



OMBUDSMAN

Western Australia

**33rd Annual Report of the
Parliamentary Commissioner for
Administrative Investigations**

Annual Report 2004

Our 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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OMBUDSMAN

Western Australia

Mr President, Mr Speaker

Annual Report of the Parliamentary Commissioner for Administrative Investigations for the year ended 30 June 2004

In accordance with section 64(1) of the *Financial Administration and Audit Act 1985* (as modified by Part 1 of Schedule 1A), I submit this report for the year ended 30 June 2004, together with copies of the opinions of the Auditor General.

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

Deirdre O'Donnell
**Parliamentary Commissioner
for Administrative Investigations**

20 October 2004

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The year's work

The reporting year that ended on 30 June 2004 was a significant one for our Office. We underwent many changes, including to our physical environment, our work practices and our overall staff profile. Throughout all these changes my staff have continued to produce high quality investigations and to maintain a high level of professionalism and commitment, which I wish to acknowledge here.

Highlights of the year included:

- the successful transition of our police misconduct jurisdiction to the newly created Corruption and Crime Commission (CCC), which commenced operations on 1 January 2004
- trialling of new work processes which have led to improvements in our responsiveness to complainants and in the quality of our assessment of incoming complaints
- a reduction in old matters on hand as a result of these new work processes
- transition to an open plan work environment on level 16 of St Martins Tower, which has strengthened our team-based approach to investigations and enhanced the capacity of our investigation staff
- plans for combining a shared corporate services function between the Ombudsman and the Office of the Public Sector Standards Commissioner were finalised; the corporate services staff of our two organisations were collocated on level 12 of St Martins Tower; and in October 2003 a Manager Corporate Services (Paul O'Connor) was appointed to manage this area and oversee the implementation of service improvements across a range of core corporate services activities including information technology, records management and occupational health and safety
- successful completion of the collocation exercise, which commenced the previous year, with the arrival of the Office of the Information Commissioner into separate secure premises on level 16
- an expanded outreach program to both community organisations and agencies within our jurisdiction, leading to a better understanding of the role and responsibilities of the Ombudsman and thus assisting in improving our accessibility
- significant progress in our corporate governance arrangements, including our risk management, business planning and overall compliance program.

We started the year with 1,016 allegations on hand. Over the course of the year we received 2,136 complaints containing 2,555 allegations, and we finalised 1,997 complaints involving 2,577 allegations. We also transferred 521 allegations to the CCC with effect from 1 January 2004. We finished the year with 473 allegations on hand.

The number of allegations received was the lowest since 1993. The number of allegations on hand is also lower than at any time over the past 14 years. However, this level reflects both the finalisation of matters and also the transfer of the 521 matters to the CCC with the transfer to that agency of the responsibility for investigating allegations of crime and misconduct involving police officers and railway special constables from 1 January 2004.

What does the Ombudsman do?

The *Parliamentary Commissioner Act 1971* (the Act) determines that the main role of the Ombudsman is to investigate administrative acts or omissions in State Government agencies and local government authorities; to investigate complaints about the conduct of police officers; and to make recommendations to redress the effect of defective administration or police misconduct and to prevent its recurrence. (As from 1 January 2004, the references to police conduct matters have been removed from our Act.)

We fulfil this role in the following ways:

- by providing an efficient and effective complaint handling system;
- by assisting in improving the quality of, and public confidence in, public administration by identifying and investigating areas of defective administration - whether or not complaints have been received;
- by developing community awareness of the Ombudsman and services provided by the Ombudsman;
- by developing the understanding of the role of the Ombudsman in State Government agencies and local governments; and
- by assisting State Government agencies and local governments to maximise the efficiency and effectiveness of their own internal complaint handling systems.

How is the Ombudsman regulated?

