidence by telling police about the perceived alcohol problem.

I made enquiries with the Department which indicated that its staff believed they had a duty of care to inform the Police Service of the complainant's problem as her employment required her to be responsible for children at school crossings. It did not believe it was directly responsible for the complainant's dismissal and it understood that the police had made further enquiries within the community before terminating her employment.

The Department said that the disclosure of information about a client to another Department usually occurs after discussion with the appropriate senior officer. One of the chief issues of consideration is the duty of care to children. In this particular case the Case Manager, a mature-age professional social work graduate with two years experience, was thoroughly acquainted with the complainant's history. It was her professional opinion that it would not be unlikely for the complainant to be in attendance at the crosswalk in a condition that might place children at risk. It suggested that, had the Case Manager not raised the issue with the police and subsequently a child or children been injured on the crosswalk, the Case Manager could have been criticised by any inquirer or coroner for not sharing information vital to the safety of children.

The Case Manager had omitted to inform the complainant that she intended to raise her concerns with the police. She acted under the assumption that departmental discretion prevailed and that there might be occasions when the Department may exercise its discretion about the release of information to another agency without the specific consent of the individual concerned.

The law in relation to release of information by professionals is in a state of some uncertainty. The common law position seems to be that professionals owe a duty of confidentiality to their clients but that in some circumstances disclosure can be made in the public interest provided it is to a responsible authority. Also, in the case of public sector employees the following apply:

(a) Section 9(b) of the Public Sector Management Act 1994 provides that employees of public sector bodies "are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities."

(b) The Western Australian Public Sector Code of Ethics includes '... a responsibility to respect a person's right to ... privacy and confidentiality of records." At the same time it says that the principles of Justice, Respect for Persons and Responsible Care stand in a continuing relationship of tension to one another and provides the following examples:

> "... community health workers may have to weigh individual rights to privacy and confidentiality, against the community need to prevent major disease outbreaks.
>
> Social workers are faced with difficult decisions about appropriate action to protect children at risk, while keeping families intact."

(c) Public Service Administrative Instruction 711 includes the following:

> "An officer shall not, except in the course of the officer's official duty and with the express permission of the chief executive officer,
>
> > (a) give to any person any information relating to the business of the Public Service or other Crown business that has been furnished to the officer or obtained by the officer in the course of his/her official duty as an officer ..."

(d) Although it was drafted in the context of responding to approaches for access to information from departmental client files (rather than departmental staff initiating the release of information to other agencies) the version of FACS Administration Instruction 494 current at the time of the incident also contained information of relevance. The guidelines in that document allowed staff to release information from client files to government departments and other bona fide individuals and agencies "Subject to consultation with third parties where appropriate" and "Only with the written consent of the client, or, where appropriate, of the client's guardian." In addition the document included the following under "Departmental discretion":

> > "There may be occasions when the Department may exercise its discretion about the release of information to another agency without the specific consent of the individual concerned. For example, an officer performing functions under the Child Welfare Act may need to disclose information in the exercise of those functions, particularly to equivalent interstate welfare departments. In addition there are situations under which the Department is required to provide information under legislative authority such as the Social Security Act and subpoena or witness summons. Such requests need to be referred to the Unit Manager in the first instance."

In my view the approach of the Case Manager to the Police Service did not comply with the requirements of either of the Administrative Instructions referred to above (the express permission of the chief executive officer was not obtained, the complainant did not provide written consent and the Unit Manager was not involved) and disclosure of information about her should not have been made in the way that it was, if at all. The Case Manager's action would have been more defensible had she raised her concerns with the client before contacting the police. This would have given the client the opportunity to raise the issue with the police herself,

to have resigned if she preferred that option or to attempt to convince the Case Manager that her concerns were not justified. Although I had no reason to doubt that the Case Manager acted in good faith, I was of the view that the Department should have made a formal written apology to the complainant for the way the matter was handled.

I made the following recommendations

- a formal written apology be given to the complainant;
- in a large organisation like the Department it might be inconvenient to apply Administrative Instruction 711 literally and involve the chief executive officer in the release of all information; and
- the Department issue detailed guidelines to staff clearly outlining when disclosures of information might be made without the client's permission, the extent to which prior approval must be obtained and who can give that approval. As a minimum, the guidelines should provide that disclosure is only appropriate when it is clearly in the public interest and to a responsible authority.

The Director General did not accept the first recommendation but accepted the other two. He delegated to all Unit Managers (including Zone Managers) his functions under Administrative Instruction 711 and agreed to review Family and Children's Services Administrative Instruction 494.

Although I was disappointed that the Director General was not prepared to issue the complainant with a formal written apology, I did not believe that any further action by my Office would produce anything of practical benefit to her.

Case Six

A fifteen-year-old girl left her family home, went to live with her nineteen-year-old boyfriend and refused to return. Her mother believed that the Department unreasonably failed to take action to have her daughter returned home. In the mother's view the Department should have made a care and protection application for her daughter in the Children's Court. The mother believed that the boyfriend was being investigated for serious offences and that the Department did not make adequate checks with the police concerning his criminal history.

The Department informed me that it had no power to force the daughter to return home or, in the absence of clear available evidence that she was in physical danger from him, to take any other action to prevent her living with her boyfriend. One of its staff had visited the girl and her boyfriend as well as making enquiries with police which, in general terms, indicated that the boyfriend did not have any criminal history involving sexual offences. Consequently, the Department did not believe that the daughter was physically at risk. It said that the daughter refused to take part in mediation offered by the Department. Several other government and non-government agencies had been involved in trying to resolve the conflict between mother and daughter.

My enquiries with the Police Service confirmed that a departmental staff member had approached one of its stations and that only general information was provided. It indicated that, by law, it could only release information about criminal records to other State Government agencies:

- "for prosecution purposes, as in the case of a criminal record being made available to the Director of Public Prosecutions for the purposes of a trial"; or

- "as a result of receiving a signed 'Authority to release' from the person specified in the information."

I was therefore satisfied that FACS staff had obtained all the information available to them from the police.

The underlying issue in the complaint was the power of parents to determine where their teenage children reside. One of my staff reviewed the legal position but found no clear-cut answer. However, the following serve as a guide:

In Hewer v Bryant [1970] 1 QB 357, Lord Denning emphasised that parental rights are diminishing rights, which decrease as the child gets older:

> "I utterly reject the notion that an infant is, by law, in the custody of his father until he is twenty one ... I decline to accept a view so much out of date. The common law can, and should keep pace with the times. It should declare ... that the legal right of a parent to the custody of a child ends at the eighteenth birthday: and even up till then, it is a dwindling right which the courts will hesitate to enforce against the wishes of the child, and the more so the older he is. It starts with a right of control and ends with little more than advice."

This approach has been followed by courts in England and Australia since 1970. In 1986 in another case involving the right of a child under the age of 16 to receive contraceptive advice and treatment without her mother's consent, the English House of Lords rejected a mother's claim that she had a general power to determine such matters concerning her daughter until the age of 16. Lord Scarman summarised the situation saying:

> "The underlying principle of the law ... is that parental rights yield to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision."

