Annual Report 2000

2000 Annual Report

OMBUDSMAN

OMBUDSMAN

Western Australia

Western Australia

29th Annual Report of the Parliamentary Commissioner for Administrative Investigations

OMBUDSMAN
Western Australia

Mr President, Mr Speaker

Annual Report of the Parliamentary Commissioner for Administrative Investigations for the year ended 30 June 2000

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 2000, 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

21 November 2000

CONTENTS

CHAPTER 1

THE YEAR'S WORK

The reporting year which ended on 30 June 2000 proved to be another very busy one for my Office.

During the year a total of 2667 complaints containing 3838 allegations were received. Although the number of complaints received fell in comparison to the previous year, the number of allegations was the highest number ever received by my Office in a single year. A total of 2695 complaints involving 3789 allegations were finalised during the year.

Efforts were made to deal with complaints as quickly as possible and this was despite the record number of new allegations which were received. Details of complaints received, how we dealt with them and the outcomes we were able to achieve follow.

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 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.

Table 1 overleaf shows the number of complaints and allegations received over the past five years.

TABLE 1 Complaints and allegations received 1996 to 2000						
Complaints received		1996	1997	1998	1999	2000
• Police matters		1 122	1 077	1 411	1 530	1 176
• Westrail special constables		n/a	n/a	n/a	36	50
• Other State Government departments and agencies and local governments		1 369	1 142	1 150	1 465	1 441
	Total	2 491	2 219	2 561	3 031	2 667
Allegations received						
• Police matters		1 682	1 599	2 180	2 149	1 996
• Westrail special constables		n/a	n/a	n/a	67	86
• Other State Government departments and agencies and local governments		1 589	1 246	1 213	1 611	1 756
	Total	3 271	2 845	3 393	3 827	3 838

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 1996 to 2000						
Number of allegations received		1996	1997	1998	1999	2000
Metropolitan electorates		2 321	2 078	2 593	2 835	2 804
Country electorates		896	705	738	893	935
Outside WA		54	62	62	99	99
	Total	3 271	2 845	3 393	3 827	3 838
Number of allegations per 10 000 electors						
Metropolitan electorates		28	25	31	33	32
Country electorates		31	24	25	30	30

Matters finalised

During the year 2695 complaints containing 3789 allegations were finalised in the manner shown in Table 3.

TABLE 3 Manner in which allegations finalised 1999/2000

Finalised without completed investigation	Number of allegations	%
• No jurisdiction	179	5
• Discretion exercised not to investigate	430	11
• Discontinued	136	4
• Withdrawn or lapsed	104	3
Finalised by completed investigation or review of internal investigation		
• Totally or substantially favourable to complainant	413	11
• Partially favourable to complainant	210	5
• Not substantiated	1580	42
• Police local resolution judged adequate	737	19
Total allegations finalised	**3789**	**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 Assistance provided for allegations finalised 1999/2000

Direct benefit for complainant	Number of allegations	%
• Apology given	24	1
• Act of grace payment	11	0
• Action/decision expedited	139	4
• Adequate explanation given	1725	45
• Charge reduced or rebate given	31	1
• Reversal or significant variation of original decision	103	3
• Referred to appropriate alternative agency	225	6
No direct benefit for complainant		
• Police local resolution matters	684	18
• No assistance given	847	22
Total allegations finalised	**3789**	**100**
Changes to law, practice or procedure	105	

Table 5 (which is at the end of this chapter) gives details of allegations finalised in respect of individual 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 which has resulted from the involvement of my Office. 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 of course happen – but "the system" is not always wrong.

Complaint handling survey

In order to better understand the current status of complaint management in the public sector, during 1999 my Office conducted a survey of complaint systems. We wanted to know how well organisations within my jurisdiction were meeting good practice standards for complaint handling, especially the *Australian Complaint Handling Standard – AS 4269 (1995)*. We surveyed 99 State Government agencies and 50 of the largest local governments. The response rate to the survey was excellent, yielding 135 survey forms – 86 from agencies and 49 from local governments. Some of the main points to emerge from the survey were:

- The majority of respondents had some processes in place to deal with individual complaints, with 75% of agencies and 50% of local governments having formal policies and procedures.

- Good practice in complaint handling requires organisations to inform their clients of the existence of the system. A range of publicity methods is therefore desirable to make the complaint system visible and accessible. Only 24% of agencies were using three or more methods to publicise their process and, with 12% of agencies and 22% of local governments using no publicity methods at all, this is an area where the survey indicated that improvement is needed. Simple measures such as listing a complaint officer's number in the telephone directory would assist. Traditional pamphlets and customer service charters could also be augmented by listing the complaint process on the organisation's web page.

- AS 4269 defines the term "complaint" broadly. Eighty percent of agencies had broad definitions which allowed them to deal with feedback about their decisions, staff behaviour and policies. Where agencies limited the scope of their complaint system it was usually to discourage complaints about their policies.

- The survey found that half of the organisations surveyed had specific staff members who were nominated to act as a complaint officer. Despite the wide variation in their roles, organisations with complaint officers were more likely to meet AS 4269 than those without them.

- Complaint handling standards require organisations to use complaint feedback to assist their quality improvement processes. Without systems for recording and analysing complaints, they will not be able to benefit from complaint feedback in any sophisticated way. Nearly one third of agencies and more than half the local governments were not collecting statistics about complaints. The task of centrally collating complaint data requires some commitment, as complaints can be made in a number of different ways and managed in different sections of an organisation. Manual analysis is still the most common method of evaluating complaint data although computer systems are really required to identify patterns of problems and track the results of quality initiatives. Even where organisations did record and analyse and prepare reports on their complaints, this information was not always reported to the CEO or senior management.

Overall, we considered that only 25% of the organisations surveyed appeared to meet AS 4269. The main reason for this result was that most organisations had no system in place to learn from complaint data. They were not using complaint information to evaluate the underlying causes of complaint so that they could take action to rectify them. Other problems were the lack of written complaint policies and procedures, inadequate publicity, outdated customer service charters and consumer brochures and narrow definitions of what constituted a complaint.

Several implications could be drawn from the survey. Quality improvement systems, especially evident in the health and TAFE sectors, were associated with meeting AS 4269. More commitment to complaint systems is required in the Western Australian public sector. CEOs need to ensure that the organisation understands the elements of a quality system and that the required resources are devoted to its implementation. I have written to all CEOs about this matter.

The survey report was mailed to public sector agencies, local governments and Members of Parliament in December 1999. The survey generated renewed interest in public sector complaint management and many organisations expressed interest in developing a new, or review an existing, complaint process. As surveys of this nature promote system improvements we intend to repeat the survey in July 2001.

Public Sector Complaint Handling Forum

Since the complaint handling survey was mailed out there has been a steady stream of callers seeking information and advice about their organisation's complaint handling system. As well as giving advice on establishing systems, we have responded to this demand in several ways:

- A complaint handling reference list was prepared and attached to the survey report and we give advice about locating relevant materials.
- Callers with specific difficulties may be referred to people in other agencies who have addressed similar problems.
- An invitation to public sector agencies and local governments to attend a meeting in our Office to establish a complaint information sharing forum in March 2000 attracted 75 participants.
- Participation in the planning committee for the Public Sector Complaint Handling Forum which has arranged follow-up events related to complaint handling.
- Establishment of a complaint handling contact list. Over 100 public sector staff now receive email advice about seminars relevant to complaint handling and customer service and new initiatives in complaint management.

Feedback to my Office indicates that the contact with others involved in establishing or reviewing their organisations' complaint handling systems is appreciated. From my perspective, an improvement in the ability of public sector agencies to handle complaints internally should result in more timely resolutions and reinforce to public sector managers that they have a primary responsibility in this area.

Overseas visit and visitors

In August 1999 I was invited to travel to Jakarta to speak at a seminar which was organised by an Indonesian government agency to consider a proposal to establish an office of Ombudsman in Indonesia. I presented a paper titled "*The role of the Parliamentary Ombudsman in promoting a clean and efficient government*". The paper was well received and I was pleased to have had a part in increasing the awareness of the role of an Ombudsman in emerging democracies.

The year also saw visits to my Office by a number of overseas dignitaries and delegations. Following a visit by a delegation from the Philippines in June 1999, visitors from Ethiopia, Thailand, Indonesia, Mozambique and South Africa visited the Office in the course of the year to discuss the role and operations of my Office.

TABLE 5 : Outcome of allegations finalised 1999-2000, by agencies.

Departments and Authorities	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	3	-	1	-	-	-	-	2	-	3
Agriculture – Department	11	2	-	1	-	2	1	2	-	8
Albany Port Authority	1	-	-	-	-	-	-	-	-	--
AlintaGas	10	-	5	-	-	2	1	2	-	10
Builders' Registration Board	1	1	-	-	1	-	1	-	-	3
Building Disputes Committee	5	1	1	-	1	1	-	2	-	6
Central Metropolitan College of TAFE	7	-	1	1	-	1	1	1	-	5
Conservation and Land Management - Department	9	-	1	-	1	1	1	2	-	6
Contract and Management Services - Department	1	-	1	-	-	-	-	-	-	1
Curriculum Council	2	-	-	-	-	-	1	1	-	2
Curtin University of Technology	7	-	-	1	1	-	-	4	-	6
Dairy Industry Authority	1	-	-	-	-	-	-	-	-	--
Dental Board	-	-	-	-	-	-	-	1	-	1
Disability Services Commission	1	-	1	-	-	1	1	5	-	8
East Perth Redevelopment Authority	4	-	-	2	1	-	-	-	-	3
Edith Cowan University	3	-	1	-	-	-	1	2	-	4
Education Department	25	4	8	7	1	2	4	6	-	32
Energy – Office of	1	-	-	-	-	1	-	-	-	1
Environmental Protection – Department	10	1	1	-	-	-	5	2	-	9
Fair Trading – Ministry	15	1	5	-	2	1	-	6	-	15
Family & Children's Services - Department	32	1	9	5	4	2	3	29	-	53
Finance Brokers Supervisory Board	5	3	2	-	-	-	-	-	-	5
Fire and Emergency Services Authority	1	-	-	-	-	-	-	1	-	1
Fisheries Department	1	-	-	-	-	-	-	1	-	1
Gold Corporation	1	-	-	-	-	-	-	1	-	1
Government Employees Housing Authority	-	-	-	-	-	1	1	-	-	2
Government Employees Superannuation Board	10	3	1	-	1	-	1	2	-	8
Great Southern Regional College of TAFE	1	-	-	-	1	-	-	-	-	1
Guardianship and Administration Board	6	-	4	-	-	-	-	3	-	7
Health Department	10	1	4	-	-	1	1	2	-	9
Health Review – Office of	6	-	-	-	-	-	-	8	-	8
Herd Improvement Service	1	-	1	-	-	-	-	-	-	1
Heritage Council	1	-	-	-	-	-	-	1	-	1
Hospital Boards	8	1	1	-	-	1	1	3	-	7
Housing – Ministry	137	-	39	3	10	25	23	49	-	149
Industrial Relations Commission - Dept of the Registrar	1	-	-	-	-	-	-	-	-	--
Insurance Commission	22	1	11	-	-	-	1	9	-	22
Justice – Ministry - Offender Management Division	541	14	154	47	26	73	37	207	-	558
- Other	103	4	15	3	3	14	16	45	-	100
Kalgoorlie-Boulder Cemetery Board	2	-	-	-	-	-	-	3	-	3
Kimberley College of TAFE	1	-	-	-	-	-	-	1	-	1
Land Administration – Department	21	1	7	-	-	3	6	3	-	20

TABLE 5 : Outcome of allegations finalised 1999-2000, by agencies.

Departments and Authorities	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	
Legal Aid	9	-	4	1	-	1	1	3	-	10
Legal Practitioners Complaints Committee	5	-	2	-	-	-	-	3	-	5
Local Government – Department	7	1	-	-	-	5	-	-	-	6
Lotteries Commission	9	-	1	-	1	-	1	6	-	9
Main Roads	4	-	1	-	-	-	-	1	-	2
Medical Board	3	-	1	-	-	-	-	1	-	2
Mental Health Review Board	1	-	-	-	-	-	-	-	-	--
Metropolitan Health Service Board	19	2	14	3	-	-	-	3	-	22
Midland College of TAFE	1	-	-	-	-	-	1	1	-	2
Minerals and Energy - Department	2	-	-	-	-	-	-	2	-	2
Murdoch University	5	-	-	-	2	-	-	1	-	3
Museum Board	-	-	-	-	-	-	1	-	-	1
National Trust Of Australia (WA)	1	-	-	-	-	-	-	-	-	--
Occupational Health, Safety and Welfare - Commission	-	-	-	-	-	-	-	1	-	1
Planning – Ministry	16	-	4	-	-	1	2	8	-	15
Planning Commission	-	-	-	-	-	-	-	2	-	2
Police Department	1996	7	50	52	33	188	43	819	737	1929
Port Hedland Port Authority	2	-	-	-	-	-	-	2	-	2
Productivity & Labour Relations - Department	9	-	-	-	1	4	1	2	-	8
Racing, Gaming & Liquor - Office	1	-	1	-	-	-	-	-	-	1
Regional Forest Agreement Steering Committee	-	-	2	-	-	-	-	-	-	2
Resources Development - Department	4	-	4	-	-	-	-	-	-	4
Rottnest Island Authority	2	-	-	-	-	-	-	2	-	2
South East Metropolitan College of TAFE	-	-	-	-	-	-	1	-	-	1
South Metropolitan College of TAFE	2	-	-	-	-	-	-	1	-	1
South West Regional College of TAFE	1	-	-	-	-	-	1	-	-	1
State Revenue Department	10	3	1	-	1	2	-	2	-	9
State Supply Commission	1	-	-	-	-	-	-	1	-	1
State Training Board	-	-	-	-	-	-	1	-	-	1
Swan River Trust	2	-	-	-	1	-	-	1	-	2
Tertiary Institutions Service Centre	2	-	-	-	-	-	-	2	-	2
Totalisator Agency Board	2	-	-	-	-	1	-	2	-	3
Tourism Commission	18	-	-	-	-	-	-	18	-	18
Training – Department	2	-	-	1	-	-	-	1	-	2
Transport – Department	62	1	4	-	1	11	5	31	-	53
University of Western Australia	7	-	5	-	-	-	-	1	-	6
Veterinary Surgeons' Board	3	-	2	-	-	-	-	1	-	3
Water and Rivers Commission	2	-	1	-	-	-	-	1	-	2
Water Corporation	27	-	10	6	-	3	-	4	-	23
Water Regulation – Office of	1	-	-	-	-	1	1	2	-	4
Western Australian Trotting Association	5	-	-	-	-	-	-	-	-	--
Western Power Corporation	93	-	5	1	1	16	14	37	-	74

TABLE 5 : Outcome of allegations finalised 1999-2000, by agencies.