The Act contains various provisions which regulate the Ombudsman, as follows:

- the Ombudsman is an independent office responsible to Parliament - not to a Minister of the Crown
- the Ombudsman may, at any time, lay before each House of Parliament a report on any matter arising in connection with the exercise of her functions
- the Act gives the Ombudsman wide investigative powers, including those of a Royal Commission - subject to the Rules of Parliament, the Ombudsman's procedures on investigation may be regulated in such a manner as she thinks fit
- the Ombudsman cannot investigate a decision of a Minister of the Crown, but may investigate a recommendation made to a Minister
- investigations may be commenced by the Ombudsman in response to the following:
 - a written complaint from any person or organisation affected in his or its personal capacity by an administrative act or omission of a department or authority under the Ombudsman's jurisdiction
 - on reference by either House of Parliament, a Committee of either House, or a Joint Committee of both Houses in respect of a matter within jurisdiction
 - on the Ombudsman's own motion
- any person who is involved in an investigation may be represented by counsel or otherwise
- the Ombudsman cannot in any report make any adverse comment about any person unless that person is given the opportunity of responding to it and a response is fairly set out in the report

- investigations are conducted in private and the Ombudsman can only disclose information or make a statement about an investigation subject to compliance with specified provisions of the Act
- the Ombudsman has a discretion whether to commence or continue an investigation
- provision is made for consultation between the Ombudsman and the Minister responsible for the agency under investigation
- as a result of an investigation, the Ombudsman may recommend to the Chief Executive Officer that redress be given to a complainant and that practices, procedures or legislation be reviewed to prevent a recurrence
- if the Ombudsman's recommendations are not accepted within a reasonable time frame, she can send to the Premier a copy of the report, the recommendations and the relevant correspondence – the Act provides that the Ombudsman may table those papers in each House of the Parliament.

In respect of complaints about the conduct of a police officer (the jurisdiction which transferred to the CCC on 1 January 2004) the Ombudsman could not investigate such a complaint until the Commissioner of Police had been given a reasonable opportunity to conduct his own investigation.

How are decisions about investigations made?

The Act provides wide ranging discretionary powers to assist in determining the scope and nature of investigations. At the individual complaint level, in accordance with the Act, all complaints are assessed against the following criteria before an investigation commences:

- 1. Basic jurisdiction issue – agency complained about** - First, we ascertain whether the agency complained about is within the Ombudsman's jurisdiction – i.e. a government department or authority, or local government. Certain agencies are outside our jurisdiction, as are decisions made by Cabinet or Ministers or the actions of legal advisers.
- 2. Other key jurisdiction issues** – We assess whether:
 - the action or decision complained of relates to a matter of administration
 - the action complained of was in the exercise of a power or function
 - the complainant is personally affected by the action or decision
 - the complainant became aware of the action or decision complained of within 12 months of making the complaint
 - the complainant has or had a legal remedy or a right of review or appeal.
- 3. Discretion whether or not to investigate** - We can exercise our discretion whether or not to investigate in situations where:
 - special circumstances exist for matters over 12 months old
 - the complainant has a legal remedy or right of review or appeal, in which case we consider whether it is reasonable to expect the complainant to resort to that remedy
 - a complaint appears to us to be frivolous, trivial, vexatious, or not in good faith
 - an investigation does not appear to be warranted in the circumstances, such as where the agency is still investigating the complaint or a complaint has not yet been made to the agency, or where another complaint-taking body may be more appropriate

- the complainant does not have a sufficient personal interest in the matter.

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

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

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

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

At the systemic level, investigations are more likely to proceed on a formal basis and involve the use of the Ombudsman's Royal Commission powers. In addition to the above criteria, we also consider the following when making decisions about whether to investigate an issue, as well as how the investigation should be conducted:

- public interest in the matter
- public policy implications of the matter
- whether there is a reasonable prospect of proving an allegation or group of allegations
- whether any practical outcome can be achieved for the complainant, due to the passage of time
- whether important systemic policy, procedural or legislative issues are involved
- available resources.

Complaints and allegations received

The statistics relating to the work of the Office record both complaints and allegations (i.e. a complaint can involve one or more allegations) in an attempt to reflect the differing amount of work involved. However, it is important to bear in mind that the amount of work involved in an investigation varies considerably from case to case. As there is no quantitative or qualitative weighting of relative importance or complexity, allegations requiring major investigations are treated the same way, statistically, as straightforward ones.

Unlike some other Ombudsman legislation, the *Parliamentary Commissioner Act 1971* does not provide for the receipt of oral complaints. This, together with other variations in jurisdiction and the differences in recording criteria, makes valid comparisons between the statistics of Ombudsmen's offices in Australia or elsewhere problematic. In particular, it should be noted that the Office handles thousands of telephone enquiries each year, frequently from members of the public seeking information rather than wishing to make a complaint. Many have a grievance but require assistance to establish how and to whom a complaint can be made. As far as possible, we provide advice and assistance on these occasions.