I appreciated that the complainant might well not agree with the decisions in these cases and probably also questioned whether her daughter had " sufficient understanding and intelligence to be capable of making up ... [her] ... own mind" to live with her boyfriend. However, they did support the Department's stance.

I accepted that a fifteen-year-old girl residing with her boyfriend was a far from ideal situation. However, on balance, I believed that the actions of FACS staff concerning the matter were reasonably open to them on the facts. They were heavily dependent on what the daughter told them and she was not at the time prepared, or in a position, to provide them with adverse information about her boyfriend.

In the circumstances I was unable to be of further assistance to the complainant in relation to this matter. I could only suggest that if she disagreed with the current state of the law (eg if she believed that the law should specify the age at which children can leave home without parental consent) she should lobby to have the law changed.

The issue of parent-teenager conflict is obviously a difficult social issue which I would not pretend to be able to resolve. However, the complaint raised important administrative issues:

- I do not believe it is unreasonable for parents to expect that departmental staff will be able to check the criminal histories of persons with whom their minor children are living, no matter what the child's age. (I stress that this is not the same thing as parents themselves being able to directly or indirectly obtain details of criminal histories).

- Sharing of information, including intelligence information (eg about current investigations), between the Department and the Police Service could improve the quality of decision making (by allowing decisions about children to be based on all relevant available information) as well as help protect the safety of officers conducting investigations.

At the same time I recognise that there is scope for manipulation by parents seeking information for inappropriate reasons and that privacy and procedural fairness issues are involved, especially in the case of intelligence information. In the case of convictions, the persons concerned have had the opportunity to present their case in court. However, it is extremely unlikely that they would have the opportunity to counter adverse intelligence information.

Documents I saw during my enquiries indicated that considerable discussion had occurred between the Department and the Police Service about the general issue of exchange of information and that police officers were very hesitant to exchange information because of confidentiality requirements and the severe penalties if they are transgressed. It appeared that the matter could only be resolved by changing the law.

I therefore recommended that the Department continue its discussions with the Police Service and with Parliamentary Counsel to see whether an amendment to the Criminal Code, or some other legislative provision, was warranted to facilitate the general exchange of information relating to the protection of children. In my view, consideration needed to be given in those discussions to whether it is practicable, in the case of intelligence information, to incorporate controls to protect the confidentiality and procedural fairness concerns of persons who are the subject of such information.

NURSES REGISTRATION BOARD

Case Seven

A naturalised Australian citizen who had qualified and worked as a General Registered Nurse in another country over thirty years ago decided to return to work in the health field. However, she decided that she would prefer to become an Enrolled Nurse rather than resume as a General Registered Nurse. She approached the Nurses Registration Board with a view to doing a refresher course and was told that, although she could do the Renewal of General Registration Program, she was not eligible for the Enrolled Nurse Renewal of Registration Program because she had never been registered as an Enrolled or General Registered Nurse in Western Australia.

The woman did not believe that the Board's approach was reasonable, especially as she considered she was downgrading her qualification and had heard of others who had done this before her. She complained to my Office.

I made enquiries with the Board which informed me that the policy which applied at the time the complainant had approached it only allowed General Nurses (Division 1) to regress to Enrolled Nurse (Division 2) if their initial registration had been in Western Australia. The other cases the complainant had heard of fell within this category. However, as a result of my enquiries, the Board had reviewed its policy and decided it should apply to all nurses, irrespective of where they had initially registered.

The complainant duly commenced the Enrolled Nurse Renewal of Registration Program.

DEPARTMENT OF LAND ADMINISTRATION

Case Eight

The complainant purchased a block of land which was covered by a restrictive covenant relating to a number of matters. The certificate of title incorrectly showed that the covenant would expire at the end of five years. In fact, only one clause of the covenant expired and the other five clauses remained in effect. The complainant intended to subdivide the lot but discovered after he purchased it that the covenant restricted use to a single dwelling. The certificate was subsequently corrected to reflect this position but the complainant sought my assistance to have the correction removed so as to allow him to disregard the restriction. I later learned that the complainant's certificate was one of 77 certificates which had been wrongly endorsed.

The purpose of restrictive covenants of this type is to protect the value of investments in a subdivision by ensuring that a certain standard is maintained when the lots are developed. Duplex developments were apparently perceived as detracting from the neighbourhood. I considered that it would not be reasonable to remedy the complainant's problem by imposing a detriment on other parties. Accordingly, I did not follow the approach preferred by the complainant. However, I was concerned that the Department's error appeared to have resulted in the complainant being financially disadvantaged. The complainant's solicitors had lodged a claim for compensation under the *Transfer of Land Act* but it was also open to the Department to consider making an *ex gratia* settlement in respect of the loss incurred by the complainant.

I obtained a report from the Department and there ensued considerable analysis of valuations to determine whether the land would actually be worth more if it could be subdivided. The eventual outcome was that the Department made the complainant an offer to settle his claim for $5,000, which was accepted. The Department also apologised for the considerable delay in addressing the matter. On this basis, I closed my file.

WORKCOVER

Case Nine

A relative of the complainant had been injured while helping him in his bricklaying business. The relative had not been covered by workers' compensation insurance and was found to have been an employee of the complainant. Accordingly, the complainant became liable for reimbursement of wages paid to the relative.

The complainant paid a private investigator to watch the relative and obtained a video recording of the relative engaging in strenuous activity chopping and collecting wood for a sustained period while he was claiming to be unfit for work because of his back injury. However, several months elapsed before an application to discontinue payments could be considered by the Workers' Compensation Board, during which time payments continued to be made. The complainant argued that he should not have been liable for payments made to his relative because he regarded the latter's claim to be fraudulent.

WorkCover had obtained a judgement in the District Court for reimbursement of wages totalling $14,834, which it was seeking to recover from the complainant. To this end it placed a caveat on his home and was threatening to pursue recovery action.

I obtained a report from WorkCover and examined its files relating to the matter. I noted that legal advice had been obtained before WorkCover took action against the complainant and that it had been suggested that,

for want of any evidence about his condition, the relative could not be proved to have been fit for work until he was seen chopping wood. However, it seemed to have been open to WorkCover to have chosen to seek reimbursement of wages paid after that date from either the complainant or the relative. It was not clear on what basis WorkCover had decided to seek the full amount from the complainant but it appeared to relate more to convenience or expediency than to the moral determination of who was responsible for the debt. Accordingly, although WorkCover was fully entitled to seek to recover the full sum from the complainant pursuant to the Court judgement, I asked the Executive Director to review the matter.

In response, the Executive Director stated that WorkCover would seek only $9,456, which was the amount paid to the relative before the date of the video recording. Furthermore, in the interest of bringing this long standing matter to quick resolution, it would consider a reasonable lesser offer or a commitment to settlement over a period of time, subject to the complainant providing evidence of his financial position. I considered this to be a reasonable response and conveyed it to the complainant.