Departments and Authorities	Allegations Received	Finalised without completed investigation: No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Finalised by completed investigation: Totally or substantially favourable	Partially favourable	Not substantiated	Police local resolution	Allegations finalised
Westrail - Special Constables	86	-	-	1	3	16	2	40	-	62
- Other	2	-	-	-	-	1	-	-	-	1
WorkCover	2	-	-	-	1	-	-	1	-	2
WorkSafe WA	9	-	4	-	-	-	-	6	-	10
Youth Affairs - Office	1	-	-	-	-	-	-	-	-	--
Sub Total	**3465**	**52**	**390**	**135**	**98**	**378**	**182**	**1421**	**737**	**3393**
Local Governments										
Albany – City	3	-	1	-	-	-	-	2	-	3
Armadale – City	7	-	-	-	-	1	-	5	-	6
Ashburton – Shire	2	-	1	-	-	-	-	1	-	2
Augusta/Margaret River – Shire	5	-	4	-	-	-	-	-	-	4
Bassendean – Town	2	-	-	-	-	-	-	-	-	--
Bayswater – City	4	-	1	-	-	1	1	1	-	4
Belmont – City	1	-	1	-	-	-	-	-	-	1
Beverley – Shire	3	-	-	-	-	1	-	2	-	3
Bridgetown – Shire	1	-	-	-	-	-	-	1	-	1
Broome – Shire	2	-	-	-	-	-	-	2	-	2
Bunbury – City	2	-	-	-	-	-	-	1	-	1
Busselton – Shire	9	-	1	-	-	3	-	5	-	9
Cambridge – Town	4	-	-	-	-	1	2	3	-	6
Canning – City	2	-	-	-	-	-	-	2	-	2
Capel – Shire	1	-	1	-	-	-	-	-	-	1
Carnarvon – Shire	1	-	-	-	-	-	-	1	-	1
Chapman Valley – Shire	2	-	-	-	-	-	1	1	-	2
Christmas Island – Shire	2	-	1	-	-	-	-	1	-	2
Claremont – Town	-	-	-	-	-	1	-	-	-	1
Cockburn – City	-	-	-	-	-	-	1	-	-	1
Cocos (Keeling) Islands – Shire	1	-	-	-	-	-	-	-	-	--
Coolgardie – Shire	1	-	-	-	-	-	-	1	-	1
Corrigin – Shire	1	-	-	-	-	-	-	1	-	1
Cottesloe – Town	2	-	-	-	-	-	1	-	-	1
Dandaragan – Shire	1	-	-	-	-	-	-	-	-	--
Denmark – Shire	1	-	-	-	-	1	-	-	-	1
Donnybrook/Balingup – Shire	1	-	-	-	-	1	-	-	-	1
Dundas – Shire	2	-	-	-	-	-	1	1	-	2
East Fremantle – Town	2	-	2	-	-	2	-	-	-	4
Esperance – Shire	1	-	-	-	-	-	-	1	-	1
Fremantle – City	7	-	3	-	1	-	2	4	-	10
Geraldton – City	1	-	-	-	-	-	-	1	-	1
Gingin – Shire	1	-	-	-	-	-	-	1	-	1
Gosnells – City	6	-	2	-	-	1	-	4	-	7

TABLE 5 : Outcome of allegations finalised 1999-2000, by agencies.

Loval Governments	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
Harvey – Shire	1	-	-	-	-	-	-	-	-	--
Jerramungup – Shire	2	-	-	-	-	-	1	1	-	2
Joondalup – City	5	-	2	-	-	-	-	3	-	5
Kalamunda – Shire	6	-	-	-	-	-	-	7	-	7
Kwinana – Town	6	-	5	-	-	1	-	2	-	8
Mandurah – City	12	-	2	-	-	1	3	7	-	13
Manjimup - Shire	6	-	-	-	-	2	-	4	-	6
Melville – City	12	-	-	-	1	2	4	10	-	17
Menzies – Shire	1	-	-	-	-	1	-	-	-	1
Mingenew – Shire	1	-	-	-	-	-	-	1	-	1
Mosman Park – Town	5	-	3	-	-	2	-	-	-	5
Mundaring – Shire	6	-	-	-	-	2	-	7	-	9
Murray – Shire	3	-	1	-	-	-	-	2	-	3
Nannup – Shire	2	-	1	-	-	-	-	1	-	2
Nedlands – City	9	-	2	-	-	2	3	1	-	8
Northampton – Shire	-	-	-	-	-	-	-	1	-	1
Peppermint Grove – Shire	1	1	-	-	-	-	-	-	-	1
Perth – City	6	-	-	-	1	-	1	4	-	6
Port Hedland – Town	-	-	-	-	-	-	-	1	-	1
Quairading – Shire	1	-	-	-	-	-	-	1	-	1
Ravensthorpe – Shire	1	-	-	-	-	-	-	1	-	1
Rockingham – City	2	-	-	-	-	1	1	1	-	3
Serpentine/Jarrahdale – Shire	1	-	-	-	-	-	-	1	-	1
South Perth – City	5	-	-	-	-	-	-	3	-	3
Stirling – City	14	-	-	-	-	1	1	15	-	17
Subiaco – City	3	-	-	-	-	1	-	2	-	3
Swan – City	13	-	1	-	1	1	-	14	-	17
Victoria Park – Town	10	-	2	-	1	-	5	5	-	13
Victoria Plains – Shire	1	-	-	-	-	1	-	-	-	1
Vincent – Town	5	-	1	-	-	2	-	2	-	5
Wanneroo – City	6	-	-	-	-	1	-	5	-	6
Waroona – Shire	1	-	-	-	-	-	-	1	-	1
West Arthur – Shire	1	-	-	-	-	-	-	-	-	--
Williams – Shire	2	-	1	-	-	-	-	2	-	3
Wyndham/East Kimberley – Shire	1	-	-	-	-	1	-	-	-	1
York – Shire	13	-	-	-	1	-	-	12	-	13
Sub Total	**244**	**1**	**39**	**-**	**6**	**35**	**28**	**159**	**-**	**268**
Organisations not within jurisdiction	129	128	-	-	-	-	-	-	-	128
Grand Total	**3838**	**181**	**429**	**135**	**104**	**413**	**210**	**1580**	**737**	**3789**

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 of Western Australia to be confident that the public sector of the State is accountable for, and is 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 project has not 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 1999/2000 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 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 710 allegations were brought forward from 1998/99 and a further 2,082 were received during the year. 1,991 allegations were finalised, 1,770 by review. Of the remaining 221 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 157 allegations.

	1997[1]	1998[1]	1999	2000
• Percentage of allegations finalised where complainants received assistance[2]	67%	83%	59%	70%
• Number of improvements to practices and procedures	17	24	14	15
• Number of allegations where Police or Westrail took further investigative action at the instigation of my Office	145	86	96	110

Other Public Sector Organisations

A total of 340 allegations were brought forward from 1998/99 and a further 1,756 were received during the year. 1,798 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 1,414 allegations.

	1997	1998	1999	2000
• Percentage of allegations finalised where complainants received assistance	83%	74%	75%	79%
• Number of improvements to practices and procedures	81	42	46	90

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[1]	1998[1]	1999	2000
• Average time taken to finalise allegations (weeks)	18	18	17	19
• Allegations finalised per full-time equivalent staff member[5]	130	141	165	153
• Percentage of allegations finalised in less than three months	56%	58%	51%	54%
• Percentage of allegations on hand at 30 June less than three months old	62%	67%	39%	44%
• Cost per finalised allegation	n/a	n/a	$513	$606

Other Public Sector Organisations

	1997	1998	1999	2000
• Average time taken to finalise allegations (weeks)	19	10	13	10
• Allegations finalised per full-time equivalent staff member[5]	114	91	112	128
• Percentage of allegations finalised in less than three months	62%	83%	65%	77%
• Percentage of allegations on hand at 30 June less than three months old	61%	72%	57%	43%
• Cost per finalised allegation	n/a	n/a	$628	$676

Information and Advisory Services

• Total cost of activity	n/a	n/a	$ 375,295	$215,370

Telecommunications Interception Audit

• Total cost of activity	n/a	n/a	$70,038	$49,344

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 2000.

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, 2000

Scope

I have audited the key effectiveness and efficiency performance indicators of the Parliamentary Commissioner for Administrative Investigations for the year ended June 30, 2000 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, 2000.

D D R PEARSON
AUDITOR GENERAL
October 31, 2000

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 1999/2000 Budget Statements and the actual performances achieved.

Police Service	Target	Actual
Quantity		
Allegations finalised	2100	1991
Timeliness		
Average time taken to finalise an allegation (weeks)	15	19
Cost		
Cost per finalised allegation	$580	$606
Other Public Sector Organisations		
Quantity		
Allegations finalised	1300	1798
Timeliness		
Average time taken to finalise an allegation (weeks)	17	10
Cost		
Cost per finalised allegation	$820	$676
Telecommunications Interception Audit		
Quantity		
Audit reports completed in accordance with legislation	1	1
Timeliness		
Statutory time limits complied with	100%	100%

CHAPTER 3

POLICE

Complaints from members of the public about either the way they had been dealt with in the course of some police operation or the conduct of police officers fell for the first time in four years. The fall in complaint numbers was quite significant although whether that fall is a periodic adjustment or evidence of an overall improvement in police operational standards is difficult to assess at this time. I would like to think the latter situation applies and that the downturn is sustainable.

The key features of the year were:

- The number of complaints received about police decisions and conduct decreased by 23.1% - from 1530 to 1176. The number of individual allegations involved decreased also – down 7.1% from 2149 to 1996. Included in this number are 232 issues involving matters such as attempts at self-harm by persons in custody or issues of 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 decreased by 16.1% - declining from 2299 to 1929.

- Reviews of the adequacy of police internal investigations were completed in respect of 1015 allegations.

- Of the total number of allegations finalised following investigation or review (1050), approximately 21% were resolved totally or partially in favour of the complainant – compared to 24% in the previous year.

The nature of the complaints

The 1996 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 1999/2000

Failure to comply with police procedure	Number		%
• Improper arrest	45		
• Entry/search and seizure	71		
• Unlawful detention/custodial matters	165		
• Custody/handling of property	63		
• Failure to perform duty	147		
• Inadequate investigation	167		
• Failure to prosecute/improper prosecution	22		
• Treatment of children	15		
• Execution/service of documents	11		
• Other/general	166	872	44
Assault or excessive force			
• Assault/undue force	249		
• Use of physical measures/batons/handcuffs	32		
• Use of firearms	10	291	14
Verbal abuse or threats			
• Demeanour/incivility	353		
• Harassment	62		
• Threats/intimidation	41		
• Interrogation/conduct of interview	19	475	24
Other misuse of authority			
• Traffic matters/procedures/use of police vehicles	111		
• Records/improper disclosure	43		
• Irregularity in evidence/perjury	43		
• Minor corruption/personal advantage	20		
• Improper exercise of powers	98	315	16
Administration matters			
• Inadequate investigation	1		
• Condition of premises/facilities	5		
• Delays	4		
• Employment matters	6		
• Licensing matters	15		
• Records	4		
• Other/general	8	43	2
Total		**1996**	**100**

Changes to the police complaints system

During the year under review, Mr Barry Matthews became Commissioner of Police and Mr Graham Lienert became the Assistant Commissioner responsible for the Professional Standards Portfolio. Since these senior officers took up their positions the structure and operations of the Professional Standards Portfolio have been under the microscope and a process of restructuring has commenced. Although all areas of the Portfolio have been examined closely, the area that has been most affected is, from my perspective, the Internal Investigations Unit (IIU). This is because changes that are made to the way in which the IIU operates have the potential to impact most on the operations of my Office within the police complaints system.

With effect from 1 July 2000 the IIU embarked upon a progressive program of devolution to Police Districts of responsibility for the conduct of the vast majority of police internal investigations of complaints. The stated objective of this process is to make it clear that the primary responsibility for investigating complaints about police is a management function of the police commander of the district in which the complaint arose. This is in accordance with my understanding of what the system is, or should be, as I indicated in my 1999 report (at page 23). IIU is to become a much smaller entity responsible for investigating serious systemic complaint issues, monitoring the performance of the districts, establishing and setting standards for internal complaint investigations, and for training internal investigators working in district offices. To assist the districts a number of IIU investigators are being transferred to the districts. These officers are to report directly to the District Commander and to be available to provide guidance and oversight to district staff charged with the responsibility for conducting internal complaint investigations.

My Office was consulted about the changes and expressed some initial reservations about the proposed system. Those reservations included a concern that the new system could result in my Office, by default, becoming more involved in the day-to-day oversight and supervision of all internal police complaint investigations and, perhaps more importantly, the impact it would have on my limited resources. The legislation that currently determines the operations of my Office does not envisage day-to-day oversight and supervision of police internal investigations as being a function of my Office and I was concerned to see that this responsibility, which quite clearly is a police function, remained with the IIU. I believe that has been achieved but I intend to monitor the situation closely in the coming months.

Timeliness

I reported last year (at page 19) that the targets agreed with police for the completion of police internal investigations of complaints about police would be:

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 1999/2000 year is the first full year in which the target system has been operating. Table 3 shows how effective the Police Service has been in meeting its targets according to data maintained by my Office for complaints about police received and completed in the years to 30 June 1999 and 2000.

