The criteria include a mixture of factors involving legality, procedural issues, reasonableness and merit. Although an Ombudsman can conduct a review of actions on their merits, Ombudsmen do not normally have the technical expertise to question the professional judgments of planners, engineers etc. Although Ombudsmen can, and at times do, examine the merits of such matters by seeking the advice from other experts, such an approach may often result only in several experts disagreeing. That result is not surprising in a situation where there is simply no single 'right' answer. However, it is often necessary to point out to complainants that the Ombudsman does not act as their advocate. Complainants sometimes have difficulty in coming to terms with that limitation.

Procedural review generally covers the criteria set out in section 25(1) of the *Parliamentary Commissioner Act 1971* and includes issues such as whether:

- the complainant had an adequate opportunity to put his or her case;
- all significant arguments were considered by the decision-maker;
- the decision-maker was independent (ie had no conflict of interest and acted without bias);
- the complainant was informed as fully as possible of any allegations against him/her;
- the decision was reasonably open to the decision-maker on the basis of logical probative evidence;
- adequate reasons were given for the decision; and
- the local government's prescribed procedures were followed by the decision-maker.

Case one - Department of Local Government

During the year I had drawn to my attention instances where the Department of Local Government had carried out enquiries relating to various matters involving the operations of local governments. Complainants expressed concern to me that the Department had not complied with the principles of procedural fairness. My enquiries revealed that staff of the Department undertook both authorised inquiries - in accordance with section 8.3 of the *Local Government Act 1995* - and "informal" assessments of local governments which had no statutory basis but which were sometimes used to determine whether any other form of statutory or other action may be required and to provide advice to the Minister.

I considered that any report prepared for the Minister or which may form the basis of decisions to invoke statutory powers - not only those having a statutory basis - which contains adverse comments or criticism about elected members or staff of local governments should be subject to the principles of procedural fairness. In my view, given the nature of local government in this State and the interest of the media in any controversy, there is always the possibility of the public release of any report of this nature, particularly if it is in any way critical. In addition, there is always the possibility that the Minister will choose to convene a formal inquiry as a result of the comments made in the informal report.

I therefore recommended that all persons who were subject to direct or implied adverse comment in any report resulting from an informal assessment or a formal inquiry carried out by officers of the Department, should be identified and given a reasonable opportunity to respond to such adverse comment and that any defence be fairly set out in the final report. The Department accepted my recommendation and amended its policy and procedures manual to reflect the principles of procedural fairness.

Case two – Shire of Busselton

I received a complaint from a person building a house in the Shire of Busselton. He had received a stream of commercial advertising as a result of the Shire putting information relating to his building application on a list that was provided to commercial operators for a fee. The complainant was opposed to "junk mail" and considered the release of such information an invasion of his privacy.

On making enquiries with the Shire I found that a motion had recently been passed at a General Meeting of Electors that was aimed at restricting the supply of ratepayer information to commercial organisations to discourage blanket sales campaigns being aimed at ratepayers listed in documents available to the public. The Council had recognised the potential for the invasion of privacy of individuals and resolved that it would refrain from making available any Shire lists containing personal details of ratepayers to any party seeking to acquire the information for commercial purposes. Ratepayers would be given the option of not appearing on lists that were made available to groups or individuals for bona fide community or government purposes.

In this particular complaint the complainant raised the question of whether he could receive *"some form of compensation"*. I advised the complainant that although his case arose before the Council introduced the new policy, I did not consider recommending payment of compensation except in cases where it could be clearly shown that a complainant had suffered measurable costs as a direct result of an agency's negligent actions. I did not consider that such circumstances existed in his case.

Case three – City of Melville

A complaint was lodged about the City in which it was alleged that the approval of a development application had been delayed excessively and this had resulted in the complainants incurring significant additional rental and interest costs. The City had refused the building licence application on unresolved planning issues. An appeal to the Minister for Local Government was upheld on the grounds that the reasons for refusal (i.e. planning issues) were not relevant considerations. The City had then considered the matter as a planning application and refused approval for the development on certain planning grounds. The applicants then appealed to the Minister for Planning and their appeal was upheld. At this point the applicants abandoned their development plans and complained to me.

I recommended that the City make an ex-gratia payment of $6,200 to the complainants because, in my opinion, it should have followed the usual process of dealing with planning approval issues first and should not have relied on planning grounds to reject the building licence application. The City accepted my recommendation but requested my input into a review of section 374 (1b)(a) and (b) of the *Local Government (Miscellaneous Provisions) Act 1960* which infers that the Council of a local government may refuse a building licence where a plan and specifications do not conform to a planning scheme in force in the relevant district.

The City considered that the interpretation which had been adopted by the Minister for Local Government *"that only building issues can be controlled by way of a building licence"* may not have been correct. I requested the Department of Local Government to review the legislation.

The Department advised that the new *Building Act* should contain a requirement for any necessary planning approvals to have been obtained prior to the issue of a building licence and that alterations to section 374(1b)(b) of the Act were not favoured in the interim. As a result, the anomaly still exists.

Dogs

During the year I received a number of complaints about decisions to destroy dogs. Similar complaints have been received in previous years. In the majority of cases the dogs had only wandered a short distance from their homes but could not be readily identified because they did not carry the necessary registration tag. Although some of the decisions made to destroy these dogs were, procedurally, in accordance with the *Dog Act,* their owners were very upset at the loss of their pets. In my view, every effort should be made to locate and advise the owner of any dog that is seized or detained. This is all the more pertinent where consideration is being given to the destruction of the animal.

Case four – Shire of Dundas

An aged dog - blind, deaf and with only three legs - was seized on private land in a weak and unkempt state. It appeared to the rangers that the dog, which was unregistered, had been abandoned and they were concerned that it might not survive the night in the pound. The destruction of the dog was authorised in accordance with section 29(12) of the *Dog Act*.

The next morning the dog was reported missing and the owners were advised that the dog had not been impounded. However, the following evening they were advised that the dog had been destroyed. Their request for the body could not be met because the ranger was unable to be contacted. Some seven days later Shire staff ascertained the whereabouts of the body and endeavoured to exhume it. However, due to the state of decomposition, they did not proceed.

The complainants were understandably very distressed that the dog had not been kept for 72 hours. Although I considered that the action taken to destroy the dog was not unreasonable, I considered that the events following the incident could have been better handled.

CHAPTER 6

MINISTRY OF HOUSING

The number of complaints about the Ministry of Housing has fluctuated in recent years. This year we received 128 complaints, which is 13 more than last year.

Many complainants approach my Office because they have used the Ministry's internal appeal system and the Ministry has informed them of their review rights if they are dissatisfied with the result of their appeal. The Ministry's continued best practice in this area is acknowledged, as is its professional response to enquiries and requests for information from my Office.

Table 1 Complaints and allegations received 1996 – 2000

	1996	1997	1998	1999	2000
No. of individual complaints	142	99	66	115	128
No. of allegations	154	104	67	121	137

During the year we finalised 149 allegations in the manner shown in Table 2.

Table 2 Manner in which allegations finalised 1999/2000

	Number of allegations	%
Finalised without investigation		
• Discretion exercised not to investigate	39	26
• Discontinued, withdrawn or lapsed	13	9
Finalised with investigation		
• Totally or substantially in favour of complainant	25	17
• Partially favourable to complainant	23	15
• Not substantiated	49	33
	149	100

Of the 97 allegations finalised after an investigation, 48 (50%) were resolved in favour of the complainant.

As I noted in last year's report, attempting to draw conclusions about the rise or fall in the total number of complaints is less important than analysing the statistics for any patterns which might indicate an underlying problem. Table 3 shows the nature of the allegations received during the year and Table 4 shows the assistance provided to complainants.

Table 3 Nature of allegations received

	1998/1999	1999/2000
Allocations and transfers	53	51
Tenant liability	24	29
Actions of Ministry officers	13	27
Property condition and maintenance	10	10
Property purchase	6	4
Behaviour of tenants	3	3
Rental assistance	1	6
Other	11	7
	121	137

Table 4 Assistance provided for allegations finalised 1999/2000

	Number of allegations
Benefit to complainant	
• Act of grace payment	2
• Charge reduced or rebate given	2
• Action expedited	17
• Adequate explanation given	55
• Reversal or significant variation of original action	21
• Referred to more appropriate agency	17
No assistance provided	35
Total allegations finalised	149

The range of issues complained about was broadly similar to previous years. However, I have noticed that this year a number of complainants were dissatisfied about the Ministry's consideration of their medical condition in relation to their need for housing. This year's case examples aim to clarify where my Office may and may not be able to assist in that area.

Faced with ever-increasing demands for housing and a finite number of housing units to meet that demand, it is obvious that the Ministry must have clear policies and guidelines about how applications for housing are to be considered and how priority cases are to be identified and dealt with. Inevitably, not all requests for new housing or transfers based on claimed priority grounds will be able to be met. Applicants for priority assistance or priority transfers who approached me were frequently perplexed and distressed when a letter from their doctor did not result in an offer of housing or a transfer. Priority assistance and transfers are only offered where the current housing is likely to worsen the medical condition. Medical evidence often states the medical condition very clearly but may not show any causal link between the medical condition and the applicant's housing.

These applications may require difficult judgments about the medical evidence provided and doctors do not always appear to appreciate that alternative housing will not be provided unless they show a link between present accommodation and the medical condition. On the other hand, a doctor may not believe that the present accommodation has an impact on the medical situation and may intentionally write the medical evidence so that no connection is made. If this is not explained to the patient, confusion can occur.

I have three concerns about evaluating medical evidence:

- There can be serious consequences if the link is missed – Case 1 which follows is an example;
- Ministry staff, and for that matter staff in my Office, are required to make a judgment about whether or not the health professional believes that there is a link between current housing and the medical condition; and
- The Ministry has its own medical information form which requires the doctor to give an opinion about whether or not there is a link between the housing and the medical condition. However, it is not used in all cases.

I wrote to the Ministry about the administrative issues arising from complaints about this matter and I discuss the outcome below.

Case one

The complainant, a father of a child with epilepsy, was concerned when the Ministry declined his application to transfer closer to a teaching hospital. The complaint had been reviewed at all levels of the Ministry's appeals process. The father stated that each time his child arrived at the emergency department of the hospital with an uncontrollable fit the staff reprimanded him for not bringing her for treatment earlier. He therefore assumed that delays in treatment would damage her brain and could even result in death.

Two pieces of medical evidence were supplied during the appeals. One signed by a resident medical officer stated that the child had a medical condition which necessitated being closer to the hospital. The other noted that emergency care is required as well as outpatient appointments. It also noted that there were significant seizures at home, despite an increase in medication, which were very distressing for the parents. It explained the delays in waiting for ambulances. However, neither document noted any deleterious health effects arising from delays in treatment.

During the appeal process the Regional Appeals Committee noted that the medical evidence supplied did not fully support the essential requirement that the tenant be located closer to the hospital. It was considered that an ambulance would be required during an emergency and the use of public transport for routine outpatient appointments was not an issue. The Public Housing Review Panel therefore concluded that closeness to public transport would not assist the medical problem.

When my Office reviewed the appeal papers it was clear that they did not establish a link between the location of the housing and the child's medical condition. However, it appeared that there could very well be one as both documents had stressed the importance of closeness to the hospital and the father stated that staff were concerned about a late presentation during fits. The hospital social worker was contacted for clarification of this matter. As a result the medical consultant expressed his opinion that delays in treatment after an attack were worsening the child's neurological condition. When informed of this, the Ministry agreed to re-house the family closer to the hospital on an urgent basis. It did, however, require a medical certificate clearly stating why the child needed to be closer to the hospital and that there was no alternative closer medical facility which could provide the required treatment.

Although I could not find that the Ministry had made an unreasonable decision on the basis of the documentation it had received, I was pleased that my involvement had assisted the family. Had the applicant used the Ministry's own medical information form, the problem may well have been resolved at an earlier stage.

Case two

The complainant, who had suffered from chronic throat and respiratory problems for years, found that his medical condition had deteriorated after moving to his Ministry accommodation situated near two busy intersections. With increasing traffic he was very concerned about the effect the fumes would have on his health. He had been hospitalised as a result of his condition and unfortunate side effects prevented him from taking the only medication which gave some relief. He was very distressed during conversations with my Office as he believed his limited prognosis was being reduced even further by his living conditions. He could not understand the Ministry's decision to not transfer him.

The case had been heard at all levels of the Ministry's appeal process. Initially the Ministry had rejected his transfer application on two grounds. His transfer application showed that **he** clearly saw a connection with the traffic fumes but the medical evidence he provided did not support any connection. His medical advisors may well have considered that his symptoms, unpleasant though they were, resulted from the progression of his illness. Ministry staff also judged that he could apply for bond assistance and find suitable accommodation in the private rental market. A subsequent appeal recommended a special transfer where he would pay $200 to cover administration costs. He was not satisfied with this result as the wait could be as long as two years.

At the time of his writing to my Office, the complainant was very concerned about his increasing discomfort and the small likelihood of a transfer. After reviewing the appeal papers, I agreed with the Ministry's decision that there was no evidence linking the housing and the medical condition. I could not therefore find that the Ministry had been unreasonable in its decision. However, not understanding the reason for the rejection the complainant continued to be very distressed. I recommended to the complainant that he approach his medical advisers with a request for documentation which would explain any connection between his environment and his health problems. If the Ministry could be convinced that the current housing was contributing to a decline in his health, it would be in a better position to give his special transfer the correct priority. Ministry staff rang my Office later on for clarification as they had received another medical certificate which again did not show any connection between the current housing and the complainant's medical condition. I recommended that Ministry staff contact the medical advisor to find out his opinion about the issue.

I later reviewed this matter to ascertain the outcome for the complainant. The Ministry had received further information from the treating doctor on its own medical information form. The doctor stated that his patient's symptoms were aggravated by the fumes in his current house. However, the Ministry had not changed the level of assistance to priority assistance in the light of the new information.

The Ministry was concerned about its capacity to assist the complainant as it deliberately locates seniors' accommodation close to shops and public transport routes as this is more likely to assist elderly tenants. This policy is reasonable and I sympathise with the Ministry's difficulty in finding accommodation for the small minority of people who may have problems living near busy roads.

Discussions continue between the Ministry and my Office about this matter.

Case three

I was not able to assist another complainant, as she could not show that there was a connection between a family member's medical condition and the housing circumstances.

The complainant's advocate, from an agency assisting migrants, was concerned that its staff would not be able to resolve its client's psychological problems due to the excessive demands placed on her. The client cared for her husband, two pre-school children and her middle-aged parents-in-law. Their three-bedroom house with a single toilet complied with the Ministry's allocation policy. However, the advocate advised that cramped conditions and more particularly the one toilet were creating distress. The toilet was needed frequently by the young children and one of the parents-in-law due to a medical condition. They had therefore applied for a transfer to a four-bedroom house with two toilets.