The complainant did not respond but members of his family visited my Office and stated that they were unable to make any significant commitment to paying the debt. There was no further action I could take which would be helpful and I closed my file.

OFFICE OF HEALTH REVIEW / METROPOLITAN HEALTH SERVICE BOARD

Case Ten

The father of a preschool child was dissatisfied with the Office of Health Review's handling of a complaint about his child's access to therapy services. After recognising that his child's development was delayed he contacted a Health Service requesting therapy. After taking details a therapist placed the child on the waiting list and informed the father that he could expect to wait six months for the service. The Service mailed an acknowledgment and a list of therapists in private practice. The complainant telephoned the service six months later and learnt that there would be a further two-month wait. Eight weeks later when the Service had not sent an appointment, he contacted the Office of Health Review for assistance. Within a few days the appointment was scheduled but it identified the need for further testing and a further waiting period was also involved. The complainant sought the help of his GP and had the testing brought forward. Two months later the Service found the child had a significant developmental disorder which justified priority treatment. Treatment commenced and a referral was arranged at one of the specialised treatment services for the twenty five to thirty children who are diagnosed with this problem each year. Once treatment commenced, the complainant was most satisfied with all the services his child received.

The complainant, on a limited income, compared the Health Service's approach with that of another government agency which assesses and means tests patients at the time a service is requested. He recommended this to the Health Service as parents would learn the seriousness of their child's problem at an earlier stage. They could then decide whether or not they should make the effort to pay for private therapy while the waiting period is served. He also believed that a means test would reduce the number of people on the waiting list competing for therapy places.

The complaint to the Office of Health Review resulted in a finding that the problem had been resolved, as the first therapy appointment had been scheduled. It also found that the agency's methods of handling the referral were not unreasonable. The complainant was dissatisfied and contacted my Office seeking a review of the finding that the Health Service had been reasonable. The complaint was supported with FOI documents. These included the file note made from the initial telephone call.

In recent years the Health Service had twice reviewed the demand for therapy services to ascertain if it was managing available resources in the most effective way. The agency's policy was that assessment should not take priority over treatment. Urgent or serious problems would be identified through intake telephone contacts with parents, professional referral and some community contact.

Although I agreed with the Office of Health Review's finding that the Health Service's referral system was not unreasonable, I had some sympathy with the complainant's view that it was not ideal on several grounds:

- The intake system did not identify the seriousness of his child's condition;
- The file note was brief and significant issues about the child's background were omitted;
- Without an early assessment parents would find it difficult to make an informed decision about the need to pay for interim private therapy; and
- There was no system in place to reinforce advice given during the intake call, such as contacting the local child health nurse for initial testing if the parent became more worried.

My Office discussed the matter with the Office of Health Review but it considered that it did not have a mandate to facilitate a resolution of the complainant's outstanding concerns. However, the Health Service was a public sector agency within my jurisdiction so my staff contacted the General Manager of the Metropolitan Region Health Service which was responsible for the Health Service concerned. The quality management personnel were implementing the new Metropolitan Health Service Board complaint policy and were most responsive. The Service, having previously dealt with the complaint by letter, invited the complainant to come in so that they could listen to his experiences with the referral process. The complainant accepted the invitation and was pleased that his complaint had been taken seriously. The Service acknowledged that his child had "slipped through the net" and apologised to him for this. Staff also explained the changes to procedure which had resulted from the review and his complaint.

The complainant wrote thanking me for my involvement and outlined how the Health Service had resolved his concerns. The actions included:

- A priority and standard wait list to ensure that children with serious conditions are seen within three months.
- Parents having the opportunity to complete application forms so that the service has a written as well as oral explanation of the problems.
- A re-allocation of regional therapy staff which the complainant believes will improve access to therapy services.

At this stage I discontinued my enquiries. This complaint highlighted the developments in public sector health agency internal complaints systems - which I welcome.

WESTRAIL / WATER CORPORATION

Case Eleven

Since 1991 the complainant (a local association) had subleased an unused railway station building for a peppercorn rent from the local Shire. The Shire in turn leased the building from Westrail. The building was only part of the large Westrail site and had a single toilet, a septic tank and a small surrounding garden. Under the terms of the sublease the association was responsible for electrical, gas, sanitary and water supply services. Over the period of the lease the association had punctually paid all electricity accounts which were issued by the Shire — gas and sanitary accounts were not relevant to the station. There had, however, never been any water consumption accounts. The association had not thought anything of this (because water usage was minimal) until, in July 1998, the Shire onforwarded water consumption and rates accounts for 1996-1998 in the amount of $9239.05.

The association complained that the amount billed was very high and queried its accuracy and whether the association was being charged for the whole site on a commercial basis. However, its attempts to find answers to these concerns from the Shire, the Water Corporation and Westrail's agents had been unsuccessful. I held the same concerns and was also puzzled as to why, given that the association had subleased the station since 1991, it had not received any water accounts prior to 1998.

As the Shire was unable to throw any light on these questions (it had never received water accounts from Westrail or the Water Corporation) I wrote to the Water Corporation and Westrail. It transpired that:

- The accounts did relate to the entire railway yard. However, no submeter had ever been installed to distinguish the station building from the remainder of the site.

- Although the rates were very high the accounts nonetheless were accurate. The service charge was levied for an 80mm pipe - larger than standard. The Water Corporation was obliged to guarantee a minimum water supply for the larger pipe and charged accordingly, even though the site was not currently operating as a rail yard and water usage was not sufficient to justify the large pipe.

- Water accounts had not been onforwarded previously because the Shire's, and therefore the association's, responsibility for payment had been overlooked.

- The accounts in question were only a small part of a much larger contentious issue between Westrail and the Water Corporation about whether or not Westrail was obliged to pay for water services provided by the Corporation.

Although the association may strictly have been liable for payment of the water accounts, it was clear that it would be unfair in the circumstances to hold it liable. I spoke with the agencies concerned who were sympathetic to the association's plight. Westrail proposed the following which I considered would satisfactorily resolve the problem:

- Westrail would seek a separate, reduced, water service for the station with the Shire to pay for the new connection

- The Shire (and consequently the association as sublessees) would not be liable for any water rates or charges until the separate service, with its own meter, was connected. The Water Corporation would then bill the Shire direct.

CHAPTER 10

ADMINISTRATION AND STAFFING

The position of Parliamentary Commissioner for Administrative Investigations (or Ombudsman, as it is better known) was established under the Parliamentary Commissioner Act 1971 ("the Act") which was assented to on 22 December 1971 and came into operation on 12 May 1972. Under the Act I report direct to the Parliament and it is to the Parliament, not the Government of the day, that I am responsible.

The responsibility for the administration of the Act (as distinct from the responsibility for my Office), is allocated to the Premier. The Ministry of the Premier and Cabinet provides a support service for such matters as the payment of salaries and the keeping of accounts and personnel records.