TABLE 3 Time to complete police internal investigations

	1998/1999		1999/2000	
Local Resolution complaints	Number	%	Number	%
0-30 days	241	47	254	61
31-42 days	35	7	32	8
43-90 days	137	26	77	19
91-150 days	72	14	29	7
More than 150 days	31	6	20	5
Total investigations completed	516	100%	412	100%
Average time to complete	26 days		24 days	
Major complaints				
0-42 days	108	16	61	13
43-90 days	162	24	102	21
91-150 days	204	31	123	26
More than 150 days	197	29	192	40
Total investigations completed	671	100%	478	100%
Average time to complete	112 days		135 days	

It is clear that police continue to have difficulty achieving the targets set. Of particular concern is the fact that 40% of major matters and 5% of minor matters (known as Local Resolutions) - down from 6% - took longer than 150 days to complete. Of most concern is that the percentage of major matters finalised in the over 150 day category has increased significantly (up from 29% to 40%) rather than reduced. Fortunately, 61% of Local Resolution matters are now finalised within the 30 day target period (up from 47%) and the overall average is 24 days, which is encouraging. However, although there may be quite valid reasons in some cases for Local Resolutions to exceed 30 days, it can be argued that others that do so in the absence of such reasons should automatically become full investigations. The fact that 39% of Local Resolutions are not finalised within the 30 day target period is unsatisfactory.

What is abundantly clear is that both the Professional Standards Portfolio and my Office need to monitor much more closely both the completion of major investigations, in particular those 40% of matters that are older than 150 days, and the Local Resolutions that become unduly protracted.

The timeliness of police internal investigations remains of major importance and I have already discussed with IIU and District Commanders the development of strategies to reduce the percentage of older matters to single figures. These strategies may include a more rigorous application of the progress reports and file inspection procedures I mentioned in my last report (at page 21).

Outcomes of matters finalised

Table 4 shows how allegations finalised in 1999/2000 were dealt with by my Office.

TABLE 4 Outcome of allegations against police finalised 1999/2000

	Number of allegations	%
No investigation required		
• No jurisdiction	7	-
• Discretion exercised not to investigate	50	3
Investigation not completed		
• Investigation discontinued	52	3
• Withdrawn/lapsed	33	2
Completed investigation or review of internal investigation		
• Totally or substantially favourable to complainant	188	10
• Partially favourable to complainant	43	2
• Not substantiated or unable to be determined	819	42
• Local resolution matters judged to have been investigated adequately	737	38
	1929	100

Complaint investigations

The review process

The administrative arrangements that exist between the Commissioner's Office and my Office specify that most major internal investigations and all Local Resolution complaints are to be referred to my Office on completion. The purpose of this procedure is to allow my Office the opportunity to review the adequacy of the police internal investigations conducted into the complaints. I described in my last report (at page 21) the procedure whereby my investigating officers seek comment and information from complainants to facilitate a more complete review. This information is to enable me to determine more effectively whether further enquiries are necessary and, if so, whether that work should be done by police, or by me conducting my own investigation.

During a sixteen-month period from February 1999 approximately 1880 questionnaires were sent out to complainants. Only about 20% of the complainants who were sent a questionnaire completed and returned it to my Office. Although the number of responses is relatively low and the questionnaire itself is not specifically designed to accurately test every stage in the police investigation process, the responses received give some very broad indications about the level of complainant satisfaction with the police internal investigation.

Some of the main points to emerge from the returned questionnaires were:

- it appears that the majority of complainants who had their complaint dealt with by local resolution were satisfied with the process followed (64%) and with the time taken by police to complete the matter (72%);
- of those who had major complaints more than half of the complainants were satisfied with the process (51%) and the time taken (60%); and
- less satisfaction was expressed about whether the police investigation had addressed all the issues and evidence raised by the complainants (58% in local resolution matters and 39% in major matters) and about whether the conclusions reached by police were appropriate (55% for local resolution matters and 31% for major matters).

I will continue to ask complainants for their input into our review of police internal investigations. I am considering ways in which a more accurate survey of complainants' satisfaction with the police investigation process could be achieved.

General observations

The most significant problem affecting police internal investigations remains the issue of timeliness – see my comments above. On one view, the move towards greater involvement by District Offices in complaint investigations could also be said to have resulted in a downturn in investigation standards. In the year under review my Office returned 110 matters to police for further work (up from 71 last year). However, I make the observation that these figures do not necessarily reflect the true position. Overall, it seems to me that the general standard of investigations is improving, albeit slowly, and should continue to improve - particularly as District Offices become more familiar with the standards I require of them. However, it is important that investigations continue to be the subject of rigorous oversight to ensure that they continue to improve and that they do not deteriorate. My Office will be doing whatever it can to assist in that regard.

The following cases are examples of my Office's involvement in the review of police complaints:

Case one

Police who were investigating a complaint of theft seized a boat from the complainant pursuant to a search warrant. After further enquiries police decided that no person would be charged with any offences. The police officer responsible for obtaining the warrant then returned the boat to another person who also claimed ownership of it. The complainant sought the return of the boat and complained that police had wrongly decided that the ownership of the boat had to be determined by civil action between him and the other party – rather than simply returning the boat to him.

Investigation revealed that the police officer who had returned the boat to the other person acted in good faith. However, he had not acted in accordance with a provision of the Criminal Code that requires, when no person is to be charged, that the seized property be taken before a Justice of the Peace - who is required "*to direct that the [property] be returned to the person from whom it was taken, unless [the Justice] is authorised or required by law to dispose of it otherwise*".

Because the boat had been returned to the other person it was not possible for the Police Service to reverse this wrongful action. In my view it was also not reasonable for police to expect that the complainant should have to take legal action to recover the boat which should have been returned to him or made the subject of interpleader

proceedings. Accordingly, I recommended that police pay compensation of $1500 to the complainant for the loss of the boat.

My recommendation was accepted and police offered the complainant the amount of compensation that I had recommended should be paid. However, the complainant declined to accept that amount and, in the circumstances, I could not take the matter any further other than to advise the complainant to explore whatever legal options might be available to him.

Cooperative investigations

During the course of the year my Office participated in a cooperative investigation with police that was the first of its kind since taking on the police jurisdiction in 1985.

Generally, few complaints about police lend themselves to an inquiry of this type. However, this case did so for the reasons that:

- I was aware that the complainant had previously attempted to manipulate a number of investigations conducted by my Office and police into previous complaints he had made about police;
- members of my staff had been involved in numerous meetings with the complainant prior to receiving the complaint and a considerable amount of information had been discussed during those meetings that was relevant to the outcome of the police investigation;
- the complainant's dissatisfaction with the outcome of police investigations, irrespective of the standard of the inquiry, was characteristic of his involvement in previous investigations and it was important to conserve the limited investigative resources of both police and of my Office.

I therefore considered it prudent that a member of my staff should oversee the police internal investigation into the complaint more closely and participate in all interviews undertaken during the investigation. The complainant agreed to this cooperative course of action on the basis that it provided him with a greater degree of confidence about the integrity of the police investigation.

A senior investigator from my Office and a commissioned police officer formulated a joint investigation plan. My officer participated in all interviews with police and civilian witnesses and met regularly with the police investigating officer to discuss the evidence germane to the complaint. My officer was also able to examine the final internal investigation report and the draft of a letter of advice to the complainant before it was sent.

At the conclusion of the police internal investigation I considered that the issues raised by the complainant had been satisfactorily investigated. I was able to advise the complainant that, in view of my ongoing role in the matter, I did not intend to take any further action unless new and compelling evidence came to light.

I anticipate the need for cooperative investigations of this sort to be limited. Nevertheless, in cases involving complaints that are not necessarily frivolous or vexatious but where a complainant's history justifies caution being exercised before limited resources are employed to investigate the matter, such cooperation should be considered as an alternative investigative means.

Examples of other investigations

In my report last year I said that I would draw attention to instances where policy, procedure and practice are applied but are not officially recognised or approved by the Commissioner. The following case is particularly apposite given the devolution of responsibilities to District Commanders that is taking place within the Police Service under the Delta Program.

Case two

An off-duty probationary police officer was detected driving at a very high speed on a freeway. It was suspected also that he had been drag racing several other vehicles in the vicinity at the time. Details were taken at the scene and the attending officers duly reported the incident to senior police officers for advice. After consultation and consideration, the offending officer was issued an infringement notice for a speeding offence and informally counselled. The offending officer had not been arrested and was not formally interviewed about either the offence committed or any disciplinary breaches that may have also occurred.

The police internal investigation file was sent to my Office for review. After considering the seriousness of the circumstances I took the view that the punitive and disciplinary actions taken against the officer may well have been lenient. I was concerned that double standards may have been applied and the offender treated differently from an ordinary member of the public on account of his being a police officer. I commenced my own investigation into the matter.

My investigation showed that the attending officers reported the incident to their supervisor who forwarded a briefing note on the incident to the Police Service Internal Investigation Unit (IIU). The briefing note stated that the offending officer would possibly be charged with wilfully dangerous (reckless) driving. Several days later one of the attending officers attended a round table discussion with his District Officer, a supervisory officer and a police prosecutor. It was decided to issue the offending officer with an infringement notice for speeding, resulting in a fine and demerit points on his motor driver's licence. The following day a discussion took place between the apprehending officer's District Officer and the superior officer of the offending officer. Later the same day the offending officer was informally counselled regarding the speeding incident. No regard was given to any possible breaches of police discipline and neither the Professional Standards Portfolio nor IIU was contacted or consulted about these decisions

Unaware of any of the decisions that had been made, IIU commenced an internal investigation which, after some initial delay, resulted in the investigation file being forwarded for the attention of the offending officer's District Officer. IIU said that they had given express instructions to the effect that the offending officer was to be interviewed. However, the offending officer was not interviewed and, following review, the file was returned to IIU. It was accompanied by a report that concurred with the action already taken against the offending officer and recommended that the officer undergo a three months extension to his probationary period. As it turned out the recommendation could not be acted upon because the offending officer had already completed his probationary period several weeks before it was made.

Overall, my investigation revealed that the actions of the apprehending officers were both appropriate and beyond reproach. Subsequently, however, certain senior police officers had taken action in accordance with their understanding of the Police Service's "devolution policy". This policy was said to form part of the 'Delta Program' and was intended to confer more authority to local management, but my enquiries discovered that it had not been formally documented or ratified and therefore it meant different things to different people. In addition, my investigation disclosed that the Police Service did not have a firm policy or any guidelines about reporting to or consulting with IIU on serious disciplinary breaches.

In this case, the overall lack of guidance or policy led senior officers to decide on the mode of prosecution, and to make decisions with regard to discipline without prior consultation with and/or instruction from IIU. I was concerned about the action taken against the offending officer and took the view that in the circumstances the decisions made and action taken needed to be reconsidered. I therefore made several recommendations to the Commissioner of Police that were designed to remedy the concerns outlined above. Principal among these recommendations were that the Commissioner:

- consider and if necessary issue instructions clarifying the levels of authority and responsibilities of senior police officers under the Commissioner's devolution policy; and

- publish more detailed instructions concerning the circumstances in which the Professional Standards Portfolio must be informed of suspected illegal or improper actions by police officers, and protocols for the investigation of criminal or disciplinary issues arising therefrom.

The Commissioner of Police subsequently notified me that a policy was being developed to clarify the levels of authority and responsibilities of senior officers. He said that the second matter would be dealt with in association with the proposed devolution of disciplinary policy to District Officers arising from the restructuring of the IIU. I am to be notified of the details of the devolution policy when it is finalised.

Case three

The *National Medal* ("the medal") was established in 1975 to replace a number of long service and good conduct awards issued to the Australian Defence Force, Australian police and fire services under the Australian system of honours and awards. It is awarded to persons for long service in eligible organisations and fifteen years eligible service is necessary to qualify for the medal. Clasps are available for each additional 10-year period.

A police officer became eligible for the award of the medal and after an integrity check by the Professional Standards Portfolio was nominated for the award. The nomination was accepted by the Governor-General, the medal was struck and he was advised to attend a presentation ceremony.

Three months before the medal presentation ceremony the officer was interviewed by police internal investigators about a breach of police regulations and was later charged with a disciplinary offence that had occurred after his nomination for, and award of, the medal. Two days before the presentation he was told he would not be presented with the medal because the relevant WA Police Service guidelines for the award of the medal stated that he could not be presented with it until the disciplinary charge was determined.

The officer pleaded guilty to the disciplinary charge and it was dealt with approximately two months after the time that he would have been presented with the medal. He then wrote to the Commissioner of Police asking that the Commissioner exercise the discretion available to him under the published guidelines to allow the presentation of the medal. The Commissioner, however, declined to do so and directed that because of his conviction on the disciplinary charge the officer would have to wait a further two years (as specified by the guidelines) before getting his medal.

The officer complained that he had been deprived of the timely presentation of the medal because of an inflexible and erroneous interpretation of the guidelines which were ambiguous and unclear and needed to be revised.

I agreed with the officer's view. In my opinion the guidelines were open to competing interpretations in a situation

where a police officer was investigated for conduct which arose after he had qualified for and been accepted to receive the medal and then advised to attend a presentation ceremony. The guidelines were unclear and needed to be revised and amended.

I recommended that the officer be presented with the medal on the basis that it was awarded to him at the date of the acceptance of his nomination by the Governor-General. I also recommended that the guidelines for the award of the medal and the clasp be revised so that they clearly expressed what would happen if an officer came under disciplinary investigation at any time after he or she had been nominated for the award of the medal. The Commissioner of Police accepted my recommendations and a review of the guidelines is now underway.

Complaints from police officers

During the past year, more so than in previous years, I received a significant number of complaints from police officers seeking redress in relation to the actions of senior police personnel or the Police Service. The majority of these complaints came from officers who were, or had been, the subject of investigation by either the IIU or the Internal Affairs Unit ("IAU").

In particular, I finalised several complaints, made individually and collectively, from six police officers who had been the subject of criticism in a report issued by the Anti-Corruption Commission ("ACC") following an investigation into police corruption conducted by an ACC Special Investigator. The former Commissioner of Police suspended the complainants from duty on 12 December 1997 following his receipt of the ACC report. The Commissioner also issued a contemporaneous media release naming each of the officers and outlining the reasons for their suspensions.

The six officers were supported by the WA Police Union and mounted a successful challenge in the Supreme Court to the legality of the findings contained in the ACC report. The Court held that the ACC had acted beyond its power in making findings of guilt and ruled that the Commissioner's decision to suspend the six officers was an invalid exercise of power. However, in making its decision the Court also said that the Commissioner was entitled to rely and act on the ACC findings as though they were lawfully made. Subsequently, the Commissioner of Police lifted the suspensions and each officer was stood down pending further action.