The matter had been considered at all levels of the Ministry's appeals process without success. The advocate explained that it was not culturally appropriate for the family to resolve the problem by an application for separate seniors' accommodation. The Ministry considered that the private rental market was an option for meeting the family's needs. Ministry staff also pointed out that its four-bedroom houses normally have only one toilet and exceptional circumstances would be required for an extra one to be built.

To determine whether or not there was a connection between the complainant's housing and her psychological distress, the advocate was asked to supply a medical certificate clarifying the parent-in-law's requirement for the toilet. The resulting medical certificate showed that the parent's medical condition was being managed in a way which required less, rather than more, access to a toilet. As the family was housed according to the Ministry's policy and they could later apply for a four-bedroom house to avoid a school age son and daughter sharing a bedroom, I could not conclude that the Ministry had made an unreasonable decision. Although the complainant's problems were undoubtedly very real, I was not able to assist her.

Case four

I was able to assist another complainant who had failed to demonstrate that she had been reasonable in refusing an offer of housing because it was unsuitable due to her children's psychological and medical problems.

The complainant, a single mother with two pre-school children, had been removed from the waiting list after she had declined an offer of housing. She had appealed at all levels of the Ministry's appeal process without success and approached my Office for help.

Prior to the breakdown of her marriage, the complainant had occupied a three-bedroom property. She therefore had more bedrooms than was required by the allocation policy. She left this property due to domestic violence and had been granted priority assistance. One of her children was receiving counselling due to the trauma associated with the breakdown of the relationship. Professional staff had advised the complainant to minimise the child's distress by maintaining routines as closely as possible to those that existed in her previous accommodation. She endeavoured to keep her children at the same child-care centres and she understood that they should continue to have separate bedrooms. She declined an offer of a two-bedroom house as she understood that she would be ignoring professional advice if she required her children to share a bedroom.

The Ministry withdrew her application for housing as she had declined a valid offer and she lodged an appeal. The professional evidence that supported her case included a doctor's letter stating that the children needed separate bedrooms. No reasons were given. There was also support from one of the counsellors but again no reason was given. The appeal panels were sympathetic but found that the offer was consistent with Ministry

policy. Due to legal proceedings I was not able to clarify the matter directly with the counselling agency.

After reviewing the complaint to my Office, I could not find that the Ministry had been unreasonable in not accepting the psychological and medical evidence that the children needed separate rooms when no reasons had been given to support this claim. However, I was not persuaded that there might not be a problem if the children were to share a bedroom. I drew the Ministry's attention to the fact that the issue of the child's needs had not been explored fully. The Ministry agreed to review the decision if the complainant could provide evidence that the children did in fact need separate bedrooms. On receipt of documentation from suitably qualified professionals indicating clear reasons why they would have problems in a shared room and how separate rooms would overcome the effects of past trauma, the Ministry agreed to reinstate the application.

The complainant was satisfied with this outcome.

Case five

Due to repeated break-ins the complainant, a single mother with several children, sought a transfer stating that she wished to be housed in a suburb near to a family member. Her house was next to some open land which she thought made it easy for people to break in. She was disturbed by thefts from the garden and people looking over the fence. Her eldest child was particularly traumatised by the events. She felt so unsafe in the house that her family, school and social functioning had deteriorated to such an extent that she was receiving treatment from a specialist child and adolescent psychiatric service. The daughter's psychiatrist and mother's GP both stated emphatically that she and her children needed greater protection from a repeat of these events for the therapeutic work to have any chance of success.

The Ministry gave two reasons for rejecting the application for a priority transfer. There could be no guarantee that break-ins would not occur in alternative accommodation and the complainant had requested one of the Ministry's slowest moving areas. Her appeal was unsuccessful as it was considered that security screens could provide a measure of safety and she could find accommodation in the private rental market. The Public Housing Review Panel dismissed her appeal but recommended that security screens and barrier doors be fitted to the property. As a result of my Office's enquiries the Ministry offered a special transfer but it also agreed to reconsider granting priority assistance if another break-in occurred.

The rejection of a priority transfer concerned me as the medical evidence stated that a recent event, one of a series, had left the mother and daughter with intense fear and helplessness to keep themselves and their property safe. The daughter was troubled by recurrent thoughts and perceptions of the event and this was having a negative impact on most areas of her life.

In my view the treating professionals had established a clear link between the current accommodation and the family's health. The Ministry appeared to be giving undue weight to the issues of increased security and lack of accommodation in the area of choice, rather than the need to leave the property due to its negative impact on the family's wellbeing. Had the Ministry explained where it might be able to make an offer of accommodation, the complainant could have decided whether moving to a non-preferred area or staying in her current accommodation was the best way to relieve her family's distress. I therefore asked the Ministry to give the matter further consideration.

When the Ministry reiterated its view that a priority transfer was not warranted, my Office sought permission from the complainant to speak to the health care providers. Some time had elapsed since the last break-in and the need for a priority transfer may have abated over time. The specialist psychiatrist and the treatment team still

considered that security screens would not overcome the problem and that the patient and her family should leave the current accommodation as ongoing memories would remain a problem if they remained there.

After receiving this updated medical information, the Ministry granted priority assistance and refunded the payment which the complainant had made for a special transfer.

Case six

The complainant, a man in his late sixties and with a heart condition, complained that the Ministry had declined his application for a priority transfer. He and his wife were from a non-English speaking background, and were reliant on their daughter who assisted them as their interpreter and stayed the night to help when he was ill. The couple were housed in a high rise apartment which was a four kilometre drive away from their daughter. The complainant had several letters from doctors stating that his medical condition was serious and that he was complaining of a flare up of his condition due to excessive noise and disruption around his residence. The doctors considered that the seriousness of his condition needed peaceful and quiet surroundings and that these would be of great assistance to his management. However, the medical certificates could be read to mean that quieter surroundings would improve the psychological well-being without actually affecting the medical condition.

The matter proceeded through all stages of the Ministry's appeal process without success. Following an enquiry from my Office, the Ministry granted a special transfer. I found this result reasonable and it satisfied the complainant.

I did, however, remain concerned about some of the procedural issues raised by this complaint and the others described above. The complainant's medical advisers stated that he had a serious medical condition, but the review process did not require there to be a statement from the medical advisors about whether or not the medical condition was affected by the accommodation and if so, in what way. The Ministry has a standard medical form and if it had been used in this case it would have removed any ambiguity about the connection between the housing and the medical condition. I therefore asked the Ministry to comment on its policy concerning the use of the form and any directions, instructions or guidelines issued to staff about its use. I was also interested to know what guidance or training is given to staff to enable them to make decisions about applicants' housing based on information from other medical certificates and doctors' letters.

In response to my enquiries about the possibility of more routine use of the medical information form, the Ministry advised me that:

- It would be unreasonable to expect a large proportion of the 15 000 applicants who apply each year for transfers and priority assistance to visit their GP or specialist for the sole purpose of completing the medical information form;
- A letter from the doctor is sufficient in most cases;
- Many applicants would have to pay a gap between their Medicare rebate and the doctor's charge; and
- The Ministry's Occupational Therapist is available to advise where necessary.

I found this response reasonable and am mindful of the need to prevent unnecessary use of health services. However, the case examples show that the current situation can cause distress and confusion to people who believe that their medical condition is being aggravated by their housing. A few people may well continue to slip through the net when the doctor is not asked to make the decision about a connection between a person's housing and their medical situation. I will continue to monitor complaints of this nature to my Office in case further consideration is needed about evaluating medical evidence.

CHAPTER 7

EDUCATION – SCHOOLS, UNIVERSITIES AND TAFE COLLEGES

During the year a total of 54 complaints were received, involving 64 individual allegations, about the Education Department, individual schools, universities and TAFE Colleges. A total of 67 allegations were finalised. Table 1 shows details of allegations received and finalised during the year compared with the previous year together with the institutions the allegations concerned.

TABLE 1 Allegations received and finalised

	1998/1999		1999/2000	
Agency	Allegations Received	Allegations Finalised	Allegations Received	Allegations Finalised
Education Department (administration and individual schools)	41	37	25	32
Curtin University	5	4	7	6
Edith Cowan University	7	6	3	4
Murdoch University	3	4	5	3
University of Western Australia	2	3	7	6
Tertiary Institutions Service Centre	11	2	2	
Curriculum Council	-	-	2	2
Central Metro College of TAFE	4	3	7	5
Great Southern College of TAFE	-	-	1	1
Kimberley College of TAFE	-	-	1	1
Midland College of TAFE	1	2	1	2
South East Metro College of TAFE	-	-	-	1
South Metro College of TAFE	1	1	2	1
South West Regional College of TAFE	-	-	1	1
West Coast College of TAFE	1	1	-	-
	66	62	64	67

The 67 allegations finalised during 1999/2000 were dealt with as follows:

- Withdrawn 5
- No jurisdiction 4
- Discretion exercised not to investigate 15
- Discontinued 9
- Finalised by investigation 34

Of the 34 allegations finalised by the completion of an investigation, 14 were resolved totally, substantially or partially in favour of the complainant with the balance not being sustained.

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

Table 2 Assistance provided for allegations finalised 1999/2000

	Number of Allegations	%
Apology given	1	2
Action expedited	8	12
Reversal or significant variation of original decision	4	6
Adequate explanation given	35	52
Referred to other appropriate agency	5	7
No assistance provided	14	21
Total allegations finalised	67	100

Education Department

School charges

In previous years I have received a significant number of complaints from parents who questioned the legal basis for schools to make some or any charges. Parents were confused about the issue, particularly as there had been a deal of publicity about the possibility of fees being abolished during the passage of the *School Education Bill 1997*. As indicated in my last report I expressed concern about the issue to the then Director General of the Department. She implemented my recommendation that a public announcement be made setting out the compulsory fee arrangements in force under the current *Education Act* and *Education Regulations*.

This year I have received very few enquiries and complaints about fees. Those parents who have contacted my Office have been under the mistaken belief that all school charges are voluntary and I have handled the matter by sending them copies of the public announcement referred to above.

Staff salaries

In my report last year I mentioned that at the beginning of the 1999 academic year I received a significant number of complaints from Education Department staff who had been waiting a considerable amount of time to be paid their salaries. The delays were caused by problems associated with the introduction of a new computer system. At the time I was not aware that overpayments had also occurred – persons overpaid had no reason to contact me. However, an overpayment led to a complaint to my Office some six months later.

Case one

A teacher commencing leave without pay received a credit in her bank account for the first pay period in the academic year. She contacted the Department and asked that the credit be reversed as soon as possible because she was concerned that as she was on a tight budget it would be inadvertently spent if it remained in the account. She says she was told *"not to worry"*, that she would be contacted in due course about the overpayment and that she would have to repay it at a rate she could afford *"for example $50 a fortnight or whatever."* A short time later another credit was made to her bank account making the total overpayment nearly $2500.

Some two and a half months later, the teacher received a letter from the Department's Staffing Directorate formally advising her of the overpayment, apologising for it occurring and asking her to contact a Recovery Officer to make mutually satisfactory repayment arrangements. By that time she had spent the overpayment on

pressing bills and offered to repay it at $50 per fortnight - the amount she said had been suggested to her earlier. During several months of negotiations:

- The Department did not deny that the teacher had been told of the $50 per fortnight in earlier contact. It told her in writing that *"… the advice of the officer you spoke to when you first contacted the Department is relevant primarily when an employee is unaware of the overpayment and it had occurred as a result of a small overpayment over a long period."* It was concerned *"that such a significant amount …* [as $2500] *… "could be eaten away and forgotten when …* [she was] *… aware that it would eventually have to be repaid."*

- The teacher varied the offer committing herself to repayments of at least $50 a fortnight plus additional lump sum payments as she was able – she offered $300 as the first of these. This was not acceptable to the Department which insisted that repayment be made at the rate the overpayment occurred (ie in two fortnightly amounts), at $490 per fortnight or at a lesser rate she could demonstrate was the maximum she could afford by supplying a detailed income and expenditure statement.

The teacher was not prepared to provide a financial statement as she believed her privacy would be compromised by doing so. The Department then referred the matter to its debt collection agency which served a notice on the teacher indicating that legal proceedings would be instigated unless the overpayment was repaid in full within a week. The teacher then complained to my Office and one of my staff contacted the Department requesting that recovery action be placed on hold while my Office had the opportunity to consider the matter. The Department agreed to my request and several hours later advised my staff that it had reviewed its position and decided that since incorrect advice had been given to the teacher initially, her offer of $50 per fortnight would be accepted. She was understandably very pleased at the Department's change of heart and indicated that she would still make additional lump sum repayments on an *ad hoc* basis.

Examples of other matters finalised

Case two

A music instrument retailer complained to me about the music teacher at local primary schools recommending a specific brand and model of guitar to his students. The retailer could not provide that specific guitar because the manufacturer only provided it to its nominated dealers. In the retailer's view there were other, significantly cheaper brands or models perfectly suited to the students' needs but parents showed no interest in them - allegedly because the teacher had told them that any guitar other than the particular brand he recommended was unsuitable. The teacher had also allegedly told both parents and the retailer that any other guitar purchased for students other than the brand and model recommended should be returned to the seller.

The complainant was of the view that only retailers are in a position to advise customers about the relative merits of various brands of instruments as they are aware of the full market position as it develops year by year and it is not in their interests to supply unsuitable goods. He believed that many parents could not afford to purchase the recommended brand or model. The retailer had contacted senior staff in the Department about the matter but was not satisfied with their response.

I obtained reports from the Education Department which confirmed that teachers did recommend a particular brand and model "or equivalent" to parents and that this was as a result *"of teaching experience and exposure to a wide variety of instruments over many years, in an attempt to secure an instrument that is capable of meeting the needs of the student and representing value for money for parents."* However, the Department indicated that teachers would work with whatever instrument the student brought to class.

The Department provided copies of brochures it issued to parents about the purchase of other instruments for use by students. These did not recommend a particular brand or model but gave a general outline of what to look for and be wary of. Senior staff met with the complainant and agreed to prepare a similar brochure about guitars, copies of which would be made available to the complainant and any other interested retailers.

The complainant was apparently satisfied with the new brochure and did not respond to my invitation to comment further about the matter.

Case three

A man in his late twenties living in another State wished to join the armed forces and needed proof that he had successfully completed 10 years of schooling. He had attended a private school in Western Australia in the 1980s that offered a special program called "ACE" but he had lost all his certificates. The school had closed down and he complained that he had been unable to establish where its records were held, if at all.

My staff made enquiries with the following government and non-government agencies in an attempt to assist the complainant:

- Education Department;
- Curriculum Council;
- Association for Independent Schools; and
- A currently operating Christian School with a name similar to the one the complainant had attended.

We were told that ACE stood for 'Accelerated Christian Education' and was an American program which had been taught at only a few schools in Western Australia. It appeared that the programme was significantly different to, and not considered to be at the same academic standard as, courses in other schools. None of the agencies had any record of the complainant. However, one indicated that the staff of the school in question had moved to the State in which the complainant was now living and were believed to have set up a school by another name there.

I passed the information on to the complainant but was otherwise unable to assist him.