Appointments to the positions of Parliamentary Commissioner and Deputy Parliamentary Commissioner are made by the Governor pursuant to section 5(2) of the Act. The Governor may, on the recommendation of the Parliamentary Commissioner, appoint such officers as he considers necessary for the purpose of enabling the functions of the Commissioner to be carried out. Subject to the Act, the terms and conditions of service of the Commissioner's staff are such as the Governor determines. Part 3 of the Public Sector Management Act 1994 (which relates to the constitution and staffing of the Public Service) does not apply to the Commissioner, the Deputy Commissioner, an Acting Commissioner or officers of the Commissioner.

I took up duty as Parliamentary Commissioner (and the Accountable Officer) on 25 November 1996 for a term of five years as the fifth Ombudsman for Western Australia. The current five year term of the Deputy Parliamentary Commissioner, Alex Errington, expires on 1 November 2002.

Staffing

The year saw a number of changes of staff in my Office:

- David Robinson was seconded to the Ministry of the Premier and Cabinet and has spent most of the year away from the Office.
- Gary Cooper, Margaret Furphy, Jason Agar and Tony Langmair were appointed as Investigating Officers.
- Jacinta Pitt commenced as a Trainee under an Aboriginal training program.
- Linda Savage-Davis, Marlene Boon and Susan Pass who had all worked part time in connection with prison complaints ceased duties in the first half of the year.
- Kathleen Foley was employed part time to assist with the workload in the prison complaints area.
- Kathryn Choules was employed part time coordinating a number of specific projects.
- Sam McComb was employed part time in connection with the re-design of the Office's complaints database and recording system.

At 30 June 1999 the staff of my Office were organised as shown in the chart overleaf.

PARLIAMENT

Ombudsman
Murray Allen

Police Complaints Group

Assistant Ombudsman
Peter Fisk

Principal Investigating Officer
Darryl Goodman

Senior Investigating Officers
Roger Watson
Eamon Ryan
Sharon Retzlaff

Investigating Officers
Robert Harvey
David Robinson
Sherry Armstrong
Anthony Mazza
Gary Cooper
Jason Agar

Enquiry Officer
Melissa Baxter

Other Public Sector Agencies Group

Deputy Ombudsman
Alex Errington

Legal Officers
Laurene Dempsey
Jane Burn

Senior Investigating Officers
Bob Scott
Phil Barden
Chris Read
Elizabeth Horne
Ian Cox
Margaret Furphy
Tony Langmair

Investigating Officers
Ian Wilson
Kathleen Foley

Enquiry Officer
Grace Moro

Corporate Support Group

Executive Officer
Terry Waldron

Project Officer
Kathryn Choules

Information Technology Officer
Sam McComb

Enquiry Officers/Senior Administrative Assistants
Grace Demonakis
Kim Harms

Administrative Support Officers
Judith-Anne Tahir
Tina Morton
Irene Dumitro
Jacinta Pitt

Office accommodation

Since 1978 my Office and the Commonwealth Ombudsman's Perth Office have shared accommodation at our present address. Members of the public are often unsure as to whether their complaint concerns a State or a Commonwealth agency and so there are advantages if they can visit or contact the one "Ombudsman Centre". We share a reception area and telephone switchboard. This arrangement provides a convenient "one stop" service for members of the public.

The basic fit-out of most of the Office has not been altered since 1978. The existing lease expires in February 2000 and proposals are being considered for more appropriate accommodation. Alternatives include the refurbishment of the existing location, moving to a new floor in the same building or moving to a new location.

Information technology

A number of significant changes were made to the Office's computing network during the year to improve its operational efficiency and stability. The main changes involved the up-grading of existing servers and the purchase of one extra file server. This allowed for each of the major IT functions to be supported by its own dedicated server linked to individual power protection devices. The changes were a result of recommendations made by the Office's consultants who provided detailed documentation of the existing hardware and software and recommended improvements relating to the network file servers, infrastructure, cabling and workstations. In addition, a strategy is now in place to ensure that systems documentation is kept up to date and is regularly reviewed.

The Office is continuing with its capital replacement program that provides for the replacement of computing hardware on a three year renewal basis. While we are able to fund the program we will be able to keep pace with technological improvements.

Netsense Pty Ltd is contracted to provide a range of IT services including the provision of a consultant to assist in the development of the new complaint database and recording system. Sam McComb has also been employed on a part time basis to assist in the development.

Year 2000 compliance

As reported in last year's report, my Office's overall exposure to the Year 2000 problem is considered to be relatively minor. Action was taken early last year to identify and minimise any risks and to monitor the situation. As a precautionary measure, an extensive independent audit was undertaken by consultants of our IT hardware, operating systems and (proprietary) applications software. Custom-written software being developed for the Office's complaints register system is currently compliant and will be further tested when development is complete.

Workplace agreement

The Office registered its first workplace agreement on 20 August 1997. The Agreement had a term of two years. As at 30 June 1999 discussions were being held with staff to produce a new agreement to replace the existing agreement. Since that date a new agreement has been negotiated and was registered on 8 September 1999.

Occupational Safety and Health

One compensation claim was received during the year. However, there was no time lost from work.

Equal Employment Opportunity

My Office continued to actively support the principles and practice of equal employment opportunity in the workplace and to further develop staff awareness. Flexible work practices, including part time employment, working from home, care of family and parental leave, are provided for in the Office's workplace agreement, thereby acknowledging the needs of employees with family responsibilities.

Public Sector Management Act

A code of conduct for the Office was adopted in 1997/98. It incorporates appropriate policy and procedures for resolving complaints about discrimination and harassment and draws upon provisions contained in the Public Sector Code of Ethics.

In accordance with section 31(1) of the Public Sector Management Act 1994, in the administration of the Office during 1998/99 I have complied with the Public Sector Standards in Human Resource Management, the Public Sector Code of Ethics and the Office Code of Conduct.

There were no breach of standards applications received during the year.

Electoral Act 1907

There was no expenditure incurred on advertising, market research polling, direct mail or media advertising activities during the year.

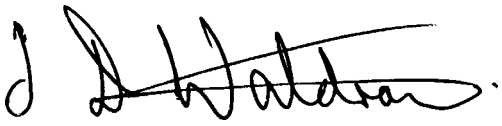
CHAPTER 11

FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1999

The accompanying financial statements relating to the Office of the Parliamentary Commissioner for Administrative Investigations have been prepared in compliance with the provisions of the *Financial Administration and Audit Act 1985* from proper accounts and records to present fairly the financial transactions for the year ended 30 June 1999 and the financial position as at 30 June 1999.