The Office also has an important referral role. Even though we may be unable to be of direct assistance to people who approach the Office about matters that are not within jurisdiction, it is often possible to refer them to another appropriate source of assistance. Therefore, an outcome of 'no jurisdiction' does not necessarily mean that the Office has not been of any assistance to the person who consulted us.

Table 1.1 shows the number of complaints and allegations received over the past five years. It should be noted that the 2004 figures reflect the transfer of the police complaints jurisdiction to the CCC on 1 January 2004.

TABLE 1.1		Complaints and allegations received 2000 to 2004				
		2000	2001	2002	2003	2004
Complaints received						
Police		1,176	1,297	1,267	1,170	789
Railway special constables		50	43	29	14	9
Other State government departments and agencies and local governments		1,441	1,571	1,642	1,435	1,338
TOTAL		2,667	2,911	2,938	2,619	2,136
Allegations received						
Police		1,996	1,986	1,811	1,574	872
Railway special constables		86	88	53	20	13
Other State government departments and agencies and local governments		1,756	1,974	2,059	1,878	1,670
TOTAL		3,838	4,048	3,923	3,472	2,555

Figure 1.1 illustrates the number of allegations received since 1990.

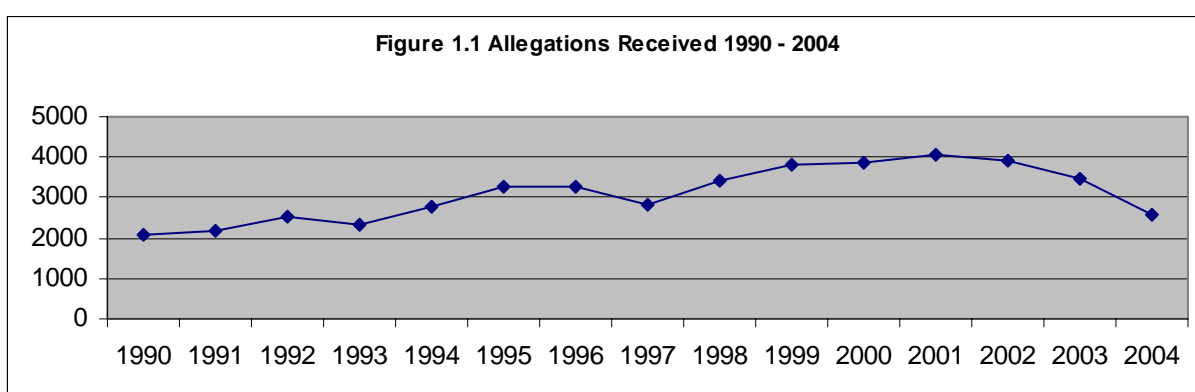


Table 1.2 shows the geographical origin of the allegations received, based on the electoral districts of Western Australia.

TABLE 1.2		Geographical origin of allegations received 2000 to 2004				
		2000	2001	2002	2003	2004
Number of allegations received						
Metropolitan electorates		2,804	3,015	2,857	2,477	1,903
Country electorates		935	986	968	942	610
Outside WA		99	47	98	53	42
TOTAL		3,838	4,048	3,923	3,472	2,555
Number of allegations per 10,000 electors						
Metropolitan electorates		32	30	31	28	21
Country electorates		30	32	32	30	19

Complaints and allegations finalised

During the year 1,997 complaints containing 2,577 allegations were finalised in the manner shown in Table 1.3 below.

TABLE 1.3		Manner in which allegations finalised	
		Number of allegations	% (approx)
Finalised at initial stage			
No jurisdiction		382	15
Discretion exercised not to investigate		690	27
Withdrawn or not proceeded with		113	4
Finalised to satisfaction of complainant		93	4
Referred back to agency		350	14
Finalised by completed investigation or review of internal investigation			
Withdrawn or not proceeded with		117	4
Could not be determined		54	2
Sustained partly		53	2
Sustained wholly or substantially		165	6
Not sustained		560	22
TOTAL ALLEGATIONS FINALISED		2,577	100

Assistance to complainants

Complainants are especially interested in whether we can provide some form of assistance or action to remedy the problem they have complained about. Table 1.4 shows the extent to which it was possible to obtain some form of benefit for complainants or a change to the law, or the practice or procedure of a government agency.