Curriculum Council

Case four

The father of a TEE student complained to me that his daughter had wrongly been accused of *"stealing"* the examination paper that had been used for her oral examination for a foreign language subject. He said that a male staff member of the Curriculum Council had visited her home after the examination and had continually *"repeated his accusations despite … [his] … daughter's tearful denials."* The daughter was very upset by *"being confronted by a middle-aged male"* and it had been necessary for the father to come home from work to console her.

The father had complained to the Curriculum Council, indicating that his daughter's performance in an exam the next day had been severely hampered because she was still upset by the incorrect accusation. The Council had explained that its staff member had visited the home only after attempts to contact the daughter by telephone had

been unsuccessful. The paper had been found in the possession of another student soon after the staff member had spoken to the daughter. Several oral apologies were given and the Chief Executive Officer sent the daughter a written explanation and apology. However, the father was of the view that the explanation was inadequate and that the written apology seemed qualified.

I obtained a report from the Council and the staff member who visited the daughter was interviewed by one of my staff.

The Council explained that on the morning when the students attended for the oral examinations it had been discovered that one of them had been taught previously by the marker allocated to them. To ensure fair dealing for all students, no student is examined by a marker who knows him/her and so the markers changed rooms. However, they did not confer with the supervising examiner or alter the room allocation sheets. One of the examiners gave his first student his copy of the examination paper and forgot to ask for it back at the end of the examination. When the supervising examiner discovered that the paper was missing he - because he was not aware of the room changes by the markers - wrongly deduced that the complainant's daughter was the student involved. The room changes were later drawn to his attention and the paper recovered from the student who had accidentally taken it with them – however, not before the staff member had been dispatched to visit the complainant's home.

The staff member who visited the complainant's home was selected because he, being familiar with the paper concerned, would be readily able to identify it, and because he was respected for his tact and discretion. Of the staff readily available only one was female and the Council did not believe that it was necessary for a female officer to carry out the task.

The male staff member's account of the visit was similar in many respects to that which the complainant indicated his daughter had given. However, it differed significantly in respect of his demeanour. He reported that the student had been *"relaxed and happy"* most of the time although at the end she looked *"serious and somewhat upset"* although well short of tears.

The Council also reported that the examination the complainant's daughter took the day subsequent to the incident comprised only 18.75% of her final assessment and that her mark for it was very similar to marks she had received throughout the year for the subject.

In the absence of independent evidence I was unable to reach any firm conclusion about the tone of the male staff member's approach or the emotional state of the complainant's daughter during the visit. However, I did not consider that it was unreasonable (given the confusion about who had been examined in the room from which the paper went missing) that the male staff member was sent to interview the daughter. When I informed the complainant of my view, he indicated that the situation might just be one of differing perceptions and decided not to pursue it further.

Universities

Case five

A student who had completed almost two years of a course at an Eastern States university moved to Western Australia and applied to enrol for a similar course at Murdoch University. However, because the two universities did not place the same weighting on individual subjects the student was disadvantaged by the move. The subjects the student had passed at the first university constituted 58% of the course there, but the corresponding subjects constituted only 45% of the Murdoch course.

The student hoped to complete a Murdoch degree in one academic year by studying more than the normal student load (number of subjects credit points). However, the "overload" required was significantly greater than that permitted at Murdoch and so the study program approved for her extended over more than one academic year.

During her first semester at Murdoch the student learned that, rather than enrolling for the Murdoch course, she would be better off if she remained as a student of the Eastern States university, but studied on a cross-institutional basis at Murdoch. Under the cross-institutional system, subjects studied at Murdoch could be credited towards her degree at the Eastern States university and the difference in the weighting of subjects between the institutions was no longer a disadvantage. In fact the subjects required to complete the Eastern States degree constituted only one academic year's work at Murdoch. Unfortunately though, one of the Murdoch subjects which the student needed to take in order to meet the requirements of the Eastern States course was only conducted in the first semester and it was one that was scheduled for the student's second academic year at Murdoch. By the time the student changed the enrolment to a cross-institutional one, it was too late for her to commence the unit in the current semester. The student then tried unsuccessfully to persuade Murdoch to run the subject in the second semester.

The student complained to me that she been misinformed at the time of her enrolment about the number of subjects she needed to complete a Murdoch degree. She believed that had she been given the correct number she would have been able to formulate an acceptable study overload that included the one remaining subject she now needed to take to complete the Eastern States degree.

I obtained a report from Murdoch University about the case as well as gathering information about the Eastern States university from the Internet. I was satisfied that the student was not misinformed at the time of enrolment about the subjects required to complete the Murdoch course. However, I believed that the ambiguous wording in Murdoch University's standard letters about credits and exemptions had contributed towards the student thinking this. Murdoch accepted my recommendation to reword the letters.

I was also satisfied that it would have been impractical for Murdoch to have repeated the first semester unit in second semester as the student wished. This was because I was informed that the subject could not be done by a single student alone as discussion and interaction between students was a crucial part of it.

Case six

In my report last year (at pages 73-74) I outlined a case involving a student (the wife of an Australian citizen) who sat for two Tertiary Entrance Examination (TEE) subjects and the Australian Scaling Test while she was under a Processing (Residence) Entry Permit. She was granted permanent residence about six months later. As she was not a permanent resident at the time she sat for the subjects she was not eligible for the TEE mature age entry scheme and so a Tertiary Entrance Score (TES)[1] was not calculated for her. It seemed rather illogical to me that persons who obtain permanent residence shortly before sitting for TEE subjects could have a TES calculated as a mature age student whereas persons who obtained permanent residence shortly after sitting could not.

In my view all mature age students who sit for the prescribed number of TEE subjects should be able to have a TES calculated upon notification to the Tertiary Institutions Service Centre (TISC) that they have been granted permanent residence status. I recommended to TISC that it liaise with its member universities with a view to them reconsidering the policy on this issue.

This reporting year TISC informed me that representatives of the universities had met to discuss my recommendation. However they did not accept it.

In my view the situation could have been addressed in a number of ways which rank in the following order of preference from the point of view of customer service:

(1) TISC could have calculated an "official" TES score and provided written confirmation of it upon the student providing written evidence from the Department of Immigration and Multicultural Affairs that permanent residence had been granted. This was the option I recommended.

This was unacceptable to TISC and the member universities because:

- Implementing it would represent a change to TISC's historical database which in its view must remain a snapshot recording the conditions which applied at the time the student sat for TEE subjects. I understand my recommendation would not have had any significant effect on the scores of other students. Rather, the objection was that, in TISC's view, once a deadline has been set for meeting eligibility criteria it must be rigidly adhered to and it would be inequitable to relax it only in the case of students who advise TISC of a change in their residency status.

- Allowing students to retrospectively meet residency eligibility criteria would create a dangerous precedent in that students could seek to have a similar approach adopted in the case of other eligibility criteria eg. seek to be considered for mature age entry on the basis of TEE subjects they sat for when "under –age".

(2) TISC could have calculated an "unofficial" TES score and provided written confirmation of it upon the student providing written evidence from the Department of Immigration and Multicultural Affairs that permanent residence had been granted.

The type of written confirmation I had in mind would have been along the lines:

'Ms X sat for two TEE subjects and the Australian Scaling Test in xxxx. She was not eligible for mature age entry to a Western Australian university because she was not a permanent resident at the time.

Had Ms X been a permanent resident her Tertiary Entrance Score for mature age entry would have been xxx.'

I understand that TISC does not consider it would be appropriate to issue "unofficial" TESs.

[1] TESs have now been replaced by Tertiary Entrance Ranks (TERs)

(3) TISC could advise any university to which the student applies that the student received individual subject marks but that, as the applicant was not a permanent resident at the time of their TEE, a TES could not be calculated for them.

This is TISC's current practice and I understand it is considered equitable because:

- Most Australian universities, through TISC equivalents in other States, have access to the information required to calculate a TES.
- Statements of results sent to students by the Curriculum Council include the information necessary to calculate a TES.
- The method used to calculate a TES is clearly set out in TISC publications openly available to students and universities.
- Universities have the option to take into account changes that occur in a student's personal circumstances (eg. granting of permanent residency) after they sit for TEE subjects and can, if they choose to do so, calculate an "unofficial" TES.

I was disappointed that TISC and its member universities did not believe that the most 'customer friendly' course should be followed and I advised it of my view. However, I did not believe that there was any point in pursuing the issue further.

Case seven

In August 1999 a couple lodged a complaint with my Office concerning their son's access to his Tertiary Entrance Ranking (TER) which would be calculated on the basis of his forthcoming Tertiary Entrance Examinations (TEE). As they planned to be overseas on holidays when the TEE results and TERs were released, they were concerned that there was no overseas access to the automated telephone results service (TISCLine) provided by the Tertiary Institutions Service Centre (TISC). Before contacting my Office they had tried unsuccessfully to resolve their concerns by contacting the Curriculum Council and the TISC. The Curriculum Council conducts the TEE and posts results by mail to students while TISC posts students a University Admission Advice Letter (UAAL) that includes both TEE results and the TER. The information contained in the UAAL is also available for a fee (75cents per minute) through the TISCLine, which prompted the complainants to raise the question of whether the automated service was intended mainly to raise revenue.

The couple were particularly concerned that if their son had to wait to receive his results by mail he might not have time to change his university course preferences if his results were lower than expected. They did not have appropriate friends or relatives available who could phone the TISCLine or collect mail on their son's behalf – in addition they had concerns about possible delays in the mail. Instead they believed that TISC should provide a service whereby staff were available at the time results were released to manually answer telephone calls from overseas and both provide TERs and process changes in course preferences this way. Alternatively they suggested that the information should be made available via the Internet. However, they said that TISC was not prepared to do either.

I made enquiries with TISC which indicated that it receives no government funding. 25% of its overall budget comes from its member universities and so it has to raise the rest by charging fees for the services it provides. It was not feasible to provide an automated telephone results service to overseas callers because no fee could be recovered from them. Similarly, TISC did not have the resources to offer either a free non-automated telephone results system or an Internet service, both of which had potential security problems.

TISC suggested that the complainant's son had three adequate means of obtaining his results from overseas in time to make changes in course preferences. These were to:

- ask TISC to post the UAAL to his overseas address and then make any course changes by return mail;
- arrange for Australia Post to redirect his mail; or
- arrange for someone else to open his mail or access the TISCLine and then telephone the results to him.

Although I realised that the third alternative was not acceptable to the complainants, I regarded the other two to be reasonable. I therefore did not sustain the complaint.

On 7 January 2000, the last date for changes of course preferences, my Office received an overseas telephone call from the complainants saying that they had made arrangements with Australia Post for the letter containing their son's results to be re-directed to their overseas address in an express airmail prepaid envelope. However, this had not arrived. Calls to their closest home post office had revealed that the letter had been mislaid there for a week and although it had been found and redirected they could not expect to receive it for at least another day or two. They had phoned TISC explaining their predicament in the hope that the results would be given over the phone but TISC refused to assist.

In the circumstances one of my staff took the son's details (student number and password) and obtained his results and TER number through the TISCLine. These were then phoned through to him. Fortunately his marks were in the range he expected and it was not necessary for him to make any course changes.

Although the action of my staff resolved the immediate problem, the complainants were concerned that their worst fears of mail delays had been realised. On their return to Western Australia they wrote to me on 26 January 2000 indicating that when their son eventually received his results letter it did not contain his TER. In their view this showed that the advice TISC had given about obtaining TERs by mail was incorrect. They asked that I review their original complaint with a view to recommending that TISC change its approach to the provision of results to persons overseas. In February 2000 they wrote to me again enclosing a copy of a UAAL from TISC dated 29 December 1999 which they had received along with other mail on 1 February 2000 in a redirection prepaid mail envelope which had gone from Perth to their overseas holiday address and back to Perth.

My enquiries revealed that the complainants had misunderstood the advice given to them. Instead of asking Australia Post to redirect by express airmail the TISC letter containing the UAAL with the TER, they had mistakenly requested that the Curriculum Council letter (which as mentioned previously only contained results) be redirected. With respect to the UAAL letter, TISC informed me that all UAAL letters had been posted to students on the same day and there had been no other complaints of them having been received late. For this reason there appeared to be no explanation for the late receipt of their son's letter other than perhaps it had been temporarily mislaid in the Post Office similar to the way the Curriculum Council letter had been.

On the information before me the unfortunate difficulties the complainant's son had experienced in obtaining his TER were due to a combination of human errors of a 'one-off' nature that were out of the control of TISC. The 'express airmail prepaid envelope' procedure that the complainants had put in place would have worked if they had nominated the correct correspondence and Australia Post had redirected it soon after receipt at the Post Office. In retrospect it would have been preferable, even if a change of address fee had been payable, for the complainants to have asked TISC to post the UAAL letter direct to their overseas holiday address – less handling, and therefore less scope for error, would have been involved.

Provided security considerations can be adequately met, placing results on the Internet appeared to be the most effective long term way of resolving problems in providing TER information to persons overseas. TISC agreed to explore this option when it had the funds to do so.

TAFE Colleges

Case eight

I received a complaint from two teenage students of the South West Regional College of TAFE concerning their exclusion from the College on the grounds that they had breached by-laws by allegedly behaving disruptively during classes. The College was only prepared to consider future enrolments in correspondence courses. The students said that they had never been given details of what they were supposed to have done or the opportunity to defend themselves.

The College provided me with information about incidents involving both lecturers and other students that had led to the exclusions. In my view there were reasonable grounds to consider excluding the students. However, I was not satisfied that the procedures that were adopted were in accordance with the principles of procedural fairness (natural justice). In particular I was not convinced that the students had been explicitly informed of the offences they were suspected of, given access to the evidence against them and provided with the opportunity to respond, including being able to call witnesses. College managers had communicated with them orally (at meetings or by phone) - in most instances notes were not made and because no independent witnesses were present it was not possible to conclusively confirm what had been said.

I recommended that the students be formally advised in writing of the allegations again them, be given access to all the evidence held against them and given the opportunity to respond, and that the disciplinary process be conducted afresh by a person not previously involved in the matter.

Although he had some reservations about my interpretation of events, the Managing Director accepted and implemented my recommendation. Detailed letters were sent to the students and a senior staff member who had no previous contact with the students interviewed the staff who had made allegations about the students as well as the students themselves. At the students' request they were also given two weeks to make written submissions – however, they did not submit anything substantive. The senior staff member found the allegations against the students to be substantiated and recommended that the College should continue to refuse enrolment.

In my view the problems I identified in the College's initial handling of the students' exclusion were due principally to unclear by-laws.

At first the College adopted a conciliatory approach to the students, seeking their cooperation to modify behaviour that was considered disruptive and to produce a positive outcome for all. Informal language appears to have been used and discussion to have been in relatively general terms. This approach was completely appropriate and one that I encourage agencies to follow in the first instance. However, once the College began to consider invoking formal sanctions under the College by-laws, the principles of administrative law required more formal procedures – the previous informal action was not enough. Unfortunately, unlike those of the four public universities, the College By-Laws were not explicit as to what was needed.