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

Accountable Officer



Principal Accounting Officer

31 August 1999

Parliamentary Commissioner for Administrative Investigations

Operating Statement
for the year ended 30 June 1999

	Notes	1998/99 $	1997/98 $
COST OF SERVICES			
Operating Expenses			
Salaries	4	1,865,928	1,531,847
Superannuation		157,445	112,360
Other staffing costs		47,714	54,299
Travelling expenses		13,858	17,155
Depreciation	5	41,866	47,145
Administration expenses	6	372,559	354,909
Accommodation expenses	7	129,458	127,596
Net loss on disposal of non-current assets	9	1,449	404
TOTAL COST OF SERVICES		2,630,277	2,245,715
Operating revenues			
Revenue from other services	10	512	19,538
Grant from Commonwealth	10	5,000	15,000
		5,512	34,538
NET COST OF SERVICES		2,624,765	2,211,177
REVENUES FROM GOVERNMENT			
Appropriations drawn	12	2,294,000	2,216,000
Receipts paid into Consolidated Fund		0	(34,823)
Resources received free of charge	8	98,730	72,684
Liabilities assumed by the Treasurer	11	157,445	112,360
TOTAL REVENUES FROM GOVERNMENT		2,550,175	2,366,221
CHANGE IN NET ASSETS RESULTING FROM OPERATIONS		(74,590)	155,044

Statement of Financial Position
as at 30 June 1999

	Notes	1998/99 $	1997/98 $
CURRENT ASSETS			
Cash and Amounts in suspense	13	277,788	249,700
Prepayments	14	10,611	14,597
Total current assets		288,399	264,297
NON-CURRENT ASSETS			
Furniture and fittings	15	2,981	9,796
Computer equipment	15	48,716	46,687
Office equipment	15	26,548	22,257
Office establishment	15	0	0
Total Non Current Assets		78,245	78,740
TOTAL ASSETS		366,644	343,037
CURRENT LIABILITIES			
Accounts payable	16	27,486	12,742
Accrued salaries	17	29,995	17,265
Employee entitlements	18	239,312	247,201
Total current liabilities		296,793	277,208
NON-CURRENT LIABILITIES			
Employee entitlements	18	200,079	121,467
Total Non Current Liabilities		200,079	121,467
Total liabilities		496,872	398,675
EQUITY			
Accumulated surplus	19	(135,345)	(60,755)
Asset revaluation reserve	20	5,117	5,117
Total equity		(130,228)	(55,638)
TOTAL LIABILITIES AND EQUITY		366,644	343,037

Parliamentary Commissioner for Administrative Investigations
Statement of Cash Flows for the year ended 30 June 1999

	Note	1998/99 $ Inflows (Outflows)	1997/98 $ Inflows (Outflows)
CASH FLOWS FROM GOVERNMENT			
Receipts from recurrent appropriations		2,001,000	1,897,000
Receipts from Capital appropriations		40,000	70,000
Receipts from Special Acts appropriations		253,000	249,000
Receipts paid into Consolidated Fund		0	(34,823)
NET CASH PROVIDED BY GOVERNMENT		2,294,000	2,181,177
Utilised as follows:			
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Salaries		(1,778,689)	(1,490,562)
Other staffing costs		(47,714)	(54,299)
Travelling expenses		(13,858)	(17,155)
Administration		(260,366)	(270,587)
Accommodation		(127,977)	(137,162)
Receipts			
Revenue from services		512	19,538
Grant from Commonwealth		5,000	15,000
NET CASH (USED IN)/ FROM OPERATING ACTIVITIES	21	(2,223,092)	(1,935,227)
CASH FLOWS FROM INVESTING ACTIVITIES			
Payments for purchase of non-current assets		(45,490)	(28,935)
Receipts from the sale of non-current assets		2,670	685
NET CASH (USED IN)/ FROM INVESTING ACTIVITIES		(42,820)	(28,250)
NET INCREASE(DECREASE) IN CASH HELD		28,088	217,700
Cash at the beginning of the reporting period		249,700	32,000
CASH AT THE END OF THE REPORTING PERIOD		277,788	249,700

Parliamentary Commissioner for Administrative Investigations
Summary of Consolidated Fund Appropriations and Revenue Estimates
for the year ended 30 June 1999

		1998/99			1997/98		
		Estimate $	Actual $	Variation $	Estimate $	Actual $	Variation $
RECURRENT							
Amount required to fund outputs for the year		2,016,000	2,016,000	0	1,849,000	1,897,000	(48,000)
Less: Retained Revenue - Section 23A of the Financial Administration and Audit Act		15,000	15,000	0	0	0	0
Item 4	Amount provided for recurrent services for the year	2,001,000	2,001,000	0	1,849,000	1,897,000	(48,000)
	Amount authorised by other statutes						
	Parliamentary Commissioner Act 1971	253,000	253,000	0	235,000	249,000	(14,000)
Total recurrent services		2,254,000	2,254,000	0	2,084,000	2,146,000	(62,000)
CAPITAL							
Item 115	Amount provided for capital services for the year	40,000	40,000	0	70,000	70,000	0
GRAND TOTAL		2,294,000	2,294,000	0	2,154,000	2,216,000	(62,000)
Details of Expenditure							
RECURRENT							
Outputs							
	Output 1 - Police Service	1,015,000	987,908	(27,092)	1,193,416	931,286	(262,130)
	Output 2 - Other Public Sector Organisations	967,000	1,028,612	61,612	654,506	839,676	185,170
	Output 3 - Information and Advisory Services	264,000	187,476	(76,524)	76,522	151,482	74,960
	Output 4 – Telecommunications Interception Audit	23,000	37,978	14,978	159,556	37,930	(121,626)
		2,269,000	2,241,974	(27,026)	2,084,000	1,960,374	(123,626)
less: Retained revenue		(15,000)	(5,512)	9,488	0	0	0
Changes in operating account balances		0	17,538	17,538	0	185,626	185,626
TOTAL		2,254,000	2,254,000	(0)	2,084,000	2,146,000	62,000
CAPITAL							
Capital expenditure		40,000	35,450	(4,550)	70,000	43,926	(26,074)
Changes in operating account balances			4,550	4,550		26,074	26,074
		40,000	40,000	0	70,000	70,000	0
GRAND TOTAL OF APPROPRIATION		2,294,000	2,294,000	(0)	2,154,000	2,216,000	62,000
Details of revenue estimates:							
Revenue disclosed as operating revenues		15,000	5,512	(9,488)	0	34,823	34,823

Parliamentary Commissioner for Administrative Investigations
Output Schedule of Expenses and Revenues
for the year ended 30 June 1999