Ultimately, each officer received a notice pursuant to section 8 of the *Police Act 1892*. The notices required them to show cause why they should not be removed from the Police Service. Following submissions, five were subsequently reinstated to duty, although one of those officers resigned from the Police Service in January 1999. As at 30 June 2000, the sixth officer remained subject to section 8 proceedings.

The detailed facts and circumstances of the ACC investigation into the six officers are set out in the Ninth Report of the Parliamentary Joint Standing Committee on the ACC.[1]

These complaints touched on the activities of the ACC but it was not open to me to carry out any investigation into the activities of that body or any of its officers because my Office does not have jurisdiction over the ACC. However, my Office does have the power to consult external bodies such as the ACC and the Director of Public Prosecutions (DPP) and during the course of the year my Office consulted the ACC about several matters in which it had been involved and also the DPP.

As a general observation, it seemed to me that there was a degree of misconception on the part of some police officers about what outcomes could be achieved regarding their complaints. For example, there appeared to be a misunderstanding that the role of my Office includes the ability to prepare briefs of evidence for use in judicial proceedings when, clearly, the legislation does not permit that. Further, there appeared to be an expectation that

[1] Joint Standing Committee on the Anti - Corruption Commission - Ninth report in the thirty - fifth Parliament - A report on the special investigation conducted by Mr Geoffrey Miller QC: the allegations, the evidence, the outcomes and their relevance to Anti - Corruption Commission procedures within the Western Australia Police Service. Tabled 9 December 1999.

I would be able to impose my decision over that of the decision-maker complained about - which also is not the case. My role is to examine, through a process of investigation, the lawfulness and reasonableness of actions taken and decisions made by State Government agencies, including the Police Service, and to consider, pursuant to the provisions of section 25 of the *Parliamentary Commissioner Act 1971,* whether there are circumstances that warrant recommendations being made to vary a decision in any particular matter.

The complaints made to me by police officers highlighted a number of important issues for my Office, the Police Service and the overall system of dealing with complaints about police. The more significant of those issues were:

- The lack of an effective and comprehensive Police Service media policy – particularly on matters relating to comment about ongoing investigations and in relation to issues of management and discipline.

- The adequacy and effectiveness of the "loss of confidence" procedure (the process envisaged by section 8 of the *Police Act 1892*);

- The application of sections 14(4) and (5) of the *Parliamentary Commissioner Act 1971* in circumstances where actual or proposed litigation by a complainant raises the question of whether it is appropriate for my Office to become or remain involved in the investigation of a particular matter.

The lack of an effective and comprehensive Police Service media policy

As a result of dealing with complaints I have recommended to the Police Service on several occasions that it review its current media policy and develop a comprehensive and equitable policy to deal with all aspects of the relationship between the Police Service and the media. This is because the existing policy is, in my opinion, inadequate to meet the current needs of the Police Service. Decisions about what to say to the media need to be made carefully and would benefit from the guidance available in a comprehensive and equitable policy. Without such a policy each situation is dealt with in isolation and different considerations come into play leading to inconsistencies and complaints about differing standards. Decisions about publicity need to be made with consistency and certainty. I am also concerned that the current policy is deficient on matters that involve public comment about ongoing criminal or internal disciplinary investigations.

An appropriate policy is essential to best serve the public interest, the individual, and the Police Service. Such a policy should set out the circumstances that would justify public comment being made and place limits on the extent of that comment. It should also establish mechanisms that would ensure the accountability of those who determine that public comment is justified and necessary.

It may not be possible to set hard and fast rules relating to the publication of the details of persons involved in investigations that could lead to criminal charges or disciplinary action. For example, there may be particular occasions where the public interest may justify disclosure of information about, or the identity of, a person who has been charged or of a police officer who has been suspended or otherwise disciplined.

In the absence of a suitable policy I have no doubt that I will continue to receive complaints from aggrieved parties about publication issues because these matters raise subjective and often emotive issues, implications and consequences.

Case four

Six officers complained about the public disclosure of their names by the former Commissioner of Police at the time of their suspension, and the subsequent internal and external publicity about both them and the issues and allegations against them.

During the investigation of this matter one of the complainants commenced a private prosecution against the former Commissioner alleging breaches of section 81 of the *Criminal Code* (disclosure of official secrets). That prosecution was taken over by the DPP and was subsequently discontinued on the presentation to the court of a *nolle prosequi*. While this prosecution was in progress I exercised my discretion under section 14(4) of the *Parliamentary Commissioner Act 1971* to discontinue my investigation. However, once the prosecution was discontinued I re-opened the investigation and proceeded to finalise the matter.

The complainants alleged that the former Commissioner's disclosure of their names at the time of their suspension and the comments he subsequently made about them on public radio was in breach of section 54 of the *ACC Act*. This section places restrictions on the publication of certain information received by, or allegations made to, the ACC.

In conducting my investigation I decided that it would not be appropriate for me to express a view about the lawfulness of the former Commissioner's actions. This was because that matter could only be determined by a court - and that avenue (at least in relation to a criminal prosecution) was statute barred. However, I was of the opinion that it was open to me to consider the complaints administratively in order to decide whether or not action of the type contemplated by section 25(2) of the *Parliamentary Commissioner Act 1971* should be taken and, if so, whether any recommendations should be made to the Commissioner as the principal officer of the Police Service.

The matter was not an easy one to determine. On the one hand there were the interests of the individual officers and their families and on the other the interests of the Police Service and the public. I had no reason to doubt that the former Commissioner, when naming the complainants in the context of announcing his response to the ACC report and the suspension action he had taken, was acting in good faith and with the interests of the Police Service in mind. However, the decision was made at a time when the Police Service did not (and still does not) have a sufficient and equitable policy to guide officers who deal with the media in situations where persons (whether police officers or civilians) are under investigation for criminal and/or disciplinary offences.

The naming of the complainants – ostensibly to prevent inaccurate media speculation about the identity of the officers concerned and the unfair labelling of the whole of the Drug Squad - was, on one view, justifiable in the light of the high public profile of the ACC investigation and the public statements about the matter made by the ACC. On the other hand, the complainants should, arguably, not have been named because at the relevant time they were only under suspension while a decision about their future in the Police Service was being made. Although some publicity about the suspensions may have been necessary, I considered that other options falling short of naming the individuals were available.

I had sought advice from the ACC whether there was any impediment to the Commissioner of Police making the public comments that he had at the time of suspending and naming the six officers. The ACC advised that there was no impediment to the Commissioner commenting as he had and I proceeded on that basis.

Having regard for the circumstances existing at the time, including the publicity that the affair had already attracted, media releases made by the ACC, the absence of a clear policy about publication in such situations,

the reasons given by the former Commissioner for naming the officers (which I accepted), and despite an assumption that the naming may have been contrary to law, I concluded - not without some hesitation - that I would not be justified in making any recommendation under section 25(2) of the *Parliamentary Commissioner Act 1971* about the naming of the six officers.

I also examined other public comments made by the former Commissioner during an interview on a Perth radio station in the days following the officers' suspension. I considered the various comments made during the interview, not in isolation but in the context of the whole interview and the circumstances existing at the time. It seemed to me that, at the time of the interview, members of the public would have been aware that the ACC had concluded an investigation into allegations of corrupt and possibly criminal conduct – the ACC's own press statements referred to the investigation being into allegations of drug-related police corruption. Against this background the public was aware that a recommendation that serious disciplinary action be taken against six officers had been made, that the former Commissioner was entitled to assume that the ACC had the power to make findings and recommendations, and that he had suspended and named six officers. I concluded that none of the former Commissioner's actions would require me to make any recommendations of the type contemplated by section 25(2) of the *Parliamentary Commissioner Act 1971* about his comments during the radio interview.

However, I did recommend that the Police Service comprehensively review its media relations policy. In my view, in making the decisions he did in this case the former Commissioner should have been assisted by a comprehensive media relations policy that gave guidance to police officers about how to deal with, and what information and statements it was reasonable to release to, the media. In making my recommendation I suggested that if the review determined that disclosures of the type made by the former Commissioner were to be seen as appropriate in the future, but had the potential to contravene, or be overly restricted by, the operation of section 54 of the ACC Act, then consideration should be given to submitting a proposal to government to obtain appropriate amendment of section 54.

I am pleased to note that the Commissioner accepted my recommendation for a review of the policy. Some progress has been made and discussions have taken place between my Office and that of the Commissioner on the development of an appropriate media policy. Progress is, however, slower than I would like.

Case five

A complaint was made by a suspended police officer about the content of a media release announcing both his reinstatement to the Police Force and that he was to be formally disciplined.

Following the former Commissioner's decision to reinstate the officer, the Police Service issued a media release about that decision which, among other things, stated that the officer would be formally counselled for inappropriate and unprofessional conduct relating to his duties. The officer complained that the stated reason advanced to him to justify the issue of this media release was contradicted by a later similar situation involving another, senior, police officer who had been the subject of disciplinary action but whom the Police Service refused to name on the grounds that it was not their policy to do so.

The decision to include in the media release a statement that the complainant was to be formally counselled fuelled the concerns I already held about the lack of an appropriate Police Service media policy. It seemed to me that, at best, all that could be said at that time was that there was an intention to issue the complainant with a notice of intention to formally counsel him and, in accordance with the requirements of procedural fairness, to give him the opportunity to respond. I was concerned that the decision to announce that he was to be formally counselled appeared to be at odds with comments made by both the Police Service and the Minister that it was not normal practice to name officers who are the subject of internal disciplinary procedures.

I wrote to the Commissioner of Police asking that he reconsider the issue including an earlier request from the complainant's solicitor for an apology. I also emphasised the need for the Police Service, as a matter of priority, to formulate and implement a detailed policy on this and other media-related issues to ensure certainty and consistency in the future.

The Commissioner advised that having considered the matter and after taking legal advice about the general issue he was not inclined to apologise. The Commissioner also confirmed that although it was not normal practice for details of internal disciplinary action and the identity of the officers involved to be made public, the publicity surrounding this officer's suspension and the sequence of events to some extent determined the action of the former Commissioner.

After considering the circumstances, including the fact that the complainant had instructed a firm of solicitors to act on his behalf to seek redress, I decided not to pursue further investigation of this issue and I exercised the discretion that is available to me accordingly.

The adequacy and effectiveness of current "loss of confidence" procedures

The current use of section 8 of the *Police Act 1892* relates to the issue of the Commissioner of Police losing confidence in an officer. It involves a decision by the Commissioner who, on the basis of relevant available information, is entitled to determine whether or not he retains confidence in a particular individual's efficiency, integrity, ethical judgement or general suitability to remain as a police officer. The Commissioner of Police may, on deciding that he no longer has confidence in a member of the Police Service, seek the Minister's approval to remove a non-commissioned officer or constable from the Service and, in the case of commissioned officers, may recommend to the Governor the removal of a commissioned officer. This process is consistent with a number of the conclusions and recommendations arising from the Royal Commission into the NSW Police Service (*"the Wood Royal Commission"*).

My understanding of the process is that it is not about proving an allegation or sustaining a complaint - but involves the making of a management decision, consistent with that available to any employer, about whether it is appropriate or desirable to retain the services of a particular individual. However, it is fair to say that in the vast majority of cases the use of section 8 is prompted by concerns raised about an officer during or after an internal investigation. I do not have any particular objection to section 8 being used in this manner provided that there are adequate safeguards that protect those persons subjected to the process from abuse through decisions being made arbitrarily or with impunity. The common law requires that such decisions must follow the principles of procedural fairness and I believe it is on those principles that the accountability of the process stands or falls.

Recognising the need for the principles of natural justice to be incorporated into the process the former Commissioner, the Minister for Police and the WA Police Union formulated what are commonly referred to as the "Administrative Arrangements". These Arrangements set down the procedures governing the section 8 process and cover the rights and obligations of each of the parties. These rights and obligations include the right of the individual involved to have the matter reviewed by an Industrial Relations Commissioner should the Commissioner of Police decide to seek Ministerial approval for the removal of a member from the Police Service.

The Arrangements as they now stand provide no specific role for my Office while the section 8 process is in train nor do I consider that they should. The role of my Office is governed by the provisions of the *Parliamentary Commissioner Act 1971*. Sections 14(1) and (1a) empower me to investigate complaints about decisions or recommendations made by State Government agencies that relate to matters of administration, and complaints about the actions and conduct of police officers. However, section 14(4) specifically prevents me, except in

particular circumstances, from investigating complaints about matters in respect of which the complainant has or had a right of appeal, reference or review before a tribunal constituted under any enactment or by virtue of the Crown's prerogative.

Consequently, in dealing with complaints from police about the section 8 process, I have limited my consideration of those matters to ensuring that the process followed has been in accordance with the principles of procedural fairness.

Case six

I received an extensive complaint from a police officer raising, among other issues, the decision by the former Commissioner of Police to issue him with a notice pursuant to section 8 of the *Police Act 1892* and problems associated with the section 8 process.

The officer complained about the competence and extent of police investigations conducted by the IAU. He said that at various times he had raised significant issues with the former Commissioner highlighting aspects of the internal investigation that he said were inadequate. He had, in effect, invited the former Commissioner to conduct further enquiries prior to making any decision about whether or not to proceed further with a section 8 notice. The complainant said that the issue of the section 8 notice was improper because it occurred before the IAU had carried out a proper and objective investigation of the facts. In his view if that had been done the issuing of the notice would have been unnecessary.

My opinion in matters such as this is that it is for the Commissioner of Police to decide whether or not he should conduct those further enquiries prior to making a decision. I do not believe that in every circumstance the Commissioner should be obliged to do so simply because the officer who may be affected by the decision has made a request for such enquiries.

It would arguably be unreasonable for me to say to the Commissioner of Police that where an officer who is the subject of a disciplinary or section 8 process raises imprecise or general claims he has an obligation to pursue all of them. To do so could be counter productive, would make the system open to abuse by prolonging investigations unduly and causing unreasonable delays in the resolution of issues. There will undoubtedly be occasions when additional enquiries should be made but to require the Commissioner of Police to do so in every case would, in my view, unnecessarily complicate and protract the section 8 process.

In the circumstances of this complaint, and in the light of the existence of the Administrative Arrangements discussed previously, I limited my consideration of the matters raised about the section 8 notice to ensuring that the principles of natural justice had been followed. I was satisfied that the complainant was not denied natural justice because it was clear that he was given access to all relevant material upon which the decision to issue the notice was made. He was also given a reasonable opportunity to make submissions and his response appeared to have been considered in an unbiased manner. The latter point was evidenced, at least in part, by the former Commissioner's decision to re-instate him, presumably on the basis that he had regained confidence in the officer's ability to continue serving as a police officer.