As all TAFE Colleges have similar by-laws I recommended to the Department of Training and Employment that consideration be given to revising them to make them more like those of the universities. The Chief Executive agreed to take my views into account in the review of the *Vocational Education and Training Act 1996*.

CHAPTER 8

WESTRAIL SPECIAL CONSTABLES

The year ending 30 June 2000 was the second full year in which I have received notification of complaints about Westrail Special Constables. As I reported last year, in November 1997 the Commissioner of Railways and I entered into a Memorandum of Understanding that established a system enabling me to monitor and review the adequacy of internal investigations conducted by Westrail into complaints made about Westrail Special Constables. I perform this task in fundamentally the same way that I do for complaints that are made about members of the Western Australia Police Service.

The individual allegations received and finalised during the year are detailed in Table 1 and the categories into which those allegations fall are described in Table 2 below. Although complaint numbers are relatively small, the number of allegations made increased by 31% over the previous year and the total of allegations finalised increased by 18% over last year's figures.

It is pleasing to note that for the year under review there was a decrease of 4.3% in the number of allegations of assault or excessive force allegedly committed by Special Constables. In addition, the number of allegations of verbal abuse or threats decreased by 6.4%. However, less encouraging is a significant increase of 10.7% in allegations of wrongful arrest and/or failure to comply with procedure.

Over the course of the next year I intend to closely monitor all allegations received relating to wrongful arrest and/or failure to comply with procedure, to determine whether there may be wider training issues that need to be addressed.

TABLE 1 Allegations received and finalised

	1998/1999	1999/2000
Number of allegations received	67	86
Number of allegations finalised	53	62

TABLE 2 Nature of allegations received

	1998/1999	1999/2000
Assault or excessive force	33	39
Wrongful arrest/Failure to comply with procedure	25	41
Verbal abuse or threats	9	6

Complaints alleging criminal misconduct

In last year's report I outlined in some detail the system in place for dealing with complaints. Specifically, I made the distinction between *"criminal"*, *"major"* and *"minor"* matters. During this year I formalised the procedure for dealing with *"criminal"* complaints. In my view, a complaint of that kind is indistinguishable from any other criminal matter and, accordingly, should be referred by Westrail to the police for criminal investigation. If, after police have advised the complainant about the outcome of the criminal investigation, he or she remains dissatisfied then an approach can be made to my Office and a complaint about police can be lodged in the normal way. I will consider the appropriateness of forwarding the complaint to the police pursuant to section 14 of the *Parliamentary Commissioner Act 1971* at that time.

Westrail has agreed to notify me when they receive advice as to the outcome of a police criminal investigation so that I can monitor the path of such complaints.

The system for dealing with complaints

During the year I finalised a complaint concerning allegations of assault by Railway Special Constables that was said to have occurred at the Perth Railway Station. In the course of reviewing the adequacy of the Westrail investigation into the matter it was revealed that at the time of the incident Westrail had no formal procedures in place to facilitate the recording of such a complaint either at the scene or if made personally at a Westrail Office. Westrail is now in the process of developing an operating procedure for the reporting and investigation of complaints against Railway Special Constables and Chubb Special Constables and I have sighted a draft copy of the proposed operating instructions. Unfortunately, implementation of the procedure has been delayed due to problems associated with structuring a procedure linking the Special Constables employed by Westrail and those employed by Chubb Security. However, I have been told that these matters are being worked out. Westrail has agreed to forward the procedure to me for final examination prior to its implementation.

Timeliness of Investigations

The performance targets agreed with Westrail for completion of internal investigations are as follows:

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

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

TABLE 3 Number and percentage of allegations finalised

	1998/1999		1999/2000	
	Number	%	Number	%
0 to 42 days	1	2%	3	5%
43 to 90 days	8	15%	8	13%
91 to 150 days	6	11%	9	14%
over 150 days	38	72%	42	68%
Total	53	100%	62	100%

It is quite clear that Westrail once again fell well short of the performance targets set for the year. Two out of three complaints are still taking more than 150 days to complete – a quite unsatisfactory position.

In last year's report I suggested that a possible reason for Westrail's failure to reach the performance targets was the apparent need for another full time investigator to be employed to deal with the backlog of complaints. In January 2000 Westrail employed an additional full time investigating officer, initially on a casual contract basis, and the position was recently advertised on a permanent basis. Although it would appear that this appointment did little to improve the statistics, I understand that the appointment has resulted in the backlog of older complaints being overcome and greater efforts can now be made to meet the target times set for the completion of investigations. I will monitor the position closely this year.

Examples of reviews of Westrail investigations

Case one

A 16-year-old boy complained that he had been unlawfully assaulted by a Special Constable at a metropolitan railway station. The Westrail internal investigation concluded that, although evidence about the alleged assault was inconsistent, there was sufficient evidence to recommend the withdrawal of a number of charges laid by the Special Constable against the complainant. It was also recommended that the Special Constable be counselled and undergo retraining in conflict resolution and customer service.

I reviewed the internal investigation and found the evidence against the Special Constable to be compelling and strongly suggestive of the Special Constable having committed a criminal offence. In my view, Westrail's proposed course of action was not adequate in the circumstances. It seemed to me that there was a particular need for Westrail to demonstrate the openness and accountability of the internal investigation system by referring the matter to the office of the Director of Public Prosecutions ("the DPP") for an independent legal opinion. Westrail agreed to this course of action. However, in the meantime, the complainant in the case expressed a desire that criminal proceedings against the Special Constable should not proceed.

The DPP reviewed the matter and agreed that there was sufficient evidence to establish a *prima facie* case against the Special Constable for assault. However, in view of the fact that the officer had undergone retraining and the complainant was not supportive of a prosecution, the DPP considered that it was not in the public interest to act against the officer.

Case two

Westrail received a complaint from a person who alleged that he had been assaulted by between two and five Railway Special Constables. The complainant said that he was involved in an altercation with another male when he was arrested by railway police and issued with an infringement notice for offensive behaviour. During my examination of this matter I was dissatisfied with the initial internal investigation conducted by Westrail. I returned the investigation file for further enquiries as it was clear that some witnesses and persons involved had not been fully interviewed.

Westrail undertook the additional enquiries and, although I was not totally satisfied with the way in which they had gone about investigating the matter, I decided not to conduct my own investigation of this complaint. I made this decision because:

- There were no independent witnesses to the altercation between the complainant and the Westrail officers.
- The complainant's evidence was general in nature and only identified one officer committing the alleged assault.
- The officer concerned had since resigned.
- There was no videotape evidence available due to the time lapse between the incident and the lodging of the complaint.
- The medical evidence was inconclusive.
- The complainant's infringement notice had been withdrawn, it being deemed inappropriate in the circumstances.

In concluding this matter I wrote to the Acting Commissioner of Railways and made a number of suggestions and recommendations about the duties and responsibilities of Railway Special Constables in relation to the recording of incidents, the taking of witness details and the preservation of video evidence. The Acting Commissioner of Railways subsequently advised me that:

- A new notebook for Special Constables had been introduced and all Special Constables had been reminded of their obligations to record relevant information in the notebooks for evidentiary purposes.
- Digital storage technology was being considered which would enable videotapes to be stored for a longer period.
- Special Constables had been reminded of the need to obtain copies of videotapes as soon as possible after an alleged incident.

CHAPTER 9

OTHER AGENCIES

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

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

WESTERN POWER CORPORATION (WPC)

Case one

I received a complaint from a resident of Yanchep about problems with the power supply and alleged damage to her electrical appliances, which she assessed as being in the order of $3000. WPC appeared to acknowledge that there was a problem with low voltages but its position was that low voltages could not cause damage to electrical appliances such as televisions, stereos, stoves etc. It acknowledged that low voltages could cause damage to light globes and it offered the complainant $92 to replace the globes, which she was not prepared to accept

WPC first responded to my enquiries by declining to meet the costs of the alleged damage but offered to appoint an independent assessor to investigate the claim if further evidence could be provided to support it. It turned out that the complainant had already engaged a qualified engineer who reported that the damage to a television set had been caused by power variations. WPC then installed a voltage recorder at the premises and found that the voltage was below acceptable limits on two of the three electrical phases. An investigation conducted by WPC engineers found the cause to be an overloaded transformer and overloaded overhead mains.

WPC then decided to pay the complainant $3000 compensation for the damage to her appliances. One of the reasons stated for this decision was that advice had been received from WPC engineers that it **was** possible for low voltages to cause damages to some electrical appliances. It was of concern to me that WPC's Risk Management Services Section (which had handled the initial complaint) did not appear to be aware of this and, indeed, had been under a quite contrary impression.

In addition, WPC had also reported to me that it had carried out a supply reliability audit in the Yanchep/Two Rocks area and had advised me of the corrective action which it had taken, which it claimed would deliver a much improved reliability of electricity supply. In the circumstances, it appeared reasonable to me to conclude that there had been problems in the distribution network in the area and that there may have been other customers who had experienced similar problems to the complainant but whose claims had been inaccurately assessed. I therefore recommended that WPC review all of the relevant claims which had been made in the recent past by customers in the area. This review was carried out and claims received in the previous twelve months were re-assessed. However, none of the rejected claims appeared to be similar to that of the complainant and I was reasonably satisfied that no further action needed to be taken about them.

WPC also clarified the issue of damage caused by low voltages. It advised that expert opinion is actually divided on the matter and that further research was being carried out to assist WPC's understanding of the situation. On that basis, I discontinued my enquiries for the present time.

Case two

I received two similar complaints about WPC's practice of issuing 'calculated' accounts in circumstances where the meter readers have been unable to get physical access to an electricity meter. This could be caused by overgrown bushes, a locked or faulty gate or the presence of an aggressive dog. In these circumstances, the meter readers are required to leave a card in the letter box advising of the specific access difficulties.

When the meters were eventually read in the two cases complained of, it was found that the previously calculated accounts had been seriously under-assessed, with the result that the next bill based on the actual reading was very high. Both complainants were dissatisfied with the explanations given by WPC. They complained to my Office about allegedly incorrect bills and subsequent demands for payment by WPC. Both also stated that they had never received a card in the letter box advising of the problem. They also claimed to have been unaware that the account had been calculated.

My enquiries led me to conclude that the complainants had not been overcharged for electricity consumption. However, there were some aspects of WPC's procedures which were of concern to me:

- The average person would not appreciate the significance of the word 'calculated' on the WPC account, or possibly even notice it.
- WPC should be prepared to advise customers who found themselves in this position that it was prepared to enter into reasonable arrangements with them to repay the outstanding amounts.
- WPC should do more to alert the customer to the fact that the account had been estimated, including the use of the word 'estimated' rather than 'calculated'.

WPC responded positively to my concerns by changing the wording as suggested. It also established a working party to review the account layouts and to consider customer feedback about them. A new policy was developed to allow customers to negotiate to pay the outstanding amount over the equivalent period of time in which the account was estimated, including consideration of the individual financial circumstances. It also advised that, in future, letters would be sent to those customers whose accounts had been estimated for more than three billing cycles rather than the previous figure of five.

I will continue to monitor the implementation of the proposed changes.

Case three

I received a complaint from a business proprietor whose premises had been destroyed by fire in January 1996. He had later been charged with arson and appeared in court in June 1997 where he was acquitted of the charge. He complained to my Office that the fire investigation carried out by the WPC inspector was negligent and suspect. More specifically, he complained that the inspector's conclusion that the fire was not electrically caused was wrong and was shown to be so in court. He alleged that the inspector's report was instrumental in a charge of arson being laid by police. More generally, he complained that the manner of the investigation indicated negligence on the part of WPC due to insufficient training of inspectors and incorrect procedures, and he claimed that if several additional avenues of inquiry had been followed or additional tests carried out by WPC, the inspector's conclusion would have been quite different.

WPC first responded by stating that its inspector had acted entirely properly and the complaint was without substance. During this lengthy investigation, WPC adopted a particularly uncooperative stance and repeated its insistence that it could not understand the nature of the complaint. As far as WPC was concerned, its inspector had given evidence in court and had been subjected to cross-examination by the complainant's solicitor. The complainant had also engaged the services of a metallurgist who gave evidence which offered an alternative conclusion to that of the WPC inspector. WPC pointed out that there was no way of knowing what evidence the jury had chosen to accept in arriving at its decision to acquit the complainant. It took the view that the basis for the complaint was dissatisfaction with the justice system. I was not prepared to accept this view.

WPC regarded its inspector's obligations as being to see whether there was an electrical cause to the fire and to make sure the premises were left in a safe electrical condition. It stated that any inspection carried out was at the discretion of the inspector and was not open to question. It seemed to me that the inspector's report carried some weight with the police Arson Squad and I believed that the complainant's allegations had to be investigated, although WPC sought to dissociate itself from the use made by the police of its report.

After protracted negotiations, WPC agreed to assist in the conduct of a review into its system of fire investigation. This was eventually carried out by an inspector from the Metropolitan Fire and Emergency Services Board of Victoria. WPC then insisted that the review be in the context of electrical safety and the relevant regulations. It did not consider it appropriate for the review to investigate the complainant's allegations about this particular fire incident because it continued to maintain that the exact nature of the complaint had not been made clear to WPC, a position which I found quite unacceptable. Nevertheless, terms of reference were eventually agreed upon which, in my view, left open the possibility that the reviewer would be able to consider whether the conclusion reached by the inspector was one which was reasonably open to him to make.

The reviewer generally concluded that WPC's system of fire investigation was sound provided it was limited to the strict requirements of its regulations. If WPC inspectors went beyond those requirements, it created difficulties because they were not fully trained fire investigators. He also made reference to the collaborative approach taken in fire investigation in Victoria by the collaboration of a number of relevant agencies.

After considering the reviewer's report, I formed the following conclusions –

- WPC's system of fire investigation was adequate to fulfil its statutory obligations under the *Electricity Act*;
- WPC's fire investigation guidelines were not adhered to in this case in regard to the expressing of an opinion by the WPC inspector when, in my view, he could not have been *"absolutely certain"* of the basis of that opinion, as required by WPC's own guidelines;
- regardless of WPC's perception that its investigation is not part of an arson investigation, the police do rely heavily on the results of any electrical investigation by WPC and apparently expect WPC personnel to give 'expert' evidence in court;

- WPC alone does not have the capacity or expertise to carry out a thorough fire investigation to the level apparently expected by the police and should not be expected to do so;
- if it had not already done so, WPC should immediately enter into discussions with the police to clarify and delineate its responsibilities and review its relationship with the Arson Squad, so that its inspectors are not placed in the invidious position of having to provide reports and opinions beyond their level of knowledge and experience;
- a more comprehensive fire investigation using expertise from all relevant agencies may have cast doubt on the conclusion reached by the inspector, ie that there was no electrical cause to the fire.

I concluded generally that the complaint had been partially substantiated. I suggested to WPC that it should make a statement to the complainant acknowledging that the system of investigation could be improved by implementation of certain measures which had been identified in the review. While not accepting liability, WPC should acknowledge that there were possible shortcomings in its investigation of this case and should express its regret if any apparent inadequacy in the process may have influenced the decision to charge the complainant with arson.