TABLE 1.4	Assistance provided - allegations finalised
	Number of actions
Direct benefit for complainant	
Apology given	34
Act of grace payment made	12
Action/decision expedited	10
Explanation or reasons provided by agency	12
Monetary charge reduced, withdrawn or refunded	25
Reversal or significant variation of original decision	21
Criminal, disciplinary or infringement charge reduced or withdrawn	5
Other assistance	19
Changes to law, practice or procedure	97

Table 1.5 (at page 9) gives details of allegations finalised in respect of individual departments, authorities and local governments.

Following our investigation, we find that a large proportion of allegations cannot be sustained. At times this may be because there is a conflict of evidence that cannot be resolved. However, in many cases we conclude that the agency has in fact acted reasonably and within its powers. Although it may often appear to the complainant that a public officer has acted unreasonably, in our experience the cause is far more likely to be inadvertence or human error. However, we remain vigilant for evidence of poor systems or processes, and always aim to ensure that the circumstances which gave rise to a particular complaint do not recur.

Telecommunications Interception

The *Telecommunications (Interception) Western Australia Act 1996* (the Act) was proclaimed by His Excellency the Governor of the State of Western Australia on 17 December 1996. The Act came into operation on 24 December 1996 when the proclamation by the Governor was published in the Government Gazette. The *Telecommunications (Interception) Western Australia Regulations 1996* (the Regulations) made pursuant to the Act were also published in the Government Gazette on 24 December 1996 and came into operation on the same day as the Act.

The Act designated the Western Australia Police Service as an "eligible authority", which in turn allowed it to be declared an "agency" for the purposes of the *Telecommunications (Interception) Act 1979* of the Commonwealth (the Commonwealth Act). Final approvals for that declaration were completed on 15 July 1997, which was the day of its gazettal by the Commonwealth Attorney General.

The Regulations prescribe the Parliamentary Commissioner for Administrative Investigations (the Ombudsman) as the Principal Inspector for the purposes of the Act and officers of the Ombudsman as Inspectors.

The *Telecommunications (Interception) Western Australia Amendment Act 2000* was proclaimed by His Excellency the Governor on 9 May 2000 and came into operation the following day. It designated the now defunct Anti-Corruption Commission (ACC) as an eligible authority, which in turn allowed it to be declared an agency for the purposes of the Commonwealth Act. This declaration took place on 24 September 2001.

The *Royal Commission (Police) Act 2002* was assented to by His Excellency the Governor on 28 June 2002 and came into operation that day. It included provision to amend the Act to designate the Police Royal Commission as an eligible authority under the Act. It also contained provision for the Commission to be declared an agency for the purposes of the Commonwealth Act. However, the

Commonwealth Government held the view that it would be inappropriate for the Commission to conduct interceptions in its own right and did not effect the necessary declaration. As a result, the Commission did not have the power to carry out its own interceptions but was eligible to receive product of interceptions carried out by other agencies.

The *Corruption and Crime Commission Act 2003* was assented to by His Excellency the Governor on 3 July 2003 and proclaimed to commence on 1 January 2004. It designated the Corruption and Crime Commission (CCC) as an eligible authority under the Act, which in turn allowed it to be declared an agency for the purposes of the Commonwealth Act. This declaration took place on 24 March 2004.

Subsection 10(2) of the Act provides that:

The principal inspector is to inspect the eligible authority's records at least twice during each financial year in order to ascertain the extent to which the authority's officers have complied with Part 2 since the last inspection under this Part of the authority's records.

Subsection 11(2) of the Act provides that:

The principal inspector, as soon as practicable, and in any event within 3 months, after the end of each financial year, is to report to the Minister in writing, in relation to the eligible authority, about the results of the inspections under section 10(2), during that financial year, of the authority's records.

In accordance with subsection 11(2), a report on the inspections carried out in relation to the Western Australia Police Service under subsection 10(2) during the financial year ended 30 June 2003 was presented to the Minister for Police. A report on the inspections carried out in relation to the ACC under subsection 10(2) during the financial year ended 30 June 2003 was presented to the Attorney General. A further report on the inspections carried out in relation to the Police Royal Commission under subsection 10(2) during the financial year ended 30 June 2003 was presented to the Attorney General.

During the reporting period, we carried out 14 inspections of the operations of the Western Australia Police Service in connection with telecommunications interceptions, including visits to the premises of the Telecommunications Interception Unit and to three regional centres. In respect of the ACC, we carried out four inspections, including an inspection immediately prior to the handover of restricted records to the CCC. In respect of the Royal Commission, we carried out five inspections.