My examination of the issues satisfied me that the investigations conducted by police were, in all of the circumstances, adequate and that the complainant had been given ample opportunity to provide information that was directly relevant to the subject matter of the investigation and the issues of concern raised about him. I was also satisfied that the processes followed during the course of the IAU investigation and subsequent section 8 procedure were fair and in accordance with the principles of natural justice.

It should be noted that doubts have been raised in the Industrial Relations Commission about whether the current process is a proper interpretation of section 8 and, at the time of writing, this matter is awaiting determination by the Full Bench of the IRC.

Litigation by complainants and the application of sections 14(4) and (5) of the Parliamentary Commissioner Act 1971

It is often the case that many of the individuals who make complaints to my Office also have recourse available to them through the courts, tribunals or other appeal mechanisms.

Section 14(4) of the Act provides broadly that I shall not investigate a complaint where the complainant has a right of appeal, reference or review before a tribunal or has a remedy by way of proceedings in a court. Section 14(5) allows me the discretion to conduct an investigation where I am satisfied in the particular circumstances of a case that it is unreasonable to expect the complainant to resort to or to have resorted to those remedies.

I received a number of complaints about police in the past year which, having regard to the those provisions, raised the question of whether it was appropriate for me to accept for investigation a complaint where there was an obvious remedy available to the complainant.

My general practice is to take a fairly broad interpretation of the relevant provisions. Where a complainant has a statutory right of appeal or review then I have generally expected them to pursue that course of action. However, even though it is arguable that many complainants to my Office have a remedy available in the courts (by way of commencing civil litigation), at least in respect of certain issues raised by their complaints, I do not consider it reasonable to expect every complainant to pursue that action. In some cases it is clearly beyond their means and capacity to do so.

However, circumstances will arise where it is not appropriate for me to commence or continue an investigation. For example, I have decided that I should not become involved in cases where the complainant has already notified the Commissioner of Police of an intention to commence legal proceedings, or has actually engaged legal counsel and commenced proceedings against the Police Service or the individual police officer involved. There have been cases where I chose to discontinue an investigation on the basis of a real possibility that litigation was being contemplated by the complainant. Such decisions are made on a case by case basis and only after taking into account all of the relevant circumstances.

Case seven

The Commissioner of Police asked me to investigate a complaint he had received from two police officers who, along with others, had been the subject of a criminal investigation that resulted in them being stood down from duty. The officers complained that a senior police officer involved in one aspect of the investigation had criminally defamed them. I agreed to look into the matter but only for the purpose of establishing the facts of the case. I said that at the completion of my enquiries I would contact police in order to discuss whether further action was required and who should be responsible for taking that action.

My investigation into the matter included obtaining and considering police documents pertinent to the matter and conducting interviews with both the complainants and all officers whom they suggested might have witnessed the comments made by the senior officer. Signed depositions were also obtained where appropriate. I chose not to pursue an interview with the senior officer. In that regard I would make the point that anything he might have said to me would not have been admissable in any proceedings by virtue of section 23A of the *Parliamentary Commissioner Act 1971*.

I consulted the Director of Public Prosecutions ("DPP") about the information gathered during my enquiries. The DPP told me that prosecutions for criminal defamation are rarely undertaken because of the availability and efficacy of civil proceedings and in the light of the personal nature of the offence. He said that matters of criminal defamation would be pursued only where the defamation is directed towards a person occupying public

office and where a prosecution was seen to be in the public interest. In his view, in the circumstances of this matter, it was unlikely that the public interest would require the commencement of a prosecution.

I became aware that solicitors acting for the complainants had informed both the Commissioner and the Minister for Police of an intention to commence civil proceedings seeking substantial damages on behalf of their clients. I decided that my involvement in the matter was no longer appropriate and that I should withdraw from it. I advised the complainants and the Commissioner of Police accordingly.

Acceptance of recommendations

Generally, police have a positive attitude towards the recommendations that I make and, in the main, they are accepted. The threat of litigation, however, has had an effect on the willingness of the Commissioner of Police to accept some recommendations. There have been cases during the year where, following an investigation, the Commissioner declined to accept my recommendations because he did not wish to compromise the legal position of the Police Service in the face of a real threat or the possibility of the complainants commencing legal proceedings for damages. In my opinion, it would be unreasonable for me to expect the Commissioner to compromise his or the Police Service's legal position by accepting a particular recommendation. My general policy in such matters has been to maintain my original recommendation and simply advise the complainant of it and the Commissioner's response. Generally, I take the matter no further. An example of such a case follows.

Case eight

I received a complaint from two officers who, having been placed under suspension, were later stood down from duty following an ACC investigation and were then reinstated. The officers complained about the content of an internal netmail message circulated throughout the Police Service by a former Assistant Commissioner following comments in the media attributed to the officers and their colleagues. The Assistant Commissioner was reported to have said in relation to the complainants that *"reinstatement is not synonymous with innocence"*.

Following investigation of this matter I concluded that the message was badly worded and I recommended that the Police Service apologise to the complainants. The Commissioner of Police refused to accept my recommendation. Although he accepted that a different choice of words may have minimised some of the complainants' concerns, in his view the netmail was not badly worded. The Commissioner also said that, in any event, he would not prejudice the Police Service's legal position in circumstances where there was a real possibility of litigation by the complainants.

It was difficult to accept the Commissioner's view that the netmail was not badly worded even though I recognised the difficulty of the legal position facing him. Consequently, I met with and discussed the matter with the Minister for Police and also personally met with the Commissioner to discuss the issue. However, this action did not persuade the Commissioner to alter his position.

Although I considered this outcome was unsatisfactory I decided that, other than advising the complainants of my original decision, my recommendation and the Commissioner's response, I would not purse the matter further.

Other complaints by police officers

Case nine

I received a complaint from an officer who had been successful in gaining promotion to the rank of sergeant. However, because the officer was under suspension and was subsequently made the subject of a section 8 notice and stood down during the time the selection process was completed, the Police Service decided to delay giving effect to his promotion for a period of six months following his reinstatement. The officer argued that his promotion should be backdated to the date on which others involved in the same selection round had been promoted.

On completion of my investigation of this matter I concluded that the officer had been denied procedural fairness because he had not been given an opportunity to be heard prior to the decision to delay giving effect to the promotion being made. In my opinion, the decision taken was unfair and I recommended to the Commissioner of Police that he backdate the officer's promotion to the date of his reinstatement (although this was later than the complainant had requested). The Commissioner accepted my recommendation and backdated the officer's promotion to the relevant date with full pay and entitlements.

Case ten

A complaint was received on behalf of a suspended police officer who had been the subject of an investigation by the IAU. In accordance with the *Parliamentary Commissioner Act 1971,* I referred the matter to police for investigation. However, the Assistant Commissioner (Professional Standards) wrote to me suggesting that it would be more appropriate for my Office to investigate the matter because it involved senior officers from IAU. I agreed with the Assistant Commissioner and began an investigation. One of the issues raised was that the suspended officer had been treated unfairly during two separate interviews with IAU officers. The suspended officer also outlined a number of physical and emotional disabilities which he believed were not taken into account during the second interview - which occurred over a period of two days.

My investigation found no evidence to suggest that IAU officers were biased, overbearing or exhibited irritation towards the suspended officer. Although I noted that both interviews were intense and that questions were repeated on a number of occasions, I considered this was a direct result of the seriousness of the investigation and the need to get to the truth of the matter. In my opinion there was no hectoring or badgering of the suspended officer in an effort to have him change his story. Though questions were repeated – sometimes more than once – I did not consider this as being anything other than a legitimate interview technique. I noted also that neither the suspended officer nor his interview friend made any complaints to IAU officers about the way either interview was being conducted. As to whether IAU officers adequately took into account the suspended officer's physical and emotional disabilities, my investigation revealed that regular breaks were afforded to the suspended officer and no complaints were made, either by him or his interview friend, to IAU officers regarding ill health. I was therefore satisfied that the suspended officer's disabilities were appropriately catered for and IAU officers had conducted a fair and reasonable interview.

Case eleven

Police received a complaint from a solicitor representing a suspended police officer who had been the subject of an investigation by the IAU. Police referred the matter to my Office for investigation as the Assistant Commissioner (Professional Standards) considered that it would be more appropriate for my Office to investigate the matter because the officer complained about was acting on his instructions. I agreed with the Assistant Commissioner and began an investigation. One of the issues raised was that the officer complained about had issued an unlawful instruction. The solicitor argued that as his client was suspended from the Police Service (and was not being paid) he was not subject to *Police Force Regulations* and, therefore, IAU officers did not have the power to order him to immediately participate in a disciplinary interview.

During my investigation it became clear that the power of senior police officers to issue lawful orders to suspended police officers was unclear. The *Police Act 1892* was silent in respect of the obligations of suspended police officers and, in my opinion, only the courts could conclusively determine such issues. After giving the matter due consideration I was inclined to the view that the *Police Force Regulations* did apply to suspended police officers. However, I accepted that the matter was not free from doubt and would remain so unless it was clarified or tested in court and a definitive decision obtained. I was pleased to note that the Police Service had recognised this and, as part of a wider review of legislation affecting its operations, was giving consideration to amendments designed to remove this uncertainty. In the interim, it had amended its procedures regarding the suspension and standing down of officers.

Overall, I concluded that police were entitled to rely on their experience and general understanding of the way the law should be applied. In that context, and having regard to the uncertainty of the legal position, I concluded that the officer complained about was entitled as part of his investigation to approach the suspended police officer and require him to submit to a disciplinary interview. Regardless of the legal position, I noted that the suspended police officer had eventually agreed to participate in a disciplinary interview on the understanding that he was to be paid for his attendance.

Police identification

One complaint I dealt with during the year focused attention on an aspect of the *Police Act 1892* and subsidiary legislation that in my view is outdated and that was primarily responsible for an altercation that occurred between a police officer and a complainant.

Case twelve

An 'on duty' police sergeant decided to use his afternoon shift meal break in the pursuit of physical fitness. He removed his police uniform, donned running gear and set off on a run. He did not take his police identity card with him but did take a mobile phone so that he could be contacted if his attendance was urgently required.

During the course of the run he came across a youth riding a motorcycle apparently in breach of the *Road Traffic Code* and the *Road Traffic Regulations*. He stopped the youth and began questioning him, at which point the youth's father appeared from a nearby residence and challenged the officer as to his identity and why his son was being questioned. The police officer identified himself orally but was unable to produce his identity card, stating that in the circumstances he was unable to carry it. A heated argument then ensued between the father and the police officer, with the father questioning the veracity of the police officer's identity statement, seemingly on the basis that if the officer was able to carry a mobile phone - why not an identity card?

The police officer explained that he was a sergeant at a local police station and offered the complainant the use of his mobile phone to contact the local police station in order to verify his authenticity. The father declined the offer and instructed his son to *"go indoors"*. The police officer warned the father that the law did not require him to carry his identity card and that if he continued with his course of conduct he would be arrested. However, the father, maintained his disbelief of the police officer's identity and again came between the officer and his son.

A local police car attended the scene within a few minutes (having been summoned by the police officer by mobile phone). The occupants verified the authenticity of the police sergeant, at which point the police sergeant arrested the father for hindering police. The complainant contested the charge and, although legally represented, was convicted of the offence.

The complainant, a man of previous good character, made a complaint to my Office about the conduct of the arresting officer overall and the fact that police can stop and detain a member of the public without the need to produce some form of identity on request.

My review of the police investigation of the matter consisted of examining the police file relating to the investigation and researching the requirements of police services Australia-wide pertaining to the carrying and presentation of identity cards, as well as examining the *Police Act 1892* and the *Police Force Regulations 1979*.

Regulation 405 states:

"A member who is not in uniform shall have with him his certificate of identity, which he shall produce whenever requested to do so by a person in relation to whom he is about to exercise any power or duty as a member unless he has a reasonable cause to refuse to do so or unless it is not possible to do so".

The ambiguity of this regulation is readily apparent. However, it is over-ridden by section 17 of the *Police Act 1892*, incorporating the principal of 'common reputation', and allows police to carry out their duties without the necessity to produce any form of identification. Section 17 states:

"*If any question shall arise as to the right of the Commissioner of Police, or any other officer or member of the Police Force, to hold or execute his office, common reputation shall to all intents and purposes be deemed sufficient evidence of such right, and it shall not be necessary to have or produce any written appointment, or any oath, or other document or matter whatsoever, in proof of such right."*

I could not look at the question of whether the complainant should or should not have been convicted. I was, however, critical of the police for the lack of judgement displayed by the officer concerned in arresting the complainant and in not proceeding by way of summons if a charge was considered necessary. I made the observation that, notwithstanding the favourable outcome for police of the subsequent court process, the matter had resulted in unfavourable publicity for the Western Australia Police Service.

In my view, although the concept of "common reputation" mentioned in section 17 of the *Police Act 1892* might have been relevant to the conditions prevailing in 1892 or earlier, it is not appropriate in a modern environment with a strong emphasis on accountability. I do not suggest that police officers should be unable to exercise their powers because they are unable to produce some form of identification. However, the legislation needs modernising and clear guidance should be provided to officers about the extent to which they can and should use their powers in circumstances where they are unable to produce identification.

I recommended that the Commissioner of Police cause a review to be undertaken of those aspects of the *Police Act 1892* and the subsidiary legislation noted above that are either outdated or ambiguous. I also suggested

that, in the meantime, the Commissioner should issue an order to police officers giving a clear directive that identity cards must be carried at all times while officers are on duty except for circumstances where it would be inappropriate to do so and prior permission has been obtained from a commissioned officer.

I am pleased to report that the Commissioner accepted my recommendation and a comprehensive review is under way.

Duty of care – alcohol and drug affected drivers and passengers

In my last report (at page 36) I referred to a case where an intoxicated man was left in charge of the keys to a motor vehicle belonging to a friend who had been arrested for a drink driving offence. When police departed the scene with the arrested man, the other man drove the vehicle and was subsequently involved in a near-fatal accident.