WPC disagreed and stated again that the details of the complaint had never been made clear. It also expressed the view that it was not appropriate for WPC to apologise *"…for any failings of the justice system."*. Further correspondence did not resolve the matter.

I considered that WPC's position was extremely unreasonable and met personally with the Managing Director in order to have a frank discussion about the complaint. I conveyed to him my view that WPC seemed to be very defensive and most unwilling to be accountable for its actions in this matter. The discussion was positive and led to some constructive outcomes, as follows -

- The specific complaint and the broader issue of fire investigation generally were discussed with the Office of Energy, the staff of which considered that my conclusions were generally sound.
- WPC accepted my conclusions with some reservations and wrote to the complainant along the lines which I had suggested.
- WPC also instituted a significant new approach to handling Ombudsman complaints in order to provide accurate, timely and helpful information and to foster a good working relationship with my Office.

Finally, discussions took place with the Fire and Emergency Services Authority (FESA) about the perceived need for a more collaborative approach to the issue of fire investigation. I am pleased to report that FESA, which was already considering such an initiative, has taken carriage of it and has already held talks with the Arson Squad in order to develop a Memorandum of Understanding for the two agencies. Other relevant agencies, such as WPC, AlintaGas and the Office of Energy, will become involved in due course. I consider this initiative to be a very positive outcome of this investigation.

DEPARTMENT FOR FAMILY AND CHILDREN'S SERVICES

Case four

The former foster carer of a child with very severe disabilities (intellectual, learning and severe behavioural problems plus Attention Deficit Hyperactivity Disorder) complained to me regarding the level of subsidy she had received while caring for the child for a six month period. The child had moved to other carers who were being paid a Special Needs Loading which she had not received during the period the child was with her. As a *"point of principle"* she believed that she was entitled to the same level of assistance as, in her view, his needs had not changed.

The Department was not prepared to approve retrospective payment of a loading because it maintained that:

- an assessment for a Special Needs Loading had not been conducted during the period the child was with the complainant;
- assessment of the child's needs was ongoing and still not certain during the time the child was with her;
- the complainant had received extra financial assistance totalling $3,880 on an ad hoc basis to cover the cost of items carers were normally expected to meet out of Special Needs Loadings; and
- the level of service and support required from the new carers had been finalised soon after the child had moved to them and these were considered to be greater than had been expected of the complainant.

I asked the Department to provide me with details of both the extra financial assistance the complainant had received and the additional services and supports the new carers were expected to provide.

The Department informed me that the $3880 had not been paid to the complainant directly but rather had been paid to others (eg a psychologist) who had provided services to the child. Also, it indicated that it had been wrong to suggest that all of these services would normally be met from a Special Needs Loading. Only one third of the amount (for telephone and transport reimbursement, medication and camps/respite activities) could have been expected to have been met from a loading.

With respect to additional services the Department indicated that the current carers were expected to implement home programs for speech and occupational therapy as well as transport the child to counselling sessions. Also there was an expectation that less respite care would be provided.

While maintaining that *'the decision to not retrospectively apply the Special Needs Loading assessed on the current care circumstances to those operating during* …[the period the complainant cared for the child] … *is a technically correct one",* the Department conceded that there were mitigating circumstances in the complainant's case in that:

- the child's behavioural difficulties did place extra demands on her;
- an assessment for a Special Needs Subsidy had been scheduled to occur during the time the child was with her but had been deferred because of staff changes and work pressures – it was likely that an assessment would have led to some level of loading being recommended; and
- some staff had inappropriately suggested to the complainant that she would be backpaid if the scheduled assessment recommended a loading.

In the circumstances, it was prepared to offer the complainant a retrospective loading at half the rate the new carers were receiving. I informed the complainant that I regarded the offer to be a reasonable compromise and, although she had some reservations, she accepted it.

Case five

An indigenous single parent whose children were in foster care wished to be reunited with them. However, she believed that the reunification process was being hindered because the male social worker allocated to her case was *"too young"* and did *"not seem to understand Aboriginal cultural issues."* She wanted responsibility for her case to be transferred to a female indigenous social worker she knew who worked for the Department.

My enquiries revealed that the indigenous worker that the complainant wished to be her case manager was not employed in a casework position and that the children had moved to an area where no indigenous workers were currently employed. Indigenous workers had been employed at the particular Office in the past but they had resigned – it was hoped that further indigenous workers could be engaged in the future.

In the circumstances the case was allocated to an experienced non-indigenous social worker, a Team Leader, on the understanding that it would be transferred to an indigenous worker should one be appointed in the future.

DEPARTMENT OF TRANSPORT

Case six

A Magistrate drew my attention to issues that had arisen during a trial he had conducted where the defendant was accused of driving while disqualified. During the trial the defendant produced two apparently original driver's licence documents which had been issued to her. The Magistrate was concerned that the Department could issue a duplicate licence without the duplicate being marked accordingly. He also sought confirmation that procedures were in place to prevent a person who was under suspension from obtaining a duplicate licence.

The Department responded with the view that the ability to distinguish between an original and a replacement licence would serve no purpose and was not warranted. It commented that the major issue was whether the person was legally entitled to drive and that this could be identified regardless of whether the person was actually in possession of a licence of either kind. I was prepared to accept the Department's view.

The Department also confirmed that there were procedures in place to prevent a replacement licence being issued to a person who was under disqualification. In this case, both of the licences had been issued while the defendant was not under disqualification; the second was issued because of her change of address.

Our research revealed that the relevant subsection of the *Road Traffic Act* presupposes that the original licence has been lost or destroyed and requires the Director General of the Department to be satisfied of that before a duplicate is issued. However, the Department's application form did not contain any provision for the applicant to make a statement to that effect. I therefore recommended that the application form be amended so that persons applying for a replacement licence are required to certify that they are the holder of a current Western Australian licence, that the licence is not suspended, cancelled or disqualified, and that all previous licences held by them had been lost or destroyed. I also recommended that the form include details of the maximum penalty for making a false statement and advice that any duplicate licence should be surrendered if the original or any earlier licence be subsequently recovered.

The Department responded positively to these recommendations and referred them to its Forms Redesign Committee for inclusion on the application form.

MINISTRY FOR PLANNING

Case seven

I received a complaint about the manner in which the Ministry disposed of a property which was surplus to requirements. The Ministry had decided to sell the property by private treaty and it engaged a local real estate agent, with the result that the property was sold without being advertised. It was alleged that the lack of advertising was contrary to guidelines for the disposal of government property. It was also alleged that impropriety had taken place because one of the joint purchasers was a business associate of the agent.

My enquiries showed that the Ministry had simply told the agent to sell the property by private treaty at a certain listing price. He was given no direction as to public advertising or placing a sign on the property. In accepting the listing, the agent had told the Ministry that he would proceed with advertising but he did not do so and did not place a sign on the property. Instead, he approached several parties whom he believed might be interested in buying the property and obtained offers from three of them, which were duly presented to the Ministry. The Ministry did not instruct the agent in relation to the requirement that government properties should be advertised and did not enquire what steps had been taken to obtain offers. Consequently, in my view, it failed to ensure that the property was advertised publicly for a fixed period as required by the government policy guidelines before considering the offers.

The Ministry responded by stating that the policy guidelines are only for guidance and that the sale of the property by private treaty was in accordance with the policy of the WA Planning Commission. The method of sale is determined by factors such as market conditions, the type of property and any other relevant matters. The Ministry pointed out that the property was actually sold at a figure commensurate with the highest and most reliable valuation advice. Although the Ministry had received written advice from the agent that he would advertise the property, it was satisfied that the agent acted appropriately, and with the best intentions, by approaching potentially interested parties, which was also in accordance with industry standards and practices. Nevertheless, the Ministry assured me that it was aware of the need for the highest level of transparency in government land dealings and that it had approved amendments to the policy guidelines relating to sale by private treaty. These amendments require the appointed agent to –

- erect a 'for sale' sign on the property on the first day of listing;
- advertise the property in a mass circulation newspaper or other similar publication available to the general public on the first suitable day following listing;
- receive and hold all offers to purchase until fourteen days have elapsed since the first advertising of the property; then
- submit all offers received during that time to the Commission for its consideration.

I considered this to be a reasonable outcome of the complaint. I also concluded, from the information obtained during my enquiries, that there had been no impropriety on the part of the agent in relation to the actual sale.

HEALTH DEPARTMENT

Case eight

A father, in receipt of a pension because he had to care for his invalid wife, complained to me about the Health Department's refusal to pay a spectacle subsidy for his 16 year old son. The explanatory notes on the application form that the son had completed at the optometrist included the sentences:

> *"The applicant must be … recorded on a current Pensioner Concession Card as a dependent child of the card holder"* and
>
> *"An application by a dependant under the age of 16 years should be signed by the applicant's guardian"*

which the father took to mean that all dependent children were eligible but that parents had to sign the applications of dependants under the age of 16 years.

In fact only dependants under the age of 16 were eligible and my enquiries revealed that this was made clear in an information sheet which the Health Department had sent to all optometrists in the State and in the publications of other government agencies (Centrelink and the Department for Family and Children's Services). Unfortunately, the father had not seen any of these documents.

As the son clearly did not meet the eligibility criteria of the Spectacle Subsidy Scheme, I was unable to be of assistance to the complainant. However, I was concerned that the information on the application form was both ambiguous with respect to the eligibility of dependants and out of date in relation to some pensioner categories. Although the documents mentioned in the previous paragraph were unambiguous and up to date, I believed that the information on the application form itself also needed to be this way.

I recommended to the Health Department that it revise the form (I gave specific examples of alternative wording) and withdraw current stocks from circulation. It accepted my recommendations in part and printed and circulated six months supply of a revised application form without sending me a draft for comment first. When I received a copy of the revised form I noted that it still included the sentence:

> *"An application by a dependant under the age of 16 years should be signed by the applicant's guardian."*

Although other changes to the form made it less likely that other parents would interpret it in the same way that the complainant had, I was concerned that there was still scope for misunderstanding. I expressed my disappointment to the Commissioner of Health that my recommendations had not been accepted in their entirety and suggested that, in the interests of customer service, the Department should consider the matter again next time the form was reprinted. He agreed and the form has since been amended.

OFFICE OF HEALTH REVIEW

I do not have the power to investigate complaints about the administrative actions and professional judgements of medical practitioners in private practice. However, the Office of Health Review (OHR), which is within my jurisdiction, does and I receive complaints about its handling of such matters.

Case nine

A patient who had suffered a very painful infection after minor surgery in a general practitioner's surgery complained to the OHR about both sustaining the infection and the treatment provided by the GP for it. The infection was not successfully treated until the patient was seen by a specialist. The patient indicated that he knew of other patients who had sustained similar infections after minor operations at the surgery.

Where it is considered appropriate, the OHR obtains independent advice from qualified practitioners as to the adequacy of treatment provided in a given case. Sometimes this is done by reviewing medical records, but in other cases it may arrange for the complainant to be reviewed in person by an independent practitioner. As this particular complainant's symptoms had abated by the time he made the complaint – he understandably waited until his pain had subsided before contacting the OHR – it was not practicable for him to be reviewed in person. Instead, the OHR consulted the specialist who had treated the complainant after the infection had developed.

The specialist advised the OHR that unfortunate side effects do sometimes occur after minor surgery through no fault of the practitioner performing the procedure. He was adamant that the complainant's was such a case and that the surgery had been performed in an entirely appropriate way. In the circumstances the OHR informed the complainant that there was no evidence that the standard of treatment he had received from the GP was unreasonable.

The patient was not satisfied that the OHR had adequately investigated his complaint and so approached my Office. In particular he alleged that the OHR had failed to consider whether other patients of the GP had suffered similar infections. He pointed out that the Communicable Diseases Control Branch of the Health Department had called a meeting about infection control in general practice.

I called for a report from the OHR and also perused its file concerning the complainant. In addition one of my staff obtained information from the Internet about the rate of infection in surgical procedures like the one the complainant had had. I was satisfied that:

- the OHR had obtained appropriate technical advice about the complainant's case;
- there was no pattern of similar complaints having been received against the GP concerned;
- as the GP carried out in the vicinity of 400 surgical procedures each year , it could reasonably be expected that a small but significant number of his patients would sustain unfortunate side-effects; and that
- the Communicable Diseases Control Branch of the Health Department was the appropriate body to consider whether there was a problem of infection control in general practice.

For these reasons I did not sustain the complaint.

STATE TRAINING BOARD

Case ten

The *Vocational Education and Training Act 1996* ("the VET Act") includes provisions relating to industry advice (including advice in relation to tenders for providing training) to the State Training Board. Prior to the VET Act such advice was provided by Industry Employment and Training Councils (IETCs) under the *State Employment and Skills Development Act 1990*. IETCs were tripartite bodies (employer, employee and government) with prescribed voting requirements etc. The VET Act widened sources of advice to "industry training advisory bodies" which includes Industry Training Councils (the former IETCs) and other bodies *"conversant with, and capable of giving advice in relation to, the vocational education and training requirements of a particular industry."*

In 1998 the State Training Board decided to introduce a new system for the provision of strategic intelligence and advice on specific industry skill requirements ("industry advice") to government. Under the new system ITCs continued to receive public funds to undertake core functions. However, except in instances where there was a body willing to provide industry advice at no cost, a competitive process for the provision of non-core services was set up which ITCs and other recognised training advisory bodies were eligible to take part in.

I received a complaint from an ITC which covered an industry sector in which tenders were not called because a government department was willing to become an industry training advisory body without receiving specific government funding for the purpose. As a consequence, the ITC's overall funding had been reduced significantly (it only received funding for its "core" activities). It alleged that:

(i) The Board unreasonably failed to consult with it during the process of granting advisory body status to the government department.
(ii) The Board favoured the government department (and other bodies prepared to provide industry advice on an unfunded basis) over the ITC (and other bodies which required government funding) by not requiring it to take part in the competitive process.
(iii) The government department (and other unfunded providers who were employer bodies) could not provide advice from an industry-wide perspective.

In its reports to me the Board indicated that there had been a history of conflict between the ITC (and its predecessor IETC) and the government department concerned which was a major employer in the industry sector. One of the Board's members had acted as a mediator but the department had withdrawn from the IETC. More recently, representatives of the department had attended meetings of the ITC but this lasted only three months. The department had then sought to become an industry training advisory body in its own right similar to employer groups in some other industries. In the Board's view, the mediation its member attempted several years before constituted consultation about the industry advice issue and there was little more it could do to resolve the differences between the ITC and the government department.

My final views after carrying out enquiries were that:

(a) I was not satisfied that the Board consulted adequately with the ITC before making the decision to grant industry training advisory body status for the industry to the government department. In my view the Board did not follow the principles of procedural fairness (natural justice). I did not accept the Board's assertion that its attempt several years before to mediate between conflicting members of the former IETC could reasonably be regarded as consultation with the ITC about the current decision. After I met with its Chair, the Board accepted my view on the need for consultation.