There were no inspections of the CCC during the reporting period. However, at the time of writing, discussions have taken place between my staff and staff of the CCC in order to establish policies and procedures for future inspections.

During the previous reporting period, Mr Tom Sherman AO carried out a review of certain provisions of the Commonwealth Act, which originated in a recommendation from the Senate Legal and Constitutional Committee in its report on the *Telecommunications (Interception) Legislation Amendment Bill 2000*. I met with Mr Sherman in May 2003 and also made a written submission to the review. Mr Sherman's report was tabled in the Commonwealth Parliament in November 2003. In April 2004, I provided further comments to the Commonwealth Attorney-General's Department, which was co-ordinating the Government's response to Mr Sherman's recommendations.

TABLE 1.5

Outcome of allegations received and/or finalised – by agencies

Departments and Authorities	Allegations received	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to satisfaction of complainant	Referred back to agency	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Agriculture – Department of	4		1		4	1	1			3	5	15
Australian Integration Management Services Corp.	145	7	50	7	14	33	2	4	1	4	29	151
Botanical Gardens and Parks Authority	4			3		1						4
Builders' Registration Board	6	6	2							1		9
Building Disputes Committee	11	1	1	5								7
Central TAFE	4	1		1							1	3
Challenger TAFE	2					1		1				2
Community Development – Department for	42	6	4			13	3		3		9	38
Conservation and Land Management – Department of	1	1										1
Consumer and Employment Protection – Department of	6					1				1		2
Criminal Injuries Compensation	2	1	1									2
Curtin University	7		2			5		5			2	14
Dental Board	3			2								2
Disability Services Commission										1		1
East Perth Redevelopment Authority	1		1									1
Edith Cowan University	1											
Education Services – Department of	4											
Education and Training – Department of	55	3	11		1	12	19	2		2	4	54
Environmental Protection Authority	4	1	2									3
Environmental Protection – Department of	12		2	10					1			13
Fire and Emergency Services Authority											1	1
Fisheries – Department of	1											
Forest Products Commission	3		2							1		3
Gold Corporation	2					1					1	2
Government Employees' Housing Authority	2											
Government Employees Superannuation Board	2				1						1	2
Guardianship and Administration Board	7		2								1	3
Hairdressers Registration Board	1											
Health – Department of	17	1	8			2	1				1	13
Health Review – Office of	11					1	3				9	13
Heritage Council	2		2									2
Hospital and Health Services	11	1	7			2	1					11
Housing and Works – Department of	138	1	26	8	3	26	7	3	10	18	56	158
Indigenous Affairs – Department of	3		1			1						2
Industrial Relations Commission – Dept. of the Registrar	1											
Industry and Resources – Department of	1		1									1
Insurance Commission	6		1	1		2					4	8
Justice – Dept. of – Offender Management Division	449	60	45	41	46	186	1	8	1	4	45	437
Justice – Department of – Other	36	3	5	4	3	9	1			1	10	36
Kimberley TAFE	1											
Land Administration – Department of	9		1			3	1			1	3	9

	Allegations received	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to satisfaction of complainant	Referred back to agency	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Legal Aid	10	1			1	5						7
Legal Practitioners Complaints Committee	7	1			1							2
Legal Practitioners Disciplinary Tribunal	1											
Local Government & Regional Development – Dept. of Lotterywest	6	2	3								3	8
Main Roads	1	1										1
Medical Board	3	1	1					1			3	6
Metropolitan Cemeteries Board	8	1	2			1	1				1	6
Mid West Development Commission	2					2						2
Murdoch University	1					1						1
Occupational Therapists Registration Board	10		1								12	13
Organisation not identified	6		1									1
Parole Board	14	5	6	1		1					1	14
Planning and Infrastructure – Department for Planning Commission	4	1		3								4
Police Service	32	2	9	1		5	4	1	2	6	7	37
Potato Marketing Corporation	3		2						1		2	5
Premier and Cabinet – Department of the Public Advocate	872	132	348	7	1	4	31	17	18	72	208	838
Public Trustee	2			2								2
Racing, Gaming & Liquor – Department of Real Estate and Business Agents Supervisory Board	2			1			1					2
Settlement Agents Supervisory Board	11		2	1								3
Small Business Development Corporation	1					1						1
Town Planning Appeal Tribunal			1									1
State Supply Commission	1			1								1
Strata Titles Referee	1											
Swan TAFE	1						1					1
Totalisator Agency Board	1	1										1
Treasury and Finance – Department of University of Western Australia	13	1	5		1	5	2		1	1		16
Veterinary Surgeons Board	5		4	1				1				6
WA Government Railways – Special Constables	1					1						1
WA Government Railways – Other	13		2					3		1	13	19
WA Trotting Association	7		5				1					6
Water and Rivers Commission								5				5
Water Corporation	4		1								1	2
Water Regulation – Office of	13		8	1	1					1		11
West Coast TAFE	6		1			2						3
Western Australian Land Authority	4	1									3	4
Western Power Corporation	1	1					1				1	3
WorkCover	77	3	27	4	9	6	11	1	3	10	17	91
Workplace Agreements Commissioner	3	2	1									3
Worksafe											2	2
Sub Totals	1		1	2			1				3	7
	2194	250	612	111	86	340	98	53	41	129	464	2184

