

In assessing whether a complaint is a matter the Ombudsman can and should investigate, we are governed by the *Parliamentary Commissioner Act 1971* (the Act), which sets out our powers and responsibilities. The key matters we consider are as follows:

1. Basic jurisdiction issue – agency complained about

First, we ascertain whether the agency complained about is within the Ombudsman's jurisdiction – i.e. a state government department or authority, or local government. Certain agencies are outside our jurisdiction, as are decisions made by Cabinet or Ministers or the actions of legal advisers. For more information on our jurisdiction, see the Complaints section of our website at www.ombudsman.wa.gov.au/complaints/index.htm.

2. Other key jurisdiction issues

We assess whether:

- the action or decision complained of relates to “a matter of administration”;
- the action complained of was in the exercise of a power or function;
- the complainant is personally affected by the action or decision;
- the complaint has been made within 12 months of the action or decision complained of; and
- the complainant has or had a legal remedy or a right of review or appeal.

3. Discretion whether or not to investigate

We can exercise our discretion whether or not to investigate in situations where:

- ‘special circumstances’ exist for matters over 12 months old;
- the complainant has a legal remedy or right of review or appeal, in which case we consider whether it is reasonable to expect the complainant to resort to that remedy;
- a complaint appears to us to be frivolous, trivial, vexatious, or not in good faith;
- an investigation does not appear to be warranted in the circumstances, such as where the agency is still investigating the complaint or a complaint has not yet been made to the agency; or where another complaint-taking body may be more appropriate; or
- the complainant does not have a sufficient personal interest in the matter.

4. Referral to other body

If a complaint is out of our jurisdiction we try to find another body which might be able to assist the complainant. For complaints within jurisdiction but where there is a more appropriate body to do the investigation, we refer it to that body (after having exercised our discretion not to investigate).

5. Action once decision is made

If we decide to investigate a complaint, we advise the agency and the complainant accordingly. As part of this process, we identify the issues raised by the complainant (along with any other issues that we consider material), and identify the specific heads of maladministration for each allegation. We can also choose to conduct either a formal or an informal investigation.

If we decide not to investigate, the complainant is advised of this, along with the reasons for our decision.

6. Prioritising investigations

The majority of our investigations are conducted informally. In prioritising these we have regard to a number of factors. For instance, we assess whether any particular urgency attaches to the outcome of the complaint. For complex matters, we consider conducting a more detailed investigation where there is significant public interest in the matter complained about; or the complaint has significant public policy implications, or raises systemic policy, procedural or legislative issues.