(b) I gave consideration as to whether I should recommend that the decision to grant industry advisory status to the government department should be set aside and the process commenced again involving formal consultation with the ITC. However, I decided that such a recommendation would have been unlikely to produce anything practicable because the ITC had made approaches to the Board after the decision was made outlining its views but had been unsuccessful in persuading the Board to change its mind.

(c) The Board had the power to make the decision not to involve unfunded industry sectors in the competitive expression of interest process. However, failing to call for expressions of interest in any industry sector left open the possibility that the best industry advice would not be obtained. This was because it prevented other potential providers, on either a funded or unfunded basis, from being considered. I made the Board aware of my view but I did not consider it necessary to make any recommendation on this aspect of the complaint. Ultimately, it is for the Board to balance, as a matter of risk management, that possibility of not receiving the best advice against the perceived benefits of gaining advice from a major industry participant on an unfunded basis.

(d) The legislation does not require industry bodies to be bi-partite or tri-partite. The fact that the particular government department and some other industry bodies do not have employee representatives does not, in itself, mean that they cannot consult with employee groups and provide advice from an industry-wide perspective. Whether or not consultation occurred needed to be monitored by the Board.

I had concerns about:

- apparent communication difficulties between the Board and the Department of Training and Employment which resulted in a departmental officer conveying incorrect information to the ITC about the Board's guidelines;
- the monitoring process to ensure that wide consultation occurs in the non-funded industry sectors; and
- inconsistencies in the documentation about the Board's decision not to apply the competitive expression of interest process for industry advice to those industry sectors where there are unfunded industry advisory bodies. The brevity of the minutes of some Board meetings contributed to this. One of the minutes included the comment *"Due to members' request of confidentiality on the discussion of ITCs the extent of these minutes is limited."*

I recommended to the Board that it:

- develop protocols with the Department of Training and Employment to ensure that information provided by departmental staff about the Board's responsibilities is accurate;
- take action to have the same essential requirements included in memoranda of understanding with self funded industry advisory bodies as are included in funding agreements with funded bodies; and
- keep comprehensive minutes of all Board meetings.

All my recommendations were accepted.

TOTALISATOR AGENCY BOARD

Case eleven

Two former long serving senior officers of the Totalisator Agency Board ("the TAB") – both of whom had retired in the 1980s - complained to me alleging that they had been unreasonably denied an uplifted superannuation benefit approved by the Board of the TAB in 1982 when it was trustee of the TAB Staff Retirement Fund. (The Board was trustee until 1994 when new legislation requiring changes to superannuation arrangements led to the establishment of TABSUPER Pty Ltd ("TABSUPER"), a separate legal entity from the TAB, to be the trustee.) They believed that they had been treated differently to other TAB employees who had received increased payments on the authority of resolutions of the Board when it was trustee.

The complainants only became aware of the relevant Board resolutions in 1997 and first approached TABSUPER, which rejected their claims. They then lodged complaints about TABSUPER with the Superannuation Complaints Tribunal ("the SCT") which decided that the matter was not within its jurisdiction. The SCT regarded the issue as being one about the payments the complainants may have been entitled to at the time of their retirements, when the TAB Board was still trustee and the superannaution fund was not a "regulated" one. The decision of TABSUPER in February 1998 to reject the complainants' claims was viewed by the SCT as being simply a confirmation of actions of the TAB Board at the time of the complainants' retirements.

TABSUPER, being a separate legal entity not under the control of the TAB, is not within my jurisdiction. I accepted the complaint on the basis that it was about events which occurred while the TAB Board was trustee (and therefore was about the TAB) and was made within twelve months of the complainants becoming aware of them.

The background to the complaint as revealed by my enquiries was that at its meeting on 12 July 1982 the Board of the TAB passed the following resolution:

> *"That the officers included in the approved list receive a minimum of 7 times their average annual salary over the last 3 years of service at age 60 years, prorated in the case of early or late retirement."*

Amongst the names on the approved list were those of the complainants and another senior staff member ("the other senior staff member"). I could not establish why all of the persons named on the list were not formally advised of the resolution – but it is clear that some became aware of it while others did not.

At the same meeting, the Board also approved (or confirmed) increased, but different, superannuation benefits for two other staff members who were eligible to retire soon after the meeting. The increased benefits were paid subsequently to the two on the authority of the minutes.

At its meeting of 26 May 1986 the Board of the TAB resolved that the other senior staff member's superannuation entitlements *"be based upon 6 times total salary at age 55, proportionately rising to 7 times at age 60 years."* This was stated *"to be in line with the Board resolution dated 12/7/82"* and the minutes used the term *"reconfirmed"*. A formal variation in accordance with this resolution was made to the Trust Deed governing the fund and the other senior staff member received a benefit calculated on this basis when he retired in 1990.

In July 1997 the complainants' representative (a recently retired former staff member of the TAB who had also been chairperson of TABSUPER) wrote to TABSUPER on behalf of the complainants suggesting that an error had occurred in the calculation of their retirement benefits and that they should be paid the "shortfall" calculated on the same basis as that used for the other senior staff member. He enclosed a supporting legal opinion that *"the TAB's resolution constituted a valid amendment of the trust deed"*. As well as this he provided background papers that

included letters from the 1982 General Manager and from a 1982 TAB Board member, both of whom indicated that it had been the Board of the TAB's intention to increase the benefits of certain key staff and that they were surprised that those staff had not been informed of this. The 1982 Board member thought the failure to inform those affected may have been due to the fact that the then TAB Board Secretary retired a few weeks later and that neither he, nor his replacement, was present during the TAB Board's discussion of the matter.

TABSUPER obtained a legal opinion from the legal consultant of its actuarial advisers. This substantially agreed with the legal opinion obtained by the complainants and included the statements:

> *"It is clear, I believe, that the Board, on 12 July 1982, was sitting as both employer and trustee of the Fund when it decided upon an "uplift" in retirement benefits for the "approved" list. Further, it is clear that the trust Deed was varied by the 12 July 1982 Resolutions and those Resolutions do not appear to have ever been specifically altered…*
>
> *I believe the "approved list" officers who have retired without "uplift" are entitled to "shortfall" amounts. The shortfall amount, if litigated for, would include interest. The Trustee should allocate interest at net Fund earning rates for the relevant shortfall period.*
>
> *It is my view that present Fund Members' returns should not be compromised by any benefit improvements (including interest) granted for "shortfall" amounts. The liability for that amount, given that the Board was Trustee and Principal Employer of the Fund in 1982 and 1983 and did not see fit to formalise details of the 1982 Resolution in the 1983 Deed amendment, falls upon the Board directly."*

The legal opinion, however, indicated that the uplifted benefit did not necessarily have to be calculated on the same basis as that used for the other senior staff member. The actuarial advisers provided TABSUPER with calculations of "shortfall" amounts using four different means of pro-rating. These ranged from $34,968 to zero ($79,484 to zero with interest at the Fund's earnings rates) for one of the complainants and $56,973 to $20,209 ($149,946 to $53,188 with interest) for the other.

The issues were considered subsequently by the Boards of TABSUPER and the TAB.

The TAB received an opinion from its legal advisers dated 19 December 1997 which included the following:

> *"While the matter is not completely beyond doubt, I cannot concur with* … [the complainants' legal adviser] … *whose opinion was accepted by* … [the principal legal consultant of TABSUPER's actuarial advisers] … *, that the TAB Board's minute of 12 July 1982 is an 'instrument in writing' and therefore operated to amend the Trust Deed which existed at the relevant time.*
>
> *An 'instrument in writing' is a formal legal document properly executed (normally under seal) and one which, in the ordinary course, would require stamping. Clearly the simple record of a Board minute contained within a general minute book which could, and did, deal with other matters, has neither the form nor content consistent with an instrument in writing for the purposes of amending the deed…*
>
> *It would be simply unacceptable for a Board to enter a legally binding commitment based on minutes that are drafted without professional advice which were not communicated to any member of the Fund. It was clearly consistent with the Board's common law requirement to seek professional advice and commercial prudence that a separate formal instrument was required.*
>
> *The fact that certain Board members may, imprudently in my view, have intended for the minute to have effected the necessary change does not alter the legal position."*

The opinion was considered by the Directors of TABSUPER at a meeting in January 1998 and in February 1998 the Acting Chairman of TABSUPER wrote to the complainants' representative advising him in part that:

> *"Legal and specialist superannuation advice has been obtained, our consideration has been given and we have reached a unanimous decision.*
>
> *Our conclusion is that the benefits paid have been calculated in accordance with the Trust Deed and Rules and that* … [the complainants] … *have entitlement to no further amount from the Fund."*

On 9 February 1998 the complainants' representative wrote to the TAB enclosing copies of correspondence with TABSUPER and saying that if TABSUPER was not prepared to pay uplifted benefits to the complainants a claim would be made against the TAB. During the next month exchanges of correspondence occurred between him and both TABSUPER and the TAB. On 16 March 1998 the Acting Chairman of TABSUPER and General Manager, Finance and Administration of the TAB, in his dual capacities, received a further opinion from the TAB's legal advisers which confirmed the earlier advice that minutes of a Board resolution were not sufficient to amend the Trust Deed.

Extracts from this advice were sent to the complainants. Although they did not agree with it, their complaint to me was not essentially about the strict legal position. Rather they argued that they had been unfairly treated as compared to other former employees of the TAB who had received increased superannuation benefits on the basis of minutes recording resolutions of the Board of the TAB.

The legal advice that both the TAB and TABSUPER had received did not refer specifically to the cases of the two employees who had retired soon after the July 1982 meeting. The TAB maintained that the two employees did not receive an updated benefit based on those minutes but I believed the evidence showed otherwise. At an early stage in my enquiries, in an attempt to expedite the matter, I wrote to the TAB in an abbreviated form suggesting that, in the interests of equity, the minutes of Board meetings should be accepted as sufficient authority to pay the complainants the increased benefit.

The Chief Executive Officer, after seeking further legal advice, requested a meeting to discuss the matter - at which he indicated that the Board of the TAB did not accept my suggestion and that it did not acknowledge that the complainants' claims had any substance. However, the TAB was prepared to offer an amount of $60,000 as full and final settlement of their combined claims - it had no view as to how the $60,000 should be divided between them but required a deed of release from both of them. He also informed me for the first time of the advice he had received about the effect of different methods of pro-rating on the claims.

I put the TAB's offer to the complainants but it was not acceptable to them and they put forward a counter-proposal that the TAB pay them amounts of $88,605 and $63,798. These amounts were calculated on the same basis as that which had been used for the other senior staff member and included adjustment for Consumer Price Index (CPI) increases since the dates of their retirements.

The counter offer was rejected by the TAB and so it was necessary for me to carry out further enquiries in order to make a formal recommendation. These included perusing all the relevant TAB files and obtaining independent technical advice concerning the meaning of "pro-rated" from the Government Employees Superannuation Board ("GESB").

Following my further enquries I did not consider it necessary for me to express an opinion about whether the TAB Board resolution of 12 July 1982 constituted sufficient legal authority for the increased benefits to be paid without a formal amendment of the Trust Deed. Instead, I noted that:

- various legal practitioners who are experienced in superannuation matters had expressed contrary views on the point;
- it was by no means clear that that the complainants were "donees" in respect of the proposed increased benefits – with the consequence that the rule in *Milroy v Lord* cited by TABSUPER's legal advisers would not operate against them; and
- it was clear that the TAB Board had on at least two occasions paid increased benefits to others in reliance on Board resolutions without formal trust deed amendments.

I remained of the view that in the interests of equity the complainants should be treated the same as the two other staff members. That is, the minutes of Board meetings should be accepted as sufficient authority to pay the complainants the increased benefits provided for in the minutes. It was clear that the TAB Board intended to confer increased benefits and the TAB's own legal advice was that the decision was properly made. The only reason why there was now a dispute was that the TAB had failed to take the formal steps to give effect to the Board's intentions and failed to inform all of the persons who were intended to be benefited. As the complainants had retired before the creation of TABSUPER, the TAB was, in my view, the most appropriate agency to make such a payment. However, the question remained as to the basis on which the payment should be calculated and whether interest should be applied.

The GESB, after seeking advice from its actuary, informed me that there is no generally-accepted method of pro-rating benefits. The method used should be consistent with the existing benefit structure of the scheme and it gave an opinion of what the most consistent method was. However, this was not the method that had been used in the case of the other senior staff member and the trustees could be considered to have set a precedent in already paying a benefit under the method used for him. I considered that for equity reasons the pro-rating method used should not change unless there was good reason.

The minutes of the TAB Board meeting approving payment of an uplifted benefit to the other senior staff member did not indicate why the particular method of pro-rating was chosen. So, in the absence of any indication that there were special circumstances applying to the other senior staff member's case, I thought that the same method of pro-rating (ie the one used in the case of the other senior staff member) should be used in all cases.

Various legal opinions had been received as to whether any "uplifted benefit" paid to the complainants should attract interest to reflect the fact that the complainants had been deprived of their funds for a considerable period and that those funds had, in the meantime, remained within the Fund, generating an investment return. It was my view that, whatever the strict legal situation might be, it would be inequitable for the complaints not to receive interest on the shortfall of benefits. They had not had use of the money for many years (10 years and 13 years) and its real value had obviously decreased because of inflation. At the same time the money had remained within the Fund and generated investment returns.

I believed that shortfall amounts should be increased by the following:

(a) the actual net fund earning rates from the dates of the original payment on retirement until the date of termination of the Fund (the Fund continued until mid-1999 when it was terminated). Members at the time had their entitlements calculated and were offered the choice of transferring to other funds of their choice.

(b) the average Commonwealth government 10 year bond rate from the date of termination of the Fund until the date of payment.

I recommended to the TAB that 'act of grace' payments be made to the complainants on this basis.

The TAB did not agree with my conclusions. The Chief Executive Officer restated previous objections and added new matters. His response was to the effect that:

- The TAB did not accept that the complainants had legitimate claims in either law or equity. This was based on the legal advice obtained and stood *'in the absence of any sustainable position put forward by the* … [complainants]" - it regarded payments made to other staff members as being directly related to their specific circumstances and not relevant to the complainants' cases.

- There were no additional monies held aside for the complainants in the superannuation fund and so in its opinion no interest could accrue. Any amount paid out to the complainants would have to be from the TAB's working profits, at the cost of its statutory stakeholders.

- Under the provisions of the *Statutory Corporations (Liability of Directors) Act 1996* each member of the Board of the TAB was required to act honestly, with care and diligence and in the interests of the Board at all times. It could not accept my recommendations because *"Put simply, if in exercising reasonable skill and care in the assessment of all the surrounding circumstances, and after seeking advice from TAB officers and professional advisers, members of the Board do not honestly believe the claims (with or without interest) are lawfully required, nor is it in the best interests of the TAB, then, in spite of any third party's recommendations, the duties of Board members are clear."*

- In its view the claims of the complainants did not fall within the parameters of an act of grace payment within the meaning of the relevant legislation (*Financial Administration and Audit Act 1985*, *Financial Regulations 1986* and Treasurer's Instruction 319.)