	Allegations received	Finalised at initial stage				Finalised by completed investigation or review				Allegations finalised	
		No jurisdiction	Discretion exercised	Finalised to satisfaction of complainant Withdrawn or not proceeded with	Referred back to agency	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially		Not sustained
Local Governments											
Albany – City	6		4	1						7	5
Armadale – City	2		1								8
Augusta/Margaret River – Shire	6										
Bassendean – Town	3				2				1	1	4
Bayswater – City	3		5								5
Beverley – Shire	1										
Broome – Shire	1										
Bunbury – City	1		1				1	1	1	1	5
Busselton – Shire										2	2
Cambridge – Town	2		1					1		6	8
Canning – City	3										
Chittering – Shire	1										
Claremont – Town	4		1							2	3
Cockburn – City	3	1	1							1	3
Collie – Shire	2		1					1			2
Coorow – Shire	5		2							3	5
Cottesloe – Town	2		1		1						2
Denmark – Shire	3		2							1	3
Derby/West Kimberley –Shire	1									1	1
Dumbleyung – Shire	1										
East Fremantle – Town	2		1								1
Esperance – Shire	2		2						1	1	4
Exmouth – Shire						2					2
Fremantle – City	5		3							2	5
Gingin – Shire	1			1							1
Gosnells – City	10		4		2			1	1	5	13
Halls Creek – Shire										3	3
Harvey – Shire	4		2								2
Joondalup – City	6		2			1				2	5
Kalamunda – Shire	5		1			1				9	11
Kalgoorlie – Boulder – City				1							1
Kwinana – Town	2	1									1
Laverton – Shire	1						1				1
Mandurah – City	2								1	6	7
Manjimup – Shire	1									1	1
Melville – City	16	1	4		1	1			2	4	13
Merredin – Shire	1								1		1
Mindarie Regional Council	1		1								1
Mosman Park – Town	1									1	1
Mundaring – Shire	9	1				5		1		1	8
Murray – Shire	4		3							1	4
Narrogin – Town	1							1	4		5
Nedlands – City	22		5			7			3		15
Not Council Specific	3	1	1	1							3
Perth – City	6		4	1	1				1		7
Port Hedland – Town	5									5	5
Rockingham – City	5		1			1			2	4	8

	Allegations received	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to satisfaction of complainant	Referred back to agency	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Serpentine/Jarrahdale – Shire	3		1							1	1	3
South Perth – City	11				1	1			1	8		11
Stirling – City	7		3	1	2	1				1	6	14
Subiaco – City	6		1				1			1	3	6
Swan – City	6		3						1		6	10
Toodyay – Shire	3									1		1
Victoria Park – Town	4		1						2		3	6
Victoria Plains – Shire	4		3								1	4
Vincent – Town	4					1			1	3	1	6
Wagin – Shire			1									1
Wanneroo – City	10		4						1	2	4	11
Yalgoo – Shire	2	1								1		2
Sub Totals	225	6	71	2	7	10	19	2	12	36	95	260
Organisations not within jurisdiction	136	126	7									133
GRAND TOTALS	2555	382	690	113	93	350	117	55	53	165	559	2577

Outreach activities

As an Office, we are committed to improving our accessibility to the citizens of Western Australia, and to anyone who wishes to make a complaint about the administrative actions and conduct of State government agencies. One way we do this is through our program of outreach activities. In the reporting period, this has involved a number of activities, including:

- regional visits to Albany and Kalgoorlie;
- talks to thirteen community groups representing a range of interests about the role and powers of the Ombudsman;
- talks to professional bodies with an interest in the work of the Ombudsman;
- presentations to agencies under our jurisdiction to improve their awareness of the Ombudsman's expectations in terms of complaint handling standards and to offer guidance on how to respond to Ombudsman investigations;
- presentations at schools and universities about the Ombudsman's functions; and
- presentations and keynote speeches at conferences.