Output	Police Service		Other Public SectorOrganisations		Information and Advisory Services		Telecommunication Interception Audit		Total	
	1998/99 $	1997/98 $	1998/99 $	1997/98 $	1998/99 $	1997/98 $	1998/99 $	1997/98 $	1998/99 $	1997/98 $
Operating expenses										
Salaries	893,379	806,819	699,207	668,092	238,556	25,729	34,786	31,207	1,865,928	1,531,847
Superannuation	61,402	51,886	66,631	51,345	27,038	7,150	2,374	1,979	193,370	157,445
Other staffing costs	20,781	25,108	16,814	20,937	8,894	6,963	1,225	1,291	47,714	54,299
Travelling expenses	568	370	4,987	4,986	8,275	11,730	28	69	13,858	17,155
Depreciation	20,490	23,926	16,926	19,952	3,349	2,037	1,101	1,230	41,866	47,145
Administration expenses	144,085	166,720	120,350	130,936	81,043	37,811	27,081	19,442	372,559	354,909
Accommodation expenses	64,586	64,755	53,569	53,999	7,898	5,512	3,405	3,330	129,458	127,596
Net loss on disposal of non-current assets	646	205	523	171	242	17	38	11	1,449	404
TOTAL OPERATING EXPENSES	1,205,937	1,139,789	979,007	950,418	375,295	96,949	70,038	58,559	2,630,277	2,245,715
Operating revenues										
Revenue from other services	512	9,167	0	9,120	0	780	0	471	512	19,538
Grant from Commonwealth	0	0	0	0	5,000	15,000	0	0	5,000	15,000
TOTAL	512	9,167	0	9,120	5,000	15,780	0	471	5,512	34,538
NET COST OF SERVICES	1,205,425	1,130,622	979,007	941,298	370,295	81,169	70,038	58,088	2,624,765	2,211,177
Revenues from Government										
Appropriations drawn	1,028,606	1,255,007	966,515	700,771	259,052	89,775	39,827	170,447	2,294,000	2,216,000
Receipts paid into Consolidated Fund		(18,598)	0	(12,120)	0	(1,524)	0	(2,581)	0	(34,823)
Resources received free of charge	35,518	30,984	35,092	15,981	7,898	12,667	20,222	13,052	98,730	72,684
Liabilities assumed by the Treasurer	61,125	52,189	67,657	50,717	26,334	7,165	2,329	2,289	157,445	112,360
TOTAL REVENUES FROM GOVERNMENT	1,125,249	1,319,582	1,069,264	755,349	293,284	108,083	62,378	183,207	2,550,175	2,366,221
CHANGE IN NET ASSETS RESULTING FROM OPERATIONS	(80,176)	188,960	90,257	(185,949)	(77,011)	26,914	(7,660)	125,119	(74,590)	155,044

Notes to the Financial Statements for the year ended 30 June 1999

1. Mission and funding

The mission of the Office is to assist Parliament and the community to be confident that the public sector of Western Australia is accountable for, and improving the standard of, administrative decision making and practices.

The Office is predominantly funded by parliamentary appropriations. The financial statements encompass all funds through which the Office controls resources to carry on its functions.

2. Significant accounting policies

(a) General Statement

The financial statements constitute a general purpose financial report which has been prepared in accordance with Australian Accounting Standards and UIG Consensus Views as applied by the Treasurer's Instructions. Several of these are modified by the Treasurer's Instructions to vary the application, disclosure, format and wording. The Financial Administration and Audit Act and the Treasurer's Instructions are legislative provisions governing the preparation of financial statements and take precedence over Australian Accounting Standards and UIG Consensus Views. The modifications are intended to fulfil the requirements of general application to the public sector together with the need for greater disclosure and also to satisfy accountability requirements.

If any such modification has a material or significant financial effect upon the reported results, details of that modification and where practicable the resulting financial effect is disclosed in individual notes to these financial statements.

(b) Basis of Accounting

The financial statements have been prepared in accordance with the Australian Accounting Standard AAS29 as modified by Treasurer's Instruction 1101A. Where Australian Accounting Standards and UIG Consensus Views are modified by Treasurer's Instructions, any material or significant financial effects resulting are quantified where practicable and disclosed by way of note.

The statements have been prepared on the accrual basis of reporting under the historical cost convention, with the exception that certain non-current physical assets have been introduced at written down current cost as at 21 April 1995. Additions to non-current physical assets since valuation are stated at cost.

(c) Appropriations

Appropriations in the nature of revenue, whether recurrent or capital, are recognised as revenues in the period in which the Office gains control of the appropriated funds. The Office gains control of appropriated funds at the time those funds are deposited into the Office's bank account.

(d) Operating accounts

Amounts appropriated are deposited into the account and any revenues which are the subject of net appropriation determinations are also deposited into the account. Revenues not subject to net appropriation determinations are deposited into the Consolidated Fund. All payments of the Office are made from the operating account.

(e) Depreciation of non-current assets

All non-current assets of a material value being those over $1,000 and having a limited useful life are systematically depreciated over their useful lives in a manner which reflects the consumption of their service potential. Depreciation is provided for on a straight line basis using rates which are reviewed annually.

Useful lives for each class of depreciable asset are:

Furniture and fittings	5 years
Computer equipment	3 years
Office equipment	5 years

(f) Employee entitlements

Annual and long service leave

These entitlements are calculated at current remuneration rates. A liability for long service leave is recognised after an officer has completed four years of service. A liability is further recognised on the transfer of an officer's employment to or from the Office.

An actuarial assessment of long service leave was carried out at 30 June 1999 and it was determined that the actuarial assessment of the liability was not materially different from the liability Australian Accounting Standard AAS 30 "Accounting for Employee Entitlements".

Superannuation.

Staff may contribute to the Superannuation and Family Benefits Act Scheme, a defined benefits pension scheme now closed to new members, or to the Gold State Superannuation Scheme, a defined benefit and lump sum scheme now also closed to new members. All staff who do not contribute to either of these schemes become non-contributory members of the West State Superannuation Scheme, an accumulation fund complying with the Commonwealth Government's Superannuation Guarantee (Administration) Act 1992.

The superannuation expense comprises the following elements:

(i) change in the unfunded employer's liability in respect of current employees who are members of the Superannuation and Family Benefits Act Scheme and current employees who accrued a benefit on transfer from that Scheme to the Gold State Superannuation Scheme; and

(ii) notional employer contributions which would have been paid to the Gold State Superannuation Scheme and West State Superannuation Scheme if the Office had made concurrent employer contributions to those Schemes.

The superannuation expense does not include payment of pensions to retirees as this does not constitute part of the cost of services provided by the Office in the current year.

The total unfunded liability for pensions and transfer benefits assumed by the Treasurer at 30 June 1999 in respect of current employees is $193,370 (1997/98 - $112,360) and pensions payable to retirees is nil (1997/98 - nil).

(g) Leases

The Office has entered into operational lease arrangements for motor vehicles where the lessors effectively retain all the risks and benefits incidental to ownership of the items held under the operating lease.

Equal instalments of the lease payments are charged to the operating statement over the lease term as this is representative of the pattern of benefits to be derived from the leased property. Office accommodation occupied by the Office is under a head lease between the lessor and the Government Property Office.

(h) Accounts Payable and Accrued Salaries

The Accrued Salaries Suspense Account consists of amounts paid annually into a suspense account over a period of 10 financial years to largely meet the additional cash outflow in each eleventh year when 27 pay days occur in that year instead of the normal 26. No interest is received on this account.

Accounts payable, including accruals not yet billed, are recognised when the Office becomes obliged to make future payments as a result of a purchase of assets or services. Accounts payable are generally settled within 30 days.