I reached the conclusion that police had failed to exercise a proper duty of care towards the man and recommended to the Commissioner of Police that the police policy dealing with drunk drivers and their passengers should be reviewed. I said that the review should, among other things, consider whether the legislation needed to be strengthened to allow police officers to retain vehicle keys where they formed the view that not to do so may result in the commission of an offence. However, I have since been advised by police that data from other States, where legislative changes have been made to allow for police officers to take possession of car keys, indicates that such amendments have not resulted in a reduction in the number of injuries and death associated with drug and drink related driving.

Following discussions between my Office and the Traffic Legislation and Policy Unit, it was agreed that the most immediate way in which to deal with such duty of care incidents was:

- to amend the relevant police Administrative and Operational Procedures to include a requirement that officers record the action taken in the official police notebook and have the person of interest sign to acknowledge the accuracy of the entry. This procedure will assist to identify incidents where members of the public either refuse the assistance of police or mislead police by acting in defiance of a promise to do something else;

- for supervising officers to conduct random audits of subordinate officers' compliance with the relevant Commissioner's Orders and Procedures;

- to ensure that the relevant and appropriate training was delivered at recruit and probationary training level at the Police Academy; and

- to explore an appropriate strategy with the Office of Road Safety to highlight adverse social and economic impacts arising from driving a motor vehicle after being released to bail on an alcohol or drug related offence, permitting another person to drive a motor vehicle when affected by alcohol or drugs and recidivist type offences.

The police objective, which I support, is to re-focus community responsibility and accountability for driving under the influence of drugs and alcohol from police to the individuals responsible for that behaviour.

Decisions to charge

In my 1997 and 1998 reports I commented on the lack of guidance given to police officers about the test to be applied when deciding to charge offenders. My comments were based on a perception that police officers were sometimes failing in their responsibility to investigate fully all aspects of an alleged offence before proceeding to charge an offender. It seemed to me that in some cases officers chose to rely on establishing a "bare prima facie case" and not to investigate other possible avenues of inquiry which might strengthen the case against the person charged or point to possible innocence.

When I wrote to the Commissioner of Police about this subject in July 1998 I was informed that a project team was considering 114 recommendations made about the police investigation process following a review of investigative practices by the Police Management Audit Unit in 1998. Some of the recommendations concerned the need for police to provide staff with additional training courses in evidence and brief presentation, the need for better supervision of the outcome of criminal investigations and for the Police Service to adopt and market a new approach with respect to investigations and prosecutions. Emphasis was placed on looking beyond just obtaining bare "prima facie" evidence and instead to consider the goal in every case to be a "reasonable prospect of conviction".

The project team completed its consideration of the recommendations in August 1999. A total of 81 of the recommendations were implemented and some were deferred or not implemented. I was pleased to note that the recommendations made concerning evidence and brief preparation have resulted in:

- the establishment of Brief Managers in all police districts throughout the State who have the role of checking the accuracy and completeness of briefs and identifying any shortcomings and deficiencies, as well as the need for any officer to have any further training based on those shortcomings and deficiencies. The Brief Managers are also to review charges that have resulted in an acquittal or have been withdrawn or dismissed and make recommendations to their superior officers regarding the withdrawal or substitution of charges;

- revised and specialised detective training courses designed to improve the investigative skills of police officers at all levels within the Police Service including a General Investigator's course, a Senior Investigator's course, a Supervisor's course and a Brief Manager's course. The intent of the Police Service to move towards obtaining sufficient evidence to gain a conviction before charges are laid is being reinforced in these training courses; and

- a plan to implement a Service-wide electronic brief system to ensure the quality of briefs of evidence.

I commend these positive initiatives on the part of the Police Service which hopefully will improve the quality of police investigations of criminal offences and ensure that an appropriate standard of investigation is achieved before a decision is made to charge. I will continue to monitor the position.

Research project

Last year I commented on a collaborative research project undertaken by my Office in conjunction with the Police Professional Standards Portfolio and the Centre for Police Research at Edith Cowan University. The research was designed to examine how police officers identify and assess the seriousness of misconduct and the factors that influence their preparedness to report misconduct (see page 38). It was anticipated that the research would assist in the design of improved police training packages regarding professional misconduct. It was not intended to be, and was not, an attempt to gauge the extent of corruption or improper conduct in the Police Service. Quite different research would be needed to do that.

Analysis of the responses to the survey questionnaire has been completed and a report on the qualitative and quantitative results is being prepared. Some key issues of relevance emerged. The survey included ten factual scenarios and the respondents (all serving police officers of various ranks) were asked to answer a series of questions about each scenario based on how they perceived the average police officer would react. The questions sought to establish: whether the conduct in each of the scenarios was considered to be misconduct; whether it was professional or criminal misconduct; an assessment of the seriousness of the misconduct; and whether and to whom the misconduct would be reported. All of the scenarios contained details of misconduct ranging from minor incidents of professional misconduct to serious criminal misconduct.

Initial assessment of the results suggests that there is a significant difference in what is perceived to be misconduct. In three of the ten scenarios more than 50 per cent of the respondents thought that there was no misconduct at all. There were also differences in whether the conduct was thought to be criminal or professional misconduct. In two of the scenarios about 50 per cent thought it was criminal and 50 percent thought it was professional misconduct. Also of interest was that even among those who thought that the average officer would perceive the conduct as misconduct only one scenario existed where more then 50 per cent thought the average police officer would report the misconduct. Where there was an indication that the misconduct would be reported, the overwhelming majority (97 per cent) indicated that the matter would be reported to an immediate supervisor and not to an external agency. Interestingly, the term "external agency" seemed also to include the police internal investigations area, which is apparently perceived to be an "external" agency or representative of an external agency.

The Police Service is to be commended for its preparedness to be involved in the research. These preliminary results provide very useful data that will assist the development of strategies to address some of the issues identified. I will continue to work with the Professional Standards Portfolio and the Centre for Police Research to produce a more detailed report on the findings later this year.

CHAPTER 4

MINISTRY OF JUSTICE

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

Offender Management Division

The number of complaints about the prison system has continued to increase. The on-going problem of over-crowded prisons appears to be the common factor and is reflected not only in the volume of complaints received but also in the issues causing concern.

Complaints received

A 6% increase in allegations in the past year has continued the steady rise in complaints since 1996/97. 541 allegations were received in 1999/2000 - 31 more than the previous year and 331 more than 1996/97. It is significant that the current level of complaints does not reflect the effects of a major single incident as was the case last year with the riot at Casuarina Prison. However, it is obvious that the riot continued to have some influence at Casuarina until late in the year and would appear to have again been a contributing factor to the number of complaints received.

The extent of the increase in complaints over the past three years is substantial and to some degree unexpected - even more so if one considers that in addition to the complaints received in writing, close to an equal number of complaints or enquiries are now received by telephone and dealt with informally. These do not appear in the statistics but have a major impact on the work of my Office and how it interacts with the prison system. It is important to consider these enquiries together with the number of written complaints I receive when any observation is made about what is occurring in our prisons.

There are clearly a number of factors contributing to the increase in complaints and there are risks in speculating on a situation that deals with the complexities of a prison environment. However, there are certain operational factors that have a more obvious influence on the position. Over-crowding, how prison officers conduct their duties, the changing nature of the prison population, which together with an on-going increase in prisoners' awareness of my Office, easier access to my Office and the response that is obtained from that access, all reflect in the level of complaints.

TABLE 1 Nature of allegations received 1996/97 - 1999/2000

	Number of allegations			
	1996/97	1997/98	1998/99	1999/00
Prisoners' rights and privileges	50	64	127	87
Harassment by prison officers	52	63	82	113
Medical issues	26	47	76	83
Prison conditions	15	21	56	51
Transfers and security classifications	22	29	52	39
Prisoners' property	16	26	37	40
Visits	8	20	26	22
Separate confinement	3	3	18	9
Mail	5	12	16	7
Complaints by prison officers	3	1	5	9
Community corrections	3	3	-	-
Other	7	14	15	81
	210	303	510	541

TABLE 2 Source of allegations received 1996/97 - 1999/2000

	Number of Allegations			
	1996/97	1997/98	1998/99	1999/00
Prison				
Albany	21	14	24	12
Bandyup	4	33	41	43
Banksia Hill	-	-	2	1
Broome	-	1	7	4
Bunbury	35	24	63	42
C W Campbell Remand Centre	12	20	17	29
Canning Vale	43	39	69	73
Casuarina	55	97	161	194
Eastern Goldfields	-	4	6	5
Greenough	7	20	20	21
Karnet	8	9	8	11
Nyandi	-	-	2	5
Pardelup	5	2	7	4
Riverbank	-	-	8	5
Roebourne	6	7	9	11
Wooroloo	7	13	21	9
Not allocated to a prison	7	20	45	72
	210	303	510	541

Table 3 Outcome of allegations finalised 1999/2000

	Number of Allegations	%
Finalised without investigation		
• No jurisdiction	14	2
• Discretion exercised not to investigate*	154	28
• Discontinued , withdrawn or lapsed	73	13
Finalised after completed investigation		
• Totally or substantially favourable to complainant	74	13
• Partially favourable to complainant	37	7
• Not substantiated	206	37
Total allegations finalised	558	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 1999/2000

	Number of Allegations
Benefit to complainant	
• Act of grace payment	1
• Action expedited	30
• Adequate explanation given	364
• Reversal or significant variation of original action	23
• Referred to other appropriate agency	80
• Cash rebate given	1
No assistance provided	59
Total allegations finalised	558
Changes to law, practice or procedure	18

Prison officer - prisoner relations

I have commented in previous reports about the relationship between prisoners and prison officers and how vital it is for officers to recognise, accept and exercise their welfare role. I have also made the observation that there is an element within prison officer ranks that is unwilling or unable to 'manage' prisoners and instead chooses to exercise authority, often imposing some form of disciplinary measure to deal with an issue or an incident rather than applying some more constructive and appropriate alternative. It therefore remains of some concern to me that the level of complaint about harassment by prison officers and rights and privileges issues remains at the same high level as last year and again represents close to 40% of the complaints received.

Although last year it was evident that the riot at Casuarina Prison had a significant bearing on the increase in complaints of this nature, in the past year there has not been any one incident that can be seen as contributing to the same high level. Clearly the continuing high prison muster levels are putting pressure on both the officers and the prisoners and give rise to increased complaints about the interaction between the two. However, more worrying is the feeling that much of the growth in these complaints reflects poor attitude on the part of some officers not only to the welfare role that I have mentioned but to their job as prison officers as a whole. This is a serious disservice to those officers whom I know give a considerable effort to their work in often difficult circumstances.

I do not think I would be alone in saying that, from my experiences with the prison system, the standard twelve hour shift being worked by prison officers has a lot to answer for. Indeed, a large number of the complaints that are currently being made to my Office, both formally and informally, seem to arise out of the sheer frustration experienced by prisoners attempting to obtain from prison staff basic information or assistance with simple everyday issues. I readily acknowledge that many prisoners are very difficult to handle, hugely demanding and almost impossible to satisfy in certain cases. However, given that situation it still appears to me that something quite fundamental is going wrong.

I am aware that the Ministry is working hard to introduce new strategies in order to move the 'attitude' log-jam and give the system new direction. These include the re-introduction of unit management, a formal grievance handling procedure and a comprehensive cognitive skills programme for prison officers and prisoners. These are major initiatives – but I fear that unless the twelve hour shift issue is addressed in its own right and the over-crowding problem is overcome in the longer term – and by this I mean beyond the opening of the new prison at Wooroloo South – these initiatives will not have the opportunity to produce the results they deserve; the prison officer /prisoner relationship will not change as it should and the level of complaints that flow as a consequence, either to my Office or within the internal prison system, will not ease.

Prison Justice - discipline, punishment and Visiting Justices

I have expressed my concerns about the prison discipline system in my last three Annual Reports. In my 1999 Report (at page 45) it was noted that the Ministry had commissioned an independent review of the disciplinary process – a development which I welcomed.

The Ministry's review was formally announced in March 2000 and aimed to establish a more equitable and transparent prison discipline process. Magistrate Paul Heaney was appointed to conduct the review and, as an interim measure, to replace Justices of the Peace used in the role of Visiting Justices at Bandyup, Casuarina and Hakea Prisons.

I am hopeful that the review marks the beginning of long overdue reform of the prison discipline system. Accordingly, I met with Mr Heaney to discuss my concerns about the system generally and have made written submissions to the review. It is interesting and pleasing to note that I have already received positive feedback from many prisoners about improvements in the conduct of hearings at the metropolitan prisons.

However, I have found it necessary to reiterate my concerns to the Ministry about a number of issues. One of these is the importance of ensuring that the review of formal discipline is not undermined by the development of an 'underground' system of discipline whereby administrative decisions are used by prison staff as an alternative form of discipline. The cooperation of prison staff in ensuring that the discipline process is fair is critical to the successful reform of the system. Prison staff play an important role in the prosecution process – for example, deciding whether a charge will be laid – and it is imperative that such powers are exercised reasonably and appropriately. In this context I am pleased that the Ministry is now reviewing this whole process.

Case one

A prisoner complained that although she requested prison staff to arrange four witnesses for her defence of a prison charge, none of the witnesses was made available.

Enquiries confirmed that when the charge first came before a visiting justice the hearing was deferred so the witnesses could be called. However, a second Visiting Justice heard the matter without the witnesses present. The prisoner was found guilty of the offence. Her penalty was two days confinement in a punishment cell.

The Ministry confirmed that although the matter was initially stood down in view of the request for witnesses, the prosecuting officer did not enter a record in the prosecution book, failing to note the adjournment or the reasons for it. The second Visiting Justice was not made aware of the previous hearing as the prosecuting officer had changed and the new officer was also unaware of the previous hearing. Further, the prosecuting officer recommended that the Visiting Justice proceed with the hearing notwithstanding the absence of witnesses, which the Visiting Justice did.

In this case, the prisoner made her complaint subsequent to her release from prison. In view of this and the nature of the penalty imposed, I could make no recommendation in relation to her individual situation. However, in my view the case highlighted the lack of attention by some prison staff to competent procedure and fairness in the disciplinary process – a concern which was made known to the Ministry.

Case two

A prisoner at Pardelup Prison Farm was charged with an offence under the *Prisons Act 1981* for possessing cannabis. He understood the charge was specifically for possessing eight grams of cannabis. He complained to me that when he appeared before the Visiting Justice to have the matter heard, the charge had been amended to include the possessing of an additional 224 grams of cannabis. He claimed he had no prior knowledge that this was to happen and had therefore only prepared a defence to the charge for the lesser quantity.