I therefore consulted with the Minister for Racing and Gaming in accordance with section 19(5) of the *Parliamentary Commissioner Act 1971*. The Minister involved the Executive Director of the Office of Racing, Gaming and Liquor in the matter who sought advice from the Crown Solicitor's Office (CSO). The CSO was of the view that the complainants' situations did fall within the parameters of the act of grace legislation, albeit for slightly different reasons than suggested by me. Although it still did not accept that the complainants' claims had substance, the TAB subsequently negotiated with the complainants who agreed to accept an act of grace payment and to withdraw their complaint to my Office. I understand that the payment was calculated on a basis similar to that which they had originally claimed – ie with interest calculated at CPI rates rather than at the higher fund earning rates I had recommended. Although my recommendation was not accepted in its entirety, I was satisfied with the final outcome - because it was satisfactory to the complainants and, in my opinion, the payments to the complainants would not have been achieved without my involvement.

CHAPTER 10

ADMINISTRATION AND STAFFING

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

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

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

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

Staffing

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

- David Robinson returned to the Office after a period of secondment with the Ministry of the Premier and Cabinet.
- Roger Watson was seconded to the Office of the Public Sector Standards Commissioner and spent most of the year away from my Office.
- Anthony Mazza was seconded to the Ministry of Fair Trading and subsequently resigned when he was appointed to a position in the Ministry.
- Sherry Armstrong was seconded to the Ministry of Fair Trading and was away from my Office for the last five months of the year.
- Tony Langmair was seconded to the Ministry of Justice and was away from my Office for the last month of the year.
- Gary Cooper and Robert Harvey resigned, Judith-Anne Tahir retired and Kathryn Choules ceased on the completion of the projects she had been working on.
- Penny Griffiths, Terri Vincent, Steve Stephenson and Robert Bateman were appointed as Investigating Officers. Steve Stephenson subsequently resigned.
- Joyce Wolfe was appointed as an Administrative Support Officer.

As at 30 June 2000 my Office was organised as shown in the chart on the next page.

PARLIAMENT

Ombudsman
Murray Allen

Police Complaints Group

Assistant Ombudsman
Peter Fisk

Principal Investigating Officer
Darryl Goodman

Senior Investigating Officers
Roger Watson
Eamon Ryan
Sharon Retzlaff
David Robinson

Investigating Officers
Sherry Armstrong
Jason Agar
Terri Vincent
Robert Bateman
Penny Griffiths

Enquiry Officer
Melissa Baxter

Other Public Sector Agencies Group

Deputy Ombudsman
Alex Errington

Legal Officers
Laurene Dempsey
Jane Burn

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

Investigating Officers
Ian Wilson
Kathleen Foley

Enquiry Officer
Grace Moro

Corporate Support Group

Executive Officer
Terry Waldron

Aboriginal Liaison Officer
Joseph Wallam

Information Technology Officer
Sam McComb

Enquiry Officers/Senior Administrative Assistants
Grace Warren
Kim Harms

Administrative Support Officers
Tina Morton
Irene Dumitro
Jacinta Mack
Joyce Wolfe

Secondment of police officers

Early in the year, during a meeting with the Acting Commissioner of Police, I raised the possibility of a pilot program involving the secondment of police officers to my Office. My objective in raising this was to allow police officers engaged in conducting internal investigations of complaints about police to be exposed to the philosophy and work practices that are followed by my staff in conducting reviews of police internal investigation files. The Acting Commissioner expressed interest in my proposal, as did Mr Barry Matthews shortly after he assumed duty as Commissioner.

Following discussions at officer level, the Police Service nominated two experienced officers for secondment and Senior Sergeants Larry Morgan and Brad Van Aken commenced working in my Office in February 2000. Both officers fitted in well and claim to have enjoyed the experience and to have benefited from it. My Office also found that being able to draw on their practical experience was of considerable assistance to the overall review process.

Messrs Morgan and Van Aken were due to return to normal police duties in September with at least one of them being replaced. It was also envisaged that one of my staff would be seconded to the Police Department but, due to other secondments already in place and some staff resignations, it has not been possible to follow through on that as yet.

Workplace agreement

The Office registered its first workplace agreement on 20 August 1997. It had a term of two years. Leading up to its expiry discussions were held with staff to produce a new agreement to replace the existing agreement. Terms of a new agreement were negotiated and it was registered on 8 September 1999. It has a term of two years.

Office accommodation

Since 1978 my Office and the Commonwealth Ombudsman's Perth Office have shared accommodation at 44 St Georges Terrace. This has proved to be very convenient over the years as members of the public are often unsure as to whether their complaint concerns a State or a Commonwealth agency. Consequently there are advantages if they can visit or contact the one "Ombudsman Centre". We share a reception area and telephone switchboard and this has provided a convenient "one stop" service for members of the public.

In my last report I mentioned that our then-existing lease would expire in February 2000 and proposals were being considered for more appropriate accommodation. Various alternatives were considered and it was decided to remain at our existing address but to accommodate all our investigating and administrative staff on the one floor. An adjacent floor was fitted out to meet our requirements and we moved over the weekend of 22/23 July 2000. Our reception area, interview rooms and conference room remain on the seventeenth floor, which now also accommodates the Commonwealth Ombudsman's Perth Office.

Information technology

There were no significant changes made to the Office's computing network during the year. The network operated efficiently and provided a stable service to users. A number of improvements were recommended by our consultants. These were accepted and were incorporated into a major network upgrade and reconfiguration coinciding with the Office's relocation in July 2000 which provided for a dedicated, purpose-built IT room.

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

Netsense continued to provide a range of IT support services. Mr Andrew Arena (W.A. Customware) and Mr Sam McComb continued to develop the Office's new complaints register database known as OSCAR (Ombudsman Statistical Complaints Automated Register). The system was successfully introduced on 1 July 2000.

Year 2000 compliance

As reported in last year's report, my Office's overall exposure to the predicted Year 2000 date-change problem was considered to be relatively minor, as action had been taken to identify and minimise any risks. As it turned out, 1 January 2000 came and went and we experienced only a very minor problem with our custom-designed database software. No work time was lost and the problem was rectified within hours at negligible cost.

Legislation impacting on the Office

My Office does not administer any legislation. However, the *Parliamentary Commissioner Act 1971* provides the basis for the existence of my Office and the *Telecommunications (Interception) Western Australia Act 1996* places certain statutory responsibilities on me and my officers. Other written laws which have an impact on the activities of my Office are:

- *Anti-Corruption Commission Act 1998*
- *Disability Services Act 1993*
- *Equal Opportunity Act 1984*
- *Financial Administration and Audit Act 1985*
- *Library Board of Western Australia Act 1951*
- *Occupational Health, Safety and Welfare Act 1987*
- *Public Sector Management Act 1994*
- *Royal Commissions Act 1968*
- *State Supply Commission Act 1991*
- *Workers Compensation and Assistance Act 1981*
- *Workplace Agreements Act 1993*

Freedom of information

My Office is an exempt agency under the *Freedom of Information Act 1992*. However, it has always been my policy to apply the spirit of the Act, where possible, to documents held by, or originating from, my Office provided their release would not contravene the secrecy provision of the *Parliamentary Commissioner Act 1971*.

Agencies which receive applications for access to documents which have originated from my Office or have been specifically prepared for my Office are required to notify me of such applications so that I have the opportunity to point out any sensitivities in the documents.

Public Sector Management Act

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

In accordance with section 31(1) of the *Public Sector Management Act 1994*, in the administration of the Office during 1999/2000 I have complied with the *Public Sector Standards in Human Resource Management*, the *Public Sector Code of Ethics* and the Office *Code of Conduct*.

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

Occupational Safety and Health

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

Equal Employment Opportunity

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

Disability services

There have been no complaints received during the year regarding the Office's provision of appropriate facilities or access to services.

Electoral Act 1907

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

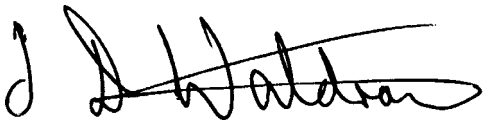
CHAPTER 11

FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2000

The accompanying financial statements relating to the Office of the Parliamentary Commissioner for Administrative Investigations have been prepared in compliance with the provisions of the *Financial Administration and Audit Act 1985* from proper accounts and records to present fairly the financial transactions for the year ending 30 June 2000 and the financial position as at 30 June 2000.

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

Accountable Officer



Principal Accounting Officer

25 August 2000

Parliamentary Commissioner for Administrative Investigations
Operating Statement for the year ended 30 June 2000

	Notes	1999/00 $	1998/99 $
COST OF SERVICES			
Operating expenses			
Salaries	4	1,921,006	1,865,928
Superannuation		207,888	157,445
Other staffing costs		29,025	47,714
Travelling expenses		8,624	13,858
Depreciation	5	49,240	41,866
Administration expenses	6	342,649	372,559
Accommodation expenses	7	128,899	129,458
Net loss on disposal of non-current assets	9	0	1,449
TOTAL COST OF SERVICES		2,687,331	2,630,277
Operating revenues			
Revenue from other services	10	1,838	512
Grant from Commonwealth	10	3,000	5,000
		4,838	5,512
NET COST OF SERVICES		2,682,493	2,624,765
REVENUES FROM GOVERNMENT			
Appropriations drawn	12	2,436,000	2,294,000
Resources received free of charge	8	53,660	98,730
Liabilities assumed by the Treasurer	11	207,888	157,445
TOTAL REVENUES FROM GOVERNMENT		2,697,548	2,550,175
CHANGE IN NET ASSETS RESULTING FROM OPERATIONS		15,055	(74,590)

Parliamentary Commissioner for Administrative Investigations
Statement of Financial Position as at 30 June 2000

	Notes	1999/00 $	1998/99 $
CURRENT ASSETS			
Cash and amounts in suspense	13	374,738	277,788
Prepayments	14	2,353	10,611
Accounts receivable	15	235	0
Total current assets		377,326	288,399
NON-CURRENT ASSETS			
Furniture and fittings	16	0	2,981
Computer equipment	16	63,883	48,716
Office equipment	16	16,853	26,548
Office establishment	16	0	0
Total Non Current Assets		80,736	78,245
TOTAL ASSETS		458,062	366,644
CURRENT LIABILITIES			
Accounts payable	17	34,061	27,486
Accrued salaries	18	40,907	29,995
Employee entitlements	19	312,615	239,312
Total current liabilities		387,583	296,793
NON-CURRENT LIABILITIES			
Employee entitlements	19	185,652	200,079
Total Non Current Liabilities		185,652	200,079
Total liabilities		573,235	496,872
EQUITY			
Accumulated surplus	20	(120,290)	(135,345)
Asset revaluation reserve	21	5,117	5,117
Total equity		(115,173)	(130,228)
TOTAL LIABILITIES AND EQUITY		458,062	366,644

Parliamentary Commissioner for Administrative Investigations
Statement of Cash Flows for the year ended 30 June 2000

	Notes	1999/00 $ Inflows (Outflows)	1998/99 $ Inflows (Outflows)
CASH FLOWS FROM GOVERNMENT			
Receipts from recurrent appropriations		2,087,000	2,001,000
Receipts from capital appropriations		63,000	40,000
Receipts from Special Acts appropriations		286,000	253,000
NET CASH PROVIDED BY GOVERNMENT		2,436,000	2,294,000
Utilised as follows:			
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Salaries		(1,851,218)	(1,778,689)
Other staffing costs		(29,025)	(47,714)
Travelling expenses		(8,624)	(13,858)
Administration		(289,838)	(260,366)
Accommodation		(117,332)	(127,977)
Receipts			
Revenue from services		1,838	512
Grant from Commonwealth		3,000	5,000
NET CASH (USED IN)/ FROM OPERATING ACTIVITIES	22	(2,291,199)	(2,223,092)
CASH FLOWS FROM INVESTING ACTIVITIES			
Payments for purchase of non-current assets		(47,851)	(45,490)
Receipts from the sale of non-current assets		0	2,670
NET CASH (USED IN)/ FROM INVESTING ACTIVITIES		(47,851)	(42,820)
NET INCREASE(DECREASE) IN CASH HELD		96,950	28,088
Cash at the beginning of the reporting period		277,788	249,700
CASH AT THE END OF THE REPORTING PERIOD	13	374,738	277,788

Parliamentary Commissioner for Administrative Investigations
Summary of Consolidated Fund Appropriations and Revenue Estimates
for the year ended 30 June 2000

		1999/2000			1998/99		
		Estimate $	Actual $	Variation $	Estimate $	Actual $	Variation $
RECURRENT							
Amount required to fund outputs for the year		2,081,000	2,099,000	(18,000)	2,016,000	2,016,000	0
Less: Retained revenue - Section 23A of the Financial Administration and Audit Act		12,000	12,000	0	15,000	15,000	0
Item 4	Amount provided for recurrent services for the year	2,069,000	2,087,000	(18,000)	2,001,000	2,001,000	0
	Amount authorised by other statutes -						
	Parliamentary Commissioner Act 1971	253,000	286,000	(33,000)	253,000	253,000	0
Total recurrent services		2,322,000	2,373,000	(51,000)	2,254,000	2,254,000	0
CAPITAL							
Item 115	Amount provided for capital services for the year	63,000	63,000	0	40,000	40,000	0
GRAND TOTAL		2,385,000	2,436,000	(51,000)	2,294,000	2,294,000	0
Details of Expenditure							
RECURRENT							
Outputs							
	Output 1 - Police Service	1,120,320	1,014,815	(105,505)	1,015,000	987,908	(27,092)
	Output 2 - Other Public Sector Organisations	980,280	1,048,582	68,302	967,000	1,028,612	61,612
	Output 3 - Information and Advisory Services	186,720	195,687	8,967	264,000	187,476	(76,524)
	Output 4 - Telecommunications Interception Audit	46,680	43,953	(2,727)	23,000	37,978	14,978
		2,334,000	2,303,037	(30,963)	2,269,000	2,241,974	(27,026)
Less: Retained revenue		(12,000)	(4,838)	7,162	(15,000)	(5,512)	9,488
Changes in operating account balances		0	74,801	74,801	0	17,538	17,538
TOTAL		2,322,000	2,373,000	51,000	2,254,000	2,254,000	(0)
CAPITAL							
Capital Expenditure		63,000	47,851	(15,149)	40,000	35,450	(4,550)
Changes in operating account balances			15,149	15,149		4,550	4,550
		63,000	63,000	0	40,000	40,000	0
GRAND TOTAL OF APPROPRIATION		2,385,000	2,436,000	51,000	2,294,000	2,294,000	(0)

Parliamentary Commissioner for Administrative Investigations
Output Schedule of Expenses and Revenues
for the year ended 30 June 2000