Accrued salaries represents the amount due to staff but unpaid at the end of the financial year, as the end of the last pay period for that financial year does not coincide with the end of the financial year.

(i) Net Fair Values of Financial Assets and Liabilities

As monetary financial assets and liabilities are not traded in an organised financial market the carrying amounts of accounts payable and accruals approximate net fair values.

3. Outputs of the Office

The Budget for 1998/99 was framed in terms of outputs, consequently financial reporting for the year is also analysed in terms of outputs.

Information about the Office's outputs are set out below. Information about expenses and revenues attributable to those outputs are set out in the Output Schedule.

Financial information from 1997/98 has been amended for comparative purposes as it was framed in terms of programs.

The outputs of the Office and their objectives are:

Output 1: POLICE SERVICE

Description: Provide an effective and efficient system of investigating, and reviewing the adequacy of internal investigations of, complaints about the Police Service and Westrail Special Constables.

Output 2: OTHER PUBLIC SECTOR ORGANISATIONS

Description: Provide an effective and efficient system of investigating complaints about public sector organisations other than the Police Service and Westrail Special Constables.

Output 3: INFORMATION AND ADVISORY SERVICES

Description: A range of activities is undertaken to provide members of the public and personnel of public sector organisations with information about the role of the Ombudsman and advice about good administrative practices.

Output 4: TELECOMMUNICATIONS INTERCEPTION AUDIT

Description: Perform the duties of Principal Inspector and Inspectors under the Telecommunications (Interception) Western Australian Act 1996.

		1998/99 $	1997/98 $
4	**Salaries**		
	Salaries	1,795,205	1,496,601
	Change in annual and long service leave provision	70,723	35,246
		1,865,928	1,531,847
5	**Depreciation**		
	Furniture and fittings	3,700	5,358
	Computer equipment	29,284	32,511
	Office equipment	8,882	7,602
	Office establishment	0	1,674
		41,866	47,145
6	**Administration expenses**		
	Expenses directly incurred by the Office	275,110	283,470
	Resources received free of charge (see note 8)	97,449	71,439
		372,559	354,909
7	**Accommodation expenses**		
	Expenses directly incurred by the Office	128,177	126,351
	Resources received free of charge (see note 8)	1,281	1,245
		129,458	127,596
8	**Resources received free of charge**		
	Administration expenses	97,449	71,439
	Accommodation expenses	1,281	1,245
		98,730	72,684
	Resources received free of charge has been determined on the basis of the following estimates provided by agencies.		
	Office of the Auditor General - Audit services	7,000	6,000
	Ministry of the Premier and Cabinet		
	- Information technology services	2,500	3,000
	- Financial management services	45,458	41,139
	- Personnel services	23,800	17,800
	Ministry of Justice - legal services	18,380	0
	State Supply Commission	0	3,500
	Treasury - property management and banking services	1,592	1,245
		98,730	72,684
	These costs have been included in expenses for the year in order to disclose an accurate cost of services.		
9	**Net loss on disposal of non-current assets**		
	Office equipment	631	(10)
	Furniture and fittings	3,115	0
	Computer equipment	(2,297)	414
		1,449	404
	Gross proceeds on disposal on non-current assets	2,670	685
10	**Operating Revenue**		
	Departmental revenue	512	16,415
	Sale revenue	0	3,123
		512	19,538
	Grant from Commonwealth - Indian Ocean Territories (also see note 26)	5,000	15,000
11	**Liabilities assumed by the Treasurer**		
	Superannuation	157,445	112,360

		1998/99 $	1997/98 $
12	**Appropriations drawn**		
	Consolidated Fund		
	Recurrent	2,001,000	1,897,000
	Capital	40,000	70,000
	Special Acts	253,000	249,000
		2,294,000	2,216,000
13	**Cash and amounts in suspense**		
	Operating Account	248,788	226,700
	Accrued Salaries Suspense Account	29,000	23,000
		277,788	249,700
	The Accrued Salaries Suspense Account is represented by a cash balance and is therefore equivalent to the net fair value.		
14	**Prepayments**		
	Accomodation	10,611	10,811
	Salaries	0	3,786
		10,611	14,597
15	**Property, furniture, fittings, equipment and software**		
	Furniture and fittings		
	At cost or valuation	18,500	26,790
	Accumulated depreciation	(15,519)	(16,994)
		2,981	9,796
	Computer equipment		
	At cost or valuation	121,965	106,526
	Accumulated depreciation	(73,249)	(59,839)
		48,716	46,687
	Office equipment		
	At cost or valuation	52,450	42,981
	Accumulated amortisation	(25,902)	(20,724)
		26,548	22,257
	Office establishment		
	At cost or valuation	5,116	5,116
	Accumulated depreciation	(5,116)	(5,116)
		0	0
	Total		
	At cost and valuation	198,031	181,413
	Accumulated depreciation	(119,786)	(102,673)
		78,245	78,740
	A number of assets of value less than $1,000 individually were written off during the year. These include:		
	Office equipment - Cost	896	
	Written down value	354	
	Computer hardware - Cost	6,136	
	Written down value	0	
	Furniture and fittings - Cost	8,290	
	Written down value	3,115	
16	**Accounts payable**		
	Administration expenses	27,486	12,742
	The carrying amount of accounts payable approximates their net fair values		
17	**Accrued Salaries**		
	Amounts owing for the working days between the end of the last pay period for the financial year and 30 June.		
	1999 - 4 working days	29,995	
	1998 - 3 working days		17,265
	Accrued salaries are settled within a few days of the financial year end. The carrying amount of accrued salaries is equivalent to the net fair value		

		1998/99 $	1997/98 $
18	**Employee entitlements**		
	Current liabilities	135,061	146,102
	Liability for annual leave	104,251	101,099
	Liability for long service leave	239,312	247,201
	Non-current liabilities	200,079	121,467
	Liability for long service leave	439,391	368,668

The carrying amount of employee entitlements is equivalent to the net fair value.

19 Equity

Liabilities exceed assets and there is therefore no residual interest in the assets of the Office. This deficit arises through expenses such as depreciation and accrual of employee entitlements for leave not involving the payment of cash in the current period being recognised in the operating statement. Funding for the Office is entirely through appropriation on a cash basis. This situation reverses when appropriated cash is used to purchase assets or to pay out accrued liabilities.

Accumulated surplus/(deficit)		
Balance at the beginning of the year	(60,755)	(215,799)
Change in net assets resulting from operations	(74,590)	155,044
Balance at the end of the year	(135,345)	(60,755)

20 Asset revaluation reserve

An independent valuation of non-current physical assets was undertaken on 21 April 1995 and was based on a fair market value to establish the carrying value for the financial statements. In establishing the depreciable value, items with a value of under $1,000 were excluded.

21 Reconciliation of net cash used in operating activities to net cost of services

For the purposes of the Statement of Cash Flows, 'cash' has been deemed to include cash on hand and amounts in suspense.