Initially this complaint seemed to raise only one issue - the procedure for the laying of the charge - but as preliminary enquiries progressed it was clear that there was a second concern with the procedure followed by prison authorities in managing and handling the cannabis itself.

The charges arose out of the discovery of two quantities of cannabis at the prison. The first (8 grams) was found under the prisoner's mattress during a room search and the second (224 grams) was discovered several days later in the prisoner's television in the prison reception room. The television had been moved to reception with other property from the prisoner's room, pending his transfer to Albany Regional Prison after the initial discovery. The Ministry of Justice could not satisfy me that the prisoner had been given notice, either orally or in writing that the charge he was to face at the Visiting Justice's hearing included the charge for the second offence. Prison staff involved could only presume that he had been advised and the relevant documentation did not show that he had been provided with this information. Accordingly, I found the prisoner's complaint to be sustained. As the prisoner had been released since making the complaint, there was no recommendation that I could make in these circumstances that would assist him. However, I did recommend to the Ministry that a review of the charging and prosecuting practices and procedures at the prison be undertaken. This is a matter that will be embraced in the course of Mr Heaney's report on Visiting Justices, prison discipline and prosecution procedures.

The second aspect of this case - the way in which the cannabis was handled from the time of its discovery until it was placed in the custody of the police some seven weeks later - gave cause for serious concern. My enquiries revealed a number of deficiencies in the process, including:

- officers handling the cannabis on their own without supervision;
- failing to record the weight of the cannabis;
- failing to seal and document the cannabis;
- not reporting the matter to the police at the time of the discovery;
- failing to record the movement of the cannabis, including the removal of a sample for forensic testing; and
- failing to obtain any receipt from the police when the cannabis was eventually placed in police custody.

I consider it fortunate that there had been no suggestion of anything untoward taking place with the cannabis. Had this occurred, the inadequacy of the procedure followed would have made it extremely difficult for the Ministry to substantiate the quantity found or provide any satisfactory explanation of the passage of events. It is clear that prison staff who had come into contact with or who had some responsibility for the handling of the substance would have been left exposed. I recommended to the Ministry that an urgent review of procedures and practices was required. A draft Standing Order has since been prepared by the Ministry to provide procedural direction for all prisons and I am informed that any necessary legislative amendments will be addressed in the course of considerations for a new *Prisons Act*.

Urine Testing

Urine testing of prisoners is an integral element of the Ministry's effort to control the use of drugs within the prison system. Although the rationale behind urine testing is not disputed, I have received a number of complaints that highlight the difficulties involved in the process.

First, it became clear that there is no consistent approach to urine testing throughout the State's prisons. In view of the ramifications of a 'dirty' sample for prisoners I considered it necessary for each prison to employ a standard approach which best ensures the accuracy of test results.

Second, I received a number of complaints from prisoners about being charged for failing to provide a urine sample. Pursuant to section 70(i) of the *Prisons Act 1981* failing to provide such a sample when required constitutes an aggravated prison offence – if found guilty the prisoner is liable to a number of serious penalties. My concern in these cases arose because a number of prisoners claimed they were unable to provide a sample for psychological reasons. In at least one case there was evidence from a counsellor to support the prisoner's contention that his emotional state prevented him from providing a sample in the presence of prison staff. The difficulty for prison staff in this situation is verifying the accuracy of such a claim.

In response to my concerns, the Ministry advised that one possible solution to this problem may be found in the use of 'sweat patches'. These patches are an alternative to urine testing and can provide a reliable reading after being in place for as little as 24 hours. Accordingly, the patches may be used to test prisoners who claim a psychological basis for their refusal to provide a urine sample when required. I understand a trial of the patches is to be undertaken in the near future at Nyandi Prison.

Case three

I received a number of complaints from prisoners at Bunbury Regional Prison about the process that was used to take urine samples on a particular day. Two of my Officers travelled to Bunbury to conduct interviews and discuss the complaints with prison administration.

In my view there was a doubt about the integrity of the samples taken on that occasion. Subsequently the charges against the prisoners involved were not proceeded with and a number of changes were made to improve the testing procedures at Bunbury. These included requiring prisoners to sign the seal over the specimen jars and expressly stating in the prison's urine testing guidelines that the *prisoner* rather than the officer is to take the specimen cup out of its wrapping and take the lid off the specimen jars.

Access to rehabilitation programs

An issue that I have raised with the Ministry many times is that of prisoners being able to complete rehabilitation programs in sufficient time to access early release options. I have had a number of complaints from prisoners who have been unable to complete programs prior to their eligibility for consideration for work release or home leave and, in some cases, parole.

Although the Ministry shares my view that prisoners should be able to complete programs at a stage in their sentence that enables them to access early release opportunities, it is clear that there have been difficulties in achieving this objective. However, it is hoped that a number of strategies will improve the situation. One of these is the implementation of a new assessment process and case management system by the Ministry that aims to ensure a more accurate assessment of prisoners when they are first received into the prison system and the implementation of a management plan which will have effect throughout the prison term.

Case four

A prisoner at Hakea Prison complained that he was unable to complete two rehabilitation courses prior to his parole review. The Parole Board deferred his parole for a number of reasons, including his failure to complete the two courses. The prisoner stated he had enrolled to complete the courses but was not able to secure a placement prior to his parole date.

In response to enquiries by my Office the Ministry took steps to ensure the prisoner completed both courses prior to his next parole review, at which time the Parole Board released him to parole. Although I was satisfied that the Ministry took the appropriate action to ensure the prisoner completed the programs prior to his second parole hearing, I remained concerned that he was not able to participate in the programs prior to his earliest eligibility date for parole.

My enquiries pointed to a number of contributing factors, but particularly highlighted ongoing problems with the process by which prison staff at individual prisons are responsible for referring prisoners to rehabilitation courses. However, I am aware that the Ministry has recognised these issues and is taking steps to improve the process. I have requested the Ministry to provide me with further details about the action that is being taken.

Smoking

One of the consequences of prison overcrowding is that two prisoners are often required to share a cell designed to accommodate only one person. The result can be inconvenience and discomfort, at best, and detriment to health and safety, at worst.

A non-smoking prisoner at Hakea Prison complained that he was required to share a cell with a prisoner who was a chain-smoker. The prisoner believed this placement put his health at risk. My Office contacted the prison and the prisoner was subsequently moved to another cell. However, in the course of my enquiries it became clear there was no documented policy regarding the placement of non-smoking and smoking prisoners together in cells. Although the Ministry advised me that non-smokers were not placed with smokers unless *'absolutely necessary'*, where such a placement did occur there was no prohibition on smoking in the cell.

In view of the seriousness of the health issues involved, I recommended that a documented policy be developed regarding the placement of non-smoking prisoners with smoking prisoners and that the policy be primarily concerned with protecting the health of the non-smoking prisoner. The Ministry agreed and formulated a policy that was included in the Local Orders of each prison. The policy provides that where it is unavoidable for non-smokers and smokers to be placed together, the cell is to be a non-smoking area. This is obviously a step in the right direction, but its effectiveness as a solution depends entirely on the degree to which the non-smoking classification is enforced.

Collective punishment

Collective punishment - to punish all for the actions of a few - is almost universally regarded as unacceptable in civilised communities and is not an aspect of prisoner management that one expects to hear about in today's prison environment. The issue has certainly not been one that has previously attracted my attention. However, several complaints from one prison raised my concerns about the perception some prison officers and management can still have about the extent of their authority, and the inappropriateness of collective punishment.

Case five

A prisoner complained of several instances when all the prisoners in his wing had received punishment because of the conduct of a handful of other prisoners.

My enquiries confirmed that the first occasion involved an early evening lockdown for the wing because a number of prisoners were tardy in returning to their cells from the day room at lockdown the previous day. The second was in connection with abuse being directed at officers of the canine search team by some prisoners following a cell search and resulted in the wing being locked down for the afternoon. The wing was locked down on a third occasion for a morning because a prisoner was said (wrongly, as it turned out) to have been activating the wing fire alarm system.

In another instance, all the prisoners in a complete unit had their privileges withdrawn and the unit telephone system deactivated after there had been a serious disruption by some prisoners the previous evening. This action was taken at the direction of the assistant superintendent.

This issue was raised formally with the Ministry as well as being discussed with the prison staff involved. Although there was some deliberation about whether certain of the lockdowns had been invoked for legitimate operational reasons - such as to allow for the conducting of interviews with prisoners - there was an acknowledgement that the collective punishment issue needed to be addressed. Officers directly involved in the decisions were counselled and an instruction was circulated to all superintendents directing that collective punishment was not to be used in any circumstances.

Racial discrimination

I received a letter from a prisoner about the actions of a prison officer he believed were discriminatory and racially based. The prisoner's concern was quite general and seemed to reflect his perception that the officer's 'disinterest' in him and reluctance to communicate with him was because he was Asian. As his account was not related to any specific action or incident and it seemed that he had yet to raise the matter with prison administration, I referred him to the superintendent in the first instance. However, the letter did raise my interest in the broader issue of racial discrimination in the prison system from the prison management and administration perspective and I wrote to the Ministry for advice about its policy and the relevant practices and procedures that were in place.

In its response the Ministry acknowledged there was not a specific policy and that in the main the prison system relied upon prisoners being aware of the role of the Equal Opportunity Commissioner and their right to pursue a grievance of racial discrimination through this avenue. It was said that *"prisoners **seem** to be aware of the current situation and available avenues"*. As far as I could ascertain neither the prisoners nor prison officers were given any specific information about the issue of racial discrimination in the prison environment. In terms of the matter being addressed in any direct way within the prison system, the advice stated only that prison officers were expected to treat prisoners *"equally and without prejudice"* and that new prison officers completed a cross-cultural training module as part of their initial training. On the basis that this was the full extent of the Ministry's efforts in this area I expressed the view that the position was quite unsatisfactory and in need of improvement.

Given the nature of the everyday relationship between prison staff and prisoners and a prison environment with prisoners of a diverse range of ethnic and cultural backgrounds, I believe that the general issue of racist behaviour is deserving of special attention. This issue is not just about the situation between prison staff and prisoners but what might also occur between individual prisoners or groups of prisoners. I indicated to the Ministry that this issue was important enough to require a very direct statement of policy and for this policy to be given effect by the implementation of appropriate strategies and supporting practices and procedures. I recommended the Ministry initiate and actively promote a policy that discouraged racist behaviour and reinforced non-racist behaviour in prisons, placed expectations on all individuals and clearly described how staff and prisoners should deal with problems of this nature.

The development of a racial discrimination policy is to be undertaken by the Ministry's Policy and Planning Directorate.

Complaints dealt with informally

In the opening comments in this chapter I mentioned that there are many cases where my Office deals with telephone contacts from prisoners. Some of these contacts concern urgent matters. The following case is an example of the way such matters can be dealt with.

Case six

A telephone complaint was received from a prisoner at Karnet Prison Farm about the withdrawal of his anti-depressant medication. According to the prisoner, a week earlier the prison doctor had rescheduled his medication because of his condition, but later the same day his psychologist had the medication withdrawn. The prisoner said he had been informed by the psychologist that he was to be 'weaned off' his dependency on this medication. Nearly a week later and just several days before his release he complained to my Office that he was suffering depression and anxiety from the withdrawal and also the worry of how he would cope once outside prison. A major concern for him was that he would be released on a long weekend and with his particular problem it would be difficult to obtain medical assistance without any prior arrangement. According to the prisoner he had been unable to make an appointment with the prison doctor that day and was uncertain if he would see him before his release.

Given the nature of the problem and the tight time frame involved, the matter was dealt with informally and telephone contact was made direct with the Ministry's Director of Health Services. The Director, himself a doctor, expressed the view that at this point it was important to maintain the prisoner's emotional stability and the dependency issue could be addressed following his release. Arrangements were made for the prisoner's medication to be resumed the next day and for him to be assisted with establishing medical support on his release. As the matter had been resolved and the Director was personally involved I took no further action.

Inspector of Custodial Services

Last year I referred to the Government's proposal to create a new statutory officer to undertake inspections of prisons. The post of Inspector of Custodial Services has now been established and Professor Richard Harding has been appointed to the position. I have met with Professor Harding to discuss our respective roles and I look forward to developing an effective working liaison between our two Offices.

Investigation into Deaths in Prisons

I have referred previously to my "own motion" investigation into deaths in prisons in Western Australia. This has been a major undertaking and as I mentioned in last year's report the scale and complexity of this exercise were underestimated. I am pleased that this work has now been completed. At the time of writing, my draft report and recommendations are with the Ministry of Justice for consideration and comment as required by the *Parliamentary Commissioner Act 1971*. I expect to table my final report in Parliament by the end of November 2000.

Other parts of theMinistry

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 103 allegations relating to these areas compared with 71 allegations received last year. The increase came about as a result of significant increases in the number of complaints received concerning the Public Trust Office and courts administration. 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	1999/2000
General administration	4	22	4
Public Trustee	5	14	41
Parole Board	8	10	9
Courts administration	22	7	32
Public Advocate	2	6	4
Fines enforcement	4	6	6
Criminal injuries compensation	1	2	4
Strata Titles Referee	-	2	1
Small Claims Tribunal	7	1	2
Coroner	-	1	-
Registrar General	2	-	-
	55	71	103

I commented in my last two reports about the number of complaints relating to workplace matters which were received from officers employed by the Ministry. I did not receive many such complaints during the past year but the following interesting case came within that category.

Case seven

A relatively senior member of the Ministry who had spent lengthy periods acting in positions above her substantive classification complained to me concerning aspects of her salary package, the outcome of a grievance she had lodged with the Director General concerning alleged actions by Directors of the Ministry to discredit her professionally and limit her career opportunities within it, and reimbursement of the fees for a course she had undertaken. She was on "stress leave" at the time she lodged the complaint.

The complainant's grievance had been investigated by a consultant engaged by the Ministry and she had in turn had the process of that grievance reviewed under the Public Sector Standards in Human Resource Management Review Procedures which are set out in the *Public Sector Management (Review Procedures) Regulations*.

During the course of my investigation the complainant negotiated a severance package with the Ministry and so her complaint was largely overtaken by events. However, there was one aspect of the grievance process that remained of concern to me.