Each of these activities provides us with an opportunity to raise awareness of the role of the Office and how the Ombudsman endeavours to improve public confidence in the accountability of the public sector of Western Australia. We also receive valuable feedback about our performance as well as insight into issues of concern to citizens in each location.

In addition, we worked with the Perth Office of the Commonwealth Ombudsman to prepare and present a joint briefing session to staff of elected members about our respective roles and responsibilities.

Gas Industry Ombudsman (Western Australia)

Section 34 of the *Energy Legislation Amendment Act 2003* added to the *Parliamentary Commissioner Act 1971* and authorised the Parliamentary Commissioner (State Ombudsman) to enter into an agreement with the governing body of the Gas Industry Ombudsman Scheme to serve as the Gas Industry Ombudsman.

The State Ombudsman entered into such an agreement with Gas Industry Ombudsman (Western Australia) Limited, the governing body of the Gas Industry Ombudsman Scheme approved by the Minister for Energy. The Scheme came into effect on 31 May 2004.

The Gas Industry Ombudsman receives, investigates and facilitates the resolution of complaints from residential and small business customers about their gas company.

Staff of the Ombudsman's Office assist me in my role as Gas Industry Ombudsman (GIO). All associated costs are recovered from Gas Industry Ombudsman (Western Australia) Limited. This organisation in turn is funded by gas companies.

In preparation for our new function, our Office developed an appropriate communication strategy, including developing a website and brochure, and advised all Members of Parliament of this new jurisdiction. We also developed new work processes in terms of receiving oral complaints and investigating complaints in line with the benchmarks which govern industry-based dispute resolution schemes such as the GIO.

Investigating Officer Sherry Armstrong has taken on responsibility for the GIO investigative function, assisted by Jane Burn, Grace Moro and Sarah Cowie. In addition, significant assistance was provided by staff of the Office of Energy, who also provided us with a temporary officer, Lana Snook, to develop the website. As well, Maria Fifield, on secondment from the Legal Aid Commission, assisted in the development of a compliance and operations manual. Wayne Mann took on the role of liaison with the GIO Board and responsibility for managing our service delivery arrangement and our reporting obligations.

Indian Ocean Territories

A service delivery arrangement between the State Ombudsman and the Commonwealth Government provides for my Office to offer Ombudsman services to residents of the Indian Ocean Territories (Christmas and Cocos (Keeling) Islands) covering agencies within my jurisdiction which also operate in the Territories at the request of the Commonwealth. Under that arrangement, I visited the Territories between 21 and 27 October 2003, accompanied by Wayne Mann, a former State Coordinator for the Territories, who has been working with my Office as a Project Officer on a training placement from the Department of the Premier and Cabinet.

During the visit I met with key government and community representatives, and made myself available to receive complaints from individuals. Overall I found there to be a high level of satisfaction in relation to services offered by Western Australian government agencies. However it became clear to me that it was important to enhance the knowledge of residents of the role and functions of both the Commonwealth and State Ombudsmen by clarifying our respective jurisdictions. I also noted the importance of improving accessibility to State Ombudsman services via targeted communication. As a consequence, I will be working with the Commonwealth Ombudsman to develop a joint brochure to explain our respective roles, and will also be providing case studies to the Territories which illustrate how the Ombudsman works.

Seminars and Conferences

As a member of the International Ombudsman Institute, I participate in the activities of the Australasian and Pacific Ombudsman Region (APOR), which is made up of Ombudsmen from all the States and Territories of Australia as well as the Commonwealth Ombudsman, together with New Zealand, Papua New Guinea, Cook Islands, Fiji, Solomon Islands, Taiwan, Tonga, Vanuatu and Western Samoa. The APOR conference for 2003 was hosted by the Papua New Guinea Ombudsman Commission and held at Madang, PNG, on 