Output	Police Service		Other Public Sector Organisations		Information and Advisory Services		Telecommunications Interception Audit		Total	
	1999/00 $	1998/99 $	1999/00 $	1998/99 $	1999/00 $	1998/99 $	1999/00 $	1998/99 $	1999/00 $	1998/99 $
Operating expenses										
Salaries	848,750	893,379	887,384	699,207	150,292	238,556	34,580	34,786	1,921,006	1,865,928
Superannuation	91,470	61,402	95,629	66,631	16,631	27,038	4,158	2,374	207,888	157,445
Other staffing costs	14,051	20,781	12,665	16,814	1,849	8,894	460	1,225	29,025	47,714
Travelling expenses	2,129	568	633	4,987	5,776	8,275	86	28	8,624	13,858
Depreciation	23,645	20,490	20,734	16,926	3,943	3,349	918	1,101	49,240	41,866
Administration expenses	164,894	144,085	144,624	120,350	26,567	81,043	6,564	27,081	342,649	372,559
Accommodation expenses	61,872	64,586	54,137	53,569	10,312	7,898	2,578	3,405	128,899	129,458
Net loss on disposal of non-current assets	0	646	0	523	0	242	0	38	0	1,449
TOTAL OPERATING EXPENSES	1,206,811	1,205,937	1,215,806	979,007	215,370	375,295	49,344	70,038	2,687,331	2,630,277
Operating revenues										
Revenue from other services	882	512	772	0	147	0	37	0	1,838	512
Grant from Commonwealth	0	0	0	0	3,000	5,000	0	0	3,000	5,000
TOTAL	882	512	772	0	3,147	5,000	37	0	4,838	5,512
NET COST OF SERVICES	1,205,929	1,205,425	1,215,034	979,007	212,223	370,295	49,307	70,038	2,682,493	2,624,765
Revenues from Government										
Appropriations drawn	1,169,280	1,028,606	1,023,120	966,515	194,880	259,052	48,720	39,827	2,436,000	2,294,000
Resources received free of charge	25,757	35,518	22,537	35,092	4,293	7,898	1,073	20,222	53,660	98,730
Liabilities assumed by the Treasurer	91,470	61,125	95,629	67,657	16,631	26,334	4,158	2,329	207,888	157,445
TOTAL REVENUES FROM GOVERNMENT	1,286,507	1,125,249	1,141,286	1,069,264	215,804	293,284	53,951	62,378	2,697,548	2,550,175
CHANGE IN NET ASSETS RESULTING FROM OPERATIONS	80,578	(80,176)	(73,748)	90,257	3,581	(77,011)	4,644	(7,660)	15,055	(74,590)

Notes to the Financial Statements for the year ended 30 June 2000

1. Departmental mission and funding

The mission of the 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."**

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

2. Significant accounting policies

The following accounting policies have been adopted in the preparation of the financial statements. Unless otherwise stated these policies are consistent with those adopted in the previous year.

(a) General Statement

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

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

(b) Basis of Accounting

The financial statements have been prepared in accordance with the Australian Accounting Standard AAS29.

The statements have been prepared on the accrual basis of reporting under the historical cost convention, with the exception that certain non-current physical assets have been introduced at written down current cost as at 30 June 1997. Additions to non-current physical assets since valuation are stated at cost.

(c) Appropriations

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

(d) Operating accounts

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

(e) Depreciation of non-current assets

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

Useful lives for each class of depreciable asset are:

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

(f) Employee entitlements

Annual and long service leave

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

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

Superannuation.

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

The superannuation expense comprises the following elements:

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

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

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

The total unfunded liability for pensions and transfer benefits assumed by the Treasurer at 30 June 2000 in respect of current employees is $207,888 (1998/99 - $193,370) and pensions payable to retirees is nil (1998/99 - nil).

(g) Leases

The Office has entered into an operational lease arrangement for motor vehicles where the lessors effectively retain all the risks and benefits incidental to ownership of the items held under the operating lease. Equal instalments of the lease payments are charged to the operating statement over the lease term as this is representative of the pattern of benefits to be derived from the leased property. Office accommodation occupied by the Office is under a head lease between the lessor and the Commercial Property Branch of Treasury.

(h) Accounts Payable and Accrued Salaries

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

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

Accrued salaries represent the amount due to staff but unpaid at the end of the financial year, as the end of the last pay period for that financial year does not coincide with the end of the financial year. Accrued salaries are settled within a few days of the financial year end. The Office considers the carrying amount of accrued salaries to be equivalent to the net fair value.

(i) Net Fair Values of Financial Assets and Liabilities

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

3. Outputs of the Office

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

The outputs of the Office and their objectives are:

Output 1: POLICE SERVICE
Description: Provide an effective and efficient system of investigating, and reviewing the adequacy of internal investigations of, complaints about the Police Service and Westrail Special Constables.

Output 2: OTHER PUBLIC SECTOR ORGANISATIONS
Description: Provide an effective and efficient system of investigating complaints about public sector organisations other than the Police Service and Westrail Special Constables.

Output 3: INFORMATION AND ADVISORY SERVICES
Description: A range of activities is undertaken to provide members of the public and personnel of public sector organisations about the role of the Ombudsman and advice about good administrative practices.

Output 4: TELECOMMUNICATIONS INTERCEPTION AUDIT
Description: Perform the duties of Principal Inspector and Inspectors under the *Telecommunications (Interception) Western Australia Act 1996*.

The Ministry of the Premier and Cabinet provides assistance with the provision of Corporate Services to support the Commissioner's functions.

		1999/00 $	1998/99 $
4.	**Salaries**		
	Salaries	1,862,130	1,795,205
	Change in annual and long service leave provision	58,876	70,723
		1,921,006	1,865,928
5.	**Depreciation**		
	Furniture and fittings	2,981	3,700
	Computer equipment	36,564	29,284
	Office equipment	9,695	8,882
	Office establishment	0	0
		49,240	41,866
6.	**Administration expenses**		
	Expenses directly incurred by the Office	289,945	275,110
	Resources received free of charge (see note 8)	52,704	97,449
		342,649	372,559
7.	**Accommodation expenses**		
	Expenses directly incurred by the Office	127,943	128,177
	Resources received free of charge (see note 8)	956	1,281
		128,899	129,458
8.	**Resources received free of charge**		
	Administration expenses	52,704	97,449
	Accommodation expenses	956	1,281
		53,660	98,730
	Resources received free of charge have been determined on the basis of the following estimates provided by agencies.		
	Office of the Auditor General - Audit services	7,000	7,000
	Ministry of the Premier and Cabinet		
	- Corporate and Business Services Division	41,622	71,758
	Ministry of Justice - legal services	4,082	18,380
	Treasury - property management	956	1,592
		53,660	98,730
	These costs have been included in expenses for the year in order to disclose an accurate cost of services.		
9.	**Net loss on disposal of non-current assets**		
	Office equipment	0	631
	Furniture and fittings	0	3,115
	Computer equipment	0	(2,297)
		0	1,449
	Gross proceeds on disposal on non-current assets	0	2,670
10.	**Operating Revenue**		
	Departmental revenue	1,838	512
		1,838	512
	Grant from Commonwealth - Indian Ocean Territories (also see note 27)	3,000	5,000
11.	**Liabilities assumed by the Treasurer**		
	Superannuation	207,888	157,445
12.	**Appropriations drawn**		
	Consolidated Fund		
	Recurrent	2,087,000	2,001,000
	Capital	63,000	40,000
	Special Acts	286,000	253,000
		2,436,000	2,294,000

		1999/00 $	1998/99 $
13.	**Cash and amounts in suspense**		
	Operating Account	338,738	248,788
	Accrued Salaries Suspense Account	36,000	29,000
		374,738	277,788
	The Accrued Salaries Suspense Account is represented by a cash balance and is therefore equivalent to the net fair value.		
14.	**Prepayments**		
	Accommodation	0	10,611
	Other	2,353	0
		2,353	10,611
15.	**Accounts Receivable**		
	GST Receivable	235	0
		235	0
16.	**Property, furniture, fittings, equipment and software**		
	Furniture and fittings		
	At cost or valuation	18,500	18,500
	Accumulated depreciation	(18,500)	(15,519)
		0	2,98
	Computer equipment		
	At cost or valuation	173,696	121,965
	Accumulated depreciation	(109,813)	(73,249)
		63,883	48,716
	Office equipment		
	At cost or valuation	52,450	52,450
	Accumulated depreciation	(35,597)	(25,902)
		16,853	26,548
	Office establishment		
	At cost or valuation	5,116	5,116
	Accumulated depreciation	5,116)	(5,116)
	Total	0	0
	At cost and valuation	249,762	198,031
	Accumulated depreciation	(169,026)	(119,786)
		80,736	78,245
	A number of assets of value less than $1,000 individually were written off during the previous year. These include:		
	Office equipment - Cost		896
	Written Down Value		354
	Computer hardware- Cost		6,136
	Written Down Value		0
	Furniture and fittings- Cost		8,290
	Written Down Value		3,115
17.	**Accounts payable**		
	Administration expenses	34,061	27,486
	The carrying amount of accounts payable approximates their net fair values.		

	1999/00 $	1998/99 $

18. Accrued Salaries

Amounts owing for the working days between the end of the last pay period for the financial year and 30 June.

2000 - 6 working days	40,907	
1999 - 4 working days		29,995

Accrued salaries are settled within a few days of the financial year end. The carrying amount of accrued salaries is equivalent to the net fair value.

19. Employee entitlements

Current liabilities		
Liability for annual leave	128,188	135,061
Liability for long service leave	184,427	104,251
	312,615	239,312
Non-current liabilities		
Liability for long service leave	185,652	200,079
	498,267	439,391

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

20. Equity

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

Accumulated surplus/(deficit)		
Balance at the beginning of the year	(135,345)	(60,755)
Change in net assets resulting from operations	15,055	(74,590)
Balance at the end of the year	(120,290)	(135,345)

21. Asset revaluation reserve

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

22. Reconciliation of net cash used in operating activities to net cost of services

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

Net cash (used in)/from operating activities	(2,291,199)	(2,223,092)
(Increase)/decrease in accrued salaries	(10,912)	(12,730)
(Increase)/decrease in liability for employee entitlements	(58,876)	(70,723)
(Increase)/decrease in accounts payable	(2,695)	(14,744)
Profit/(loss) on disposal of assets	0	(1,449)
Depreciation and amortisation	(49,240)	(41,866)
Increase/(decrease) in prepayments	(8,258)	(3,986)
Increase/(decrease) in GST Receivable	235	0
Resources received free of charge	(53,660)	(98,730)
Liabilities assumed by the Treasurer	(207,888)	(157,445)
Net cost of services (operating statement)	(2,682,493)	(2,624,765)

	1999/00 $	1998/99 $

23. Lease Commitments

Motor Vehicles

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

not later than one year	15,244	13,478
later than one year but not later than two years	15,244	13,478
	30,488	26,956

Property Lease

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

not later than one year	127,943	84,880
	127,943	84,880

24. Remuneration and retirement benefits of Senior Officers

Remuneration

The number of senior officers whose total of fees, salaries and other benefits received, or due and receivable, for the financial year, who fall within the following bands is:

$		
90,001 - 100,000	1	1
120,001 - 130,000	-	1
140,001 - 150,000	1	-
150,001 - 160,000	-	1
170,001 - 180,000	1	-

The total remuneration of senior officers was:	420,653	369,826

The following amounts in respect of retirement benefits for senior officers were paid or became payable for the financial year:

Retirement benefits	0	0
Redundancy payments	0	0

Notional contributions to Gold State Superannuation Scheme and West State Superannuation Scheme	30,770	24,444

Number of senior officers who are members of the Superannuation and Family Benefits Act Scheme.	0	0

25. Explanatory Statement

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

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

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

		Estimate 1999/00 $	Actual 1999/00 $	Variance $
Outputs	Police Service	1,132,240	1,014,815	(117,425)
	Other Public Sector Organisations	992,460	1,048,582	56,122
	Information and Advisory Services	220,040	195,687	(24,353)
	Telecommunications Interception Audit	40,260	43,953	3,693
	TOTAL	2,385,000	2,303,037	(81,963)

Explanation of variations

The overall variation between actual expenditure and the estimate was 3.4%. Expenditure was less than the estimate by $81,963.
There were minor variances between the outputs with the most significant being Police Service where expenditure was less than the estimate by 8.7% or $117,425. This was partially off-set by expenditure on Information and Advisory Services exceeding the estimate by 5.65% or $56,122.

By line item:
Other Staffing Costs - expenditure was less than the estimate by 40.09%or $26,263. The decrease in expenditure was mainly due to a reduction in staff travel.

Communications - expenditure was less than the estimate by 38.81% or $21,347. The decrease in expenditure was mainly due to expected increases in telephone charges not arising and a decrease in courier services.

Services and Contracts - expenditure exceeded the estimate by 21% or $55,563. This was mainly due to reduced lease expenses of $51,306 due to the negotiation of a new lease and additional consultant expenses of $100,020 relating to the continued development of the Office's complaint maintenance register.

Capital expenditure was less than the estimate by $15,149. Expenditure was deferred until the completion of the office rearrangement and refurbishment.

The Office received supplementary funding of $51,000. $28,000 related to amounts authorised by other statutes and $23,000 related to the 1% Government incentive.

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

		Actual 1999/00 $	Actual 1998/99 $	Variance $
Outputs	Police Service	1,014,815	987,908	(26,907)
	Other Public Sector Organisations	1,048,582	1,028,612	(19,970)
	Information and Advisory Services	195,687	187,476	(8,211)
	Telecommunications Interception Audit	43,953	37,978	(5,975)
	TOTAL	2,303,037	2,241,974	(61,063)
	Departmental Revenue	4,838	5,512	674

Explanation of variations
The increase in actual recurrent expenditure for 1999/2000 compared to 1999/98 was $61,063. There were no significant variances in the outputs between the years. Capital expenditure was greater than the previous financial year by $12,401 and was due to current funding.
Departmental revenue was limited to $3,000 toward Indian Ocean Territories expenditure and $1838 for recoups of recurrent expenditure.

26. Additional Financial Instruments Disclosures

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

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

27. Indian Ocean Territories

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

	1999/00 $	1998/99 $
Opening Balance	20,000	15,000
Receipts	3,000	5,000
Payments	18,527	0
Closing Balance	4,473	20,000

Auditor General

To the Parliament of Western Australia

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS FINANCIAL STATEMENTS FOR THE YEAR ENDED JUNE 30, 2000

Scope

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

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

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

Audit Opinion

In my opinion,

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

(ii) the Operating Statement, Statement of Financial Position, Statement of Cash Flows, Output Schedule of Expenses and Revenues and Summary of Consolidated Fund Appropriations and Revenue Estimates and the Notes to and forming part of the financial statements are based on proper accounts and present fairly in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and the Treasurer's Instructions, the financial position of the Parliamentary Commissioner at June 30, 2000 and the results of its operations and its cash flows for the year then ended.

D D R PEARSON
AUDITOR GENERAL
October 31, 2000

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THE OMBUDSMAN'S MISSION

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.

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