Net cash (used in)/from operating activities	(2,223,092)	(1,935,227)
(Increase)/decrease in accrued salaries	(12,730)	(9,825)
(Increase)/decrease in liability for employee entitlements	(70,723)	(35,246)
(Increase)/decrease in accounts payable	(14,744)	(10,246)
Profit/(loss) on disposal of assets	(1,449)	(404)
Depreciation and amortisation	(41,866)	(47,145)
Increase/(decrease) in prepayments	(3,986)	12,380
Resources received free of charge	(98,730)	(72,684)
Liabilities assumed by the Treasurer	(157,445)	(112,360)
Asset cost adjustment	0	(420)
Net cost of services (operating statement)	(2,624,765)	(2,211,177)

22 Lease Commitments

Motor Vehicles

These commitments relate to motor vehicle leases which are due for payment:

not later than one year	13,478	19,122
later than one year but not later than two years	13,478	19,122
	26,956	38,244

Property Lease

The Government Property Office leases office accommodation on behalf of government agencies under non-cancellable operating leases. At the reporting date, the net fair value of this commitment is:

not later than one year	84,880	137,162
	84,880	137,162

		1998/99	1997/98
23	**Remuneration and retirement benefits of Senior Officers**		
	Remuneration		
	The number of senior officers whose total of fees, salaries and other benefits received, or due and receivable, for the financial year, who fall within the following bands is:		
	$		
	80,001 - 90,000	-	1
	90,001 - 100,000	1	-
	110,001 - 120,000	-	1
	120,001 - 130,000	1	-
	150,001 - 160,000	1	1
	The total remuneration of senior officers was:	369,826	352,490
	The following amounts in respect of retirement benefits for senior officers were paid or became payable for the financial year:		
	Retirement benefits	0	0
	Redundancy payments	0	0
	Notional contributions to Gold State Superannuation Scheme and West State Superannuation Scheme	24,444	29,544
	Number of senior officers who are members of the Superannuation and Family Benefits Act Scheme .	0	0

24 Explanatory Statement

The Summary of Consolidated Fund Appropriations and Revenue Estimates discloses appropriations and other statutes expenditure estimates, the actual expenditures made and revenue estimates and payments into the Consolidated Fund, all on a cash basis.

The following explanations are provided in accordance with *Treasurer's Instruction 945:*

Significant variations between actual revenue and expenditure and estimates for the financial year. (Variations of 10% or greater are considered significant)

		Estimate 1998/99 $	Actual 1998/99 $	Variance $
Outputs	Police Service	1,015,000	987,908	(27,092)
	Other Public Sector Organisations	967,000	1,028,612	61,612
	Information and Advisory Services	264,000	187,476	(76,524)
	Telecommunications Interception Audit	23,000	37,978	14,978
	TOTAL	2,269,000	2,241,974	(27,026)

Explanation of variations

The overall variation between actual expenditure and the estimate was 1.19%.
There were minor variances between the outputs which offset each other.
Salaries were less than the estimate by $78,085 and services and contracts exceeded the estimate by $74,251. The decrease in salaries expenditure was a result of the delay in filling vacancies together with the utilisation of part-time and casual staff.
The increase in expenditure on services and contracts was mainly due to consultancy expenses incurred in the development of a new complaints register system.

Significant variations between actual revenue and expenditure for the current financial year and the immediately preceding financial year . (Variations of 10% or greater are considered significant)

		Actual 1998/99 $	Actual 1997/98 $	Variance $
Outputs	Police Service	987,908	931,286	(56,622)
	Other Public Sector Organisations	1,028,612	839,676	(188,936)
	Information and Advisory Services	187,476	151,482	(35,994)
	Telecommunications Interception Audit	37,978	37,930	(48)
	TOTAL	2,241,974	1,960,374	(281,600)
	Departmental Revenue	5,512	34,823	(29,311)

Explanation of variations
The increase in actual recurrent expenditure for 1998/99 compared to 1997/98 was $281,600. The increases in expenditure in the Police Service, Other Public Sector Organisations and Information and Advisory Services Outputs were mainly due to salary increases and the full year effect of employing three additional FTE's that were approved in the previous financial year but were only employed for part of that year. Capital expenditure was less than the previous financial year by $8,476 and was due mainly to current funding not being fully expended. There were no sales of assets or recoups of current expenditure in the current financial year. Departmental revenue was limited to one payment of $5,000 toward Indian Ocean Territories expenditure.

25 Additional Financial Instruments Disclosures

Interest rate risk exposure
The Office's exposure to interest rate risk is nil as the relevant financial instruments, consisting of cash and amounts in suspense, accounts payable, accrued salaries and employee entitlements are all non-interest bearing.

Credit risk exposure
The Office's exposure to credit risk is nil as there are no amounts receivable.

26 Indian Ocean Territories

The Indian Ocean Territories Reimbursement Fund was established in March 1996 and became operational in July 1996.
The purpose of the Fund is to meet the cost of the services of the Office in relation to complaints involving the Indian Ocean Territories.
The balance of the Fund at the end of the financial year is deposited with the Reserve Bank of Australia - Western Australia Account.
The figures presented below for the Fund have been prepared on a cash basis.

	1998/99 $	1997/98 $
Opening Balance	15,000	0
Receipts	5,000	15,000
Payments	0	0
Closing Balance	20,000	15,000

Auditor General

To the Parliament of Western Australia

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS FINANCIAL STATEMENTS FOR THE YEAR ENDED JUNE 30, 1999

Scope

I have audited the accounts and financial statements of the Parliamentary Commissioner for Administrative Investigations for the year ended June 30, 1999 under the provisions of the Financial Administration and Audit Act 1985.

The Parliamentary Commissioner is responsible for keeping proper accounts and maintaining adequate systems of internal control, preparing and presenting the financial statements, and complying with the Act and other relevant written law. The primary responsibility for the detection, investigation and prevention of irregularities rests with the Parliamentary Commissioner.

My audit was performed in accordance with section 79 of the Act to form an opinion based on a reasonable level of assurance. The audit procedures included examining, on a test basis, the controls exercised by the Parliamentary Commissioner to ensure financial regularity in accordance with legislative provisions, evidence to provide reasonable assurance that the amounts and other disclosures in the financial statements are free of material misstatement and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Accounting Standards, other mandatory professional reporting requirements and the Treasurer's Instructions.

The audit opinion expressed below has been formed on the above basis.

Audit Opinion

In my opinion,

(i) the controls exercised by the Parliamentary Commissioner for Administrative Investigations provide reasonable assurance that the receipt and expenditure of moneys and the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions; and

(ii) the Operating Statement, Statement of Financial Position, Statement of Cash Flows, Activity/Output Schedule of Expenses and Revenues and Summary of Consolidated Fund Appropriations and Revenue Estimates and the Notes to and forming part of the financial statements are based on proper accounts and present fairly in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and the Treasurer's Instructions, the transactions for the year ended June 30, 1999 and the financial position at that date.

D D R PEARSON
AUDITOR GENERAL
October 29, 1999

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