One of the complainant's claims was that the person engaged by the Ministry to investigate her grievance and the then Acting Director General had breached the principles of natural justice (procedural fairness) in their consideration of her grievance. She indicated that the grievance investigator had received adverse information about her and included it in his report to the Acting Director General without informing her and giving her the opportunity to comment. This issue had been addressed by the reviewer appointed by the Office of the Public Sector Standards Commissioner (OPSSC) who, in a very thorough report, found that there was no breach of Standard 9.4 *"Decisions and processes embody the principles of natural justice."*

The issue of my involvement in matters that have already been considered under the *Public Sector Management (Review Procedures) Regulations* is complicated. The Public Sector Standards Commissioner (PSSC), except in his role as Chief Executive Officer, is clearly not within my jurisdiction. However, although independent reviewers are allocated by the OPSSC they are in fact paid by the employing authority and report to both the PSSC and the employing authority.

I take the view that:

- I have no jurisdiction in respect of the allocation of independent reviewers. For example, if I received a complaint that the OPSSC had appointed a biased reviewer I would refer the matter back to the OPSSC.

- I do have jurisdiction in respect of employing authorities refusing to implement recommendations of independent reviewers. However, this is of little practical significance because I do not have any more power then the PSSC and so there would usually be no point in me becoming involved.

- The independent reviewer's role is generally limited to investigating whether there has been a breach of standards (or the Code of Ethics) and appears to concentrate mainly on process issues. My powers are wider than this and include a consideration of both process and reasonableness ("merit") issues and I may reinvestigate matters already reviewed by an independent reviewer.

- I have power to investigate the process by which independent reviewers carry out their reviews and the merits of their findings.

However, because there is a need to avoid unnecessary duplication of investigation, it is unusual for me to become involved in a matter that has already been considered by an independent reviewer. I have no intention of routinely reviewing the merits of independent reviewers' findings.

In this case I agreed with the reviewer's outline of the facts and his characterisation of the complaint about the grievance process but I did not agree that the complainant had received procedural fairness. This was because there was no indication that the complainant had been given any information about the adverse comments that appeared in the investigator's report before the Acting Director General made his decision about the grievance.

The principles of procedural fairness (natural justice) include the rule known as *"audi alteram partem (hear the other side). It states that a decision cannot stand unless the person directly affected by it was given a fair opportunity to both state his case and to know and answer the other side's case."* (From *Oxford Dictionary of Law*). That is, the decision-maker has two responsibilities. First, a decision-maker must afford a person whose interests will be adversely affected by a decision an opportunity to present his or her case. Second, the person must be informed as fully as possible of anything alleged against them and be given an opportunity to respond before the decision-maker makes a decision.

The reviewer was apparently satisfied that *"decisions and processes embod* … [ied] … *the principles of natural justice"* because the complainant "*had the opportunity to put her case, and all relevant arguments were considered before a decision was made."* At the same time he appeared to acknowledge that the investigator had received and included adverse comment about the complainant in his report and that this was not brought to her attention prior to the Acting Director General making a decision on her grievance. That is, he had not addressed the second part of the hearing rule mentioned above. I was of the view that this may have been because the Public Sector Standards in Human Resource Management defined Natural Justice as:

"The rules of fair play -

Decision makers must act fairly and without bias

A person shall not be judge in his or her own cause

All parties to the matter should have the opportunity to put their case and all relevant arguments considered before a decision is made

All persons need to be informed of the basis of a decision, where the decision affects them"

The definition did not say anything specific about informing persons of things alleged about them.

In the circumstances I requested the Public Sector Standards Commissioner to consider amending the definition of Natural Justice in his Office's publications to specifically mention the need for persons affected by decisions to be informed of, and given the opportunity to respond to, any adverse information about them that is to be used by a decision-maker.

The Public Sector Standards Commissioner agreed to my request. In addition, a copy of my final report was placed with copies of the independent reviewer's report contained on the OPSSC's files and with copies of both the investigator's and the reviewer's reports contained on Ministry of Justice files.

The following two cases are examples of the sorts of issues involving the Public Trust Office (PTO) which have been the subject of complaint during the year.

Case eight

The complainant, who lives in another State, was a beneficiary of a deceased estate in Western Australia administered by the Public Trustee. She received periodic payments of rent from a property which was part of the estate. When she received one particular statement, she concluded that the payment was incorrect and that she had been underpaid. She claimed that she had spoken by telephone to the PTO on several occasions and had been advised that a number of people had checked the account and had found it to be correct. She was under the clear impression that no further action would be taken by the PTO.

The complainant then referred the matter to her accountant, who corresponded with the PTO and the real estate agent who managed the property, and subsequently identified the arithmetical error which had been made in the rental payment. The PTO then paid the complainant the underpaid amount. She then wrote requesting reimbursement of her accountant's fee of $320 on the basis that the need for the work to be done had arisen solely from an error made by the PTO. However, the PTO declined to do so.

The complainant's case was based on her belief that the PTO did not intend to take further action on the matter. In response, the PTO claimed that it had intended to make further investigations and that it was purely the complainant's decision to use the services of her accountant. Since the differing understandings had arisen during the course of several telephone calls, it was not possible to resolve this aspect of the complaint.

I formed the view that the complainant's belief was reasonable because the matter had been checked by several staff of the PTO and because three weeks had passed since her last telephone call and she had heard nothing further. I advised the PTO that, in my view, it would be reasonable to reimburse the $320. The PTO responded by advising me that the problem with the payment had not been clearly explained by the complainant over the telephone and that, in effect, the complainant and the staff member dealing with her were talking at cross purposes. It was only when correspondence from her accountant was received that the nature of the problem became clear and the error identified. It stated that, if the complainant had advised that previous correspondence from the PTO had not provided the answers she was seeking, the error would have been identified without the involvement of her accountant. It again declined to reimburse the accountant's fee.

I remained of the view that the complainant had made a reasonable effort to explain the concern to the PTO and that, in any event, the situation would not have arisen if the original error had not been made. I therefore recommended that the reimbursement be made. The PTO considered the matter further and accepted my recommendation. It made the reimbursement to the complainant and apologised for the inconvenience caused to her.

Case nine

I received a complaint from a man about the alleged failure of the PTO to carry out a direction in the will of his late great-aunt, who died in 1979. The will had provided for the erection of a monument on the grave as a testamentary expense up to $400. The complainant had discovered the absence of a monument after carrying out some research into the family history.

The PTO had first advised the complainant that it was not the executor of the estate in question. The complainant then provided a copy of the will in which it was clearly stated that the Public Trustee had been appointed as executor and trustee. The PTO accepted the proof and next advised the complainant that, from the limited information on file, it appeared that no funds had been expended on a monument. The complainant requested the PTO to rectify the matter by erecting a monument at its expense up to $1148, which he had calculated as being the present day equivalent of $400 in 1979. This request was declined on the basis that administration of the estate had been completed in 1981 and there was no way of determining whether an alternative arrangement had been entered into at the time with the beneficiaries of the estate. The PTO suggested that the cost be met by the remaining beneficiaries.

The complainant was not satisfied with the PTO's response and made a complaint to my Office. Informal enquiries were made with the PTO and I was advised that the file on the deceased estate had been severely culled when it was sent to archive some years previously, which was why there was limited information on the matter. I formed the view that the PTO had a responsibility to meet the wishes of the deceased person and that it was somewhat unreasonable to decline to act on the matter now because of a lack of information, when that lack of information was itself due to the actions of the PTO, even if those actions were themselves in accordance with a proper schedule for the disposal of documents. Consequently, the Deputy Ombudsman met with the Acting Public Trustee to discuss the complaint, with the outcome that further enquiries would be made and the matter reviewed. In due course, I was pleased to learn that the PTO had agreed to contribute up to $1148 towards the cost of erecting an appropriate memorial on the complainant's great-aunt's grave.

CHAPTER 5

LOCAL GOVERNMENT

During the year a total of 175 complaints involving 244 specific allegations were received about the actions or decisions of 66 of the State's 142 local governments, and the Shires of Christmas Island and the Cocos (Keeling) Islands. This represents a 19% decrease in allegations received this year compared with the 303 allegations contained in the 266 complaints which were received in 1998/99.

In my 1997 annual report I made mention of the approach adopted by my staff of encouraging complainants to try to resolve their problem direct with the local government before making a complaint to my Office. Since adopting that approach I have found that a considerable amount of time and effort is saved for the complainant, the local government and my Office.

Furthermore, if at the time of the initial contact with my Office it is established that the local government is not at fault but that the complainant is not aware of the due process which must be followed, an appropriate explanation can be provided to the complainant. If, however, it is established that the complainant has not pursued the complaint as far as possible with the local government, advice is provided to the complainant to ensure that a detailed submission is made to the local government about the complainant's concerns. The complainant is also advised at this time of the action he or she can reasonably expect from the local government. Many people are unclear as to their rights and obligations and not aware that their expectations may not always be met. This approach has been particularly effective where the local government has an effective complaint handling system in place.

Of the 268 allegations finalised during the year 46 were resolved without an investigation. Of the 222 that were finalised after an investigation, 63 were found wholly, substantially or partly in favour of the complainant and 159 were not substantiated. Table 1 shows the type of assistance that was provided in respect of the 268 allegations that were finalised.

TABLE 1 Assistance provided for allegations finalised 1999/2000

	Number of Allegations	%
Apology given	5	2
Action expedited	36	13
Act of grace payment	3	1
Adequate explanation given	201	75
Charge reduced or rebate given	1	1
Reversal or significant variation of original decision	14	5
Referred to other appropriate agency	3	1
No assistance given	5	2
Total allegations finalised	268	100
Changes to practice/procedure	7	

In 201 (or 75%) of the allegations finalised during the year my Office was able to assist complainants by providing an explanation about the actions of the local government complained about and/or the basis of the reasons for those actions.

The following table shows the nature of the 244 allegations received about local governments during the year.

Table 2 Nature of allegations about local governments 1999/2000

Building Control	
Refusals, conditions of application, objections, construction/demolition matters	17
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	12
Corporate and Customer Service	
Complaint handling, provision of information, liability claims, meetings/elections, conduct of officers and elected members, staffing issues	50
Development	
Refusals, conditions of application, objections, home occupations	42
Enforcement	
Enforcement of development and building conditions, unauthorised development, parking and traffic, control of animals, fire control and other statutes and local laws	41
Engineering	
Roads, footpaths, rights of way, construction/maintenance, traffic management, road closures, access	17
Environmental Health Issues	
Noise and other pollution, public health issues, waste disposal and other environmental issues	12
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	17
TOTAL	244

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 to 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 66 local governments subject of complaint	% of complaints received
Urban – metropolitan developed	13%	30%	38%
Regional town/city	7%	11%	7%
Fringe developing urban or regional	6%	7%	23%
Rural – significant growth	6%	9%	9%
Rural – agricultural	52%	32%	18%
Rural – remote	16%	11%	5%

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

Complaint handling systems

There are many reasons why the number of complaints to my Office about a particular area within my jurisdiction increases or decreases each year. For example, a decrease in complaints about local governments may indicate that they have introduced effective mechanisms for dealing with their own complaints or that the causes of complaint have been addressed and ratepayers are satisfied with the service offered.

Because of my belief that complaints ought to be dealt with as close to the source of the "problem" as possible, I encourage local governments to introduce their own internal complaint handling systems. To that end my staff worked with the Western Australian Municipal Association to develop the booklet "*Local Government Complaint Procedure - Guidelines for Effective Complaint Handling*" which was launched in 1997. At that time I was optimistic that this publication would assist local government to develop their own internal systems. This would result in more complaints being dealt with directly by local governments and only the complaints requiring an independent external review would come to my Office.

My survey of complaint handling in the Western Australian Public Sector which is discussed in Chapter 1 showed that this optimism was perhaps premature. I surveyed 49 of the largest local governments and found that only half had a written complaint policy and only 55% had a formal complaint procedure. Only 16 local governments were using information technology to analyse their complaint data. Although 15 were analysing their complaint data manually, this limited their ability to use the data to improve their services. On the basis of the documentation submitted, I considered that only six (12% of the local governments) had systems in place which would meet the Australian Complaint Handling Standard, AS 4269 (1995). This compared with 33% of the public sector agencies in the survey.

The survey also revealed that the distribution of the *Local Government Complaint Procedure - Guidelines for Effective Complaint Handling* has not promoted the development of quality complaint handling in local government that I anticipated. The Department of Local Government has been made aware of the results of the survey and I understand it proposes to address the problem in the coming year. My staff have been involved in discussions with the Department and strategies are being considered.

Advice, help and investigations

During the year a considerable amount of time was spent in giving detailed explanations to residents and ratepayers who telephoned my Office seeking advice in relation to their rights and obligations regarding a wide variety of council services. Many also sought advice about the assistance my Office could offer and what was involved in an Ombudsman's investigation. Generally, complainants were advised that when carrying out an investigation my Office tries to do two things. First, to find out whether a local government has acted unreasonably, and, if it has, to try to solve the complainant's problem; second - and probably more importantly - to find out what caused the problem and to make recommendations that would prevent a recurrence.

When carrying out an investigation my Office looks at the way decisions are made (the administrative processes) to see if the complainant has received natural justice (procedural fairness), whether or not the decisions are within the local government's legal power to make and whether they are reasonable.

In practice, it is not always easy to assess reasonableness because it is a subjective concept. Therefore, the complainant and the agency may have quite different views about what is reasonable in a particular situation. In the end, the essential value of an assessment of reasonableness by my Office is that it is made by an independent person who is neither an advocate for the complainant nor an apologist for the agency.

When assessing reasonableness the criterion is not whether I would have made the same decision if I had been in the same position as the decision-maker, but rather whether the decision was reasonably open to the decision-maker on the evidence. Many situations are not clear cut - there is often not just one "right" answer.

In most cases, where the merits of decisions are reviewed it is because significant procedural irregularities have been identified which give rise to the belief that the person affected has not had his or her position considered fully on its merits. In such cases a recommendation is normally made that the decision-maker reconsider the matter in the light of the relevant information or that a second opinion be sought.

Where, as a result of an investigation, I am of the opinion that the administrative action taken:

- appears to have been taken contrary to law;
- was unreasonable, unjust, oppressive or improperly discriminatory;
- was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;
- was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been given;
- was based wholly or partly on a mistake of law or fact; or
- was wrong,

I can report my opinion and the reasons for that opinion to the Mayor or President of the local government and may make such recommendations as I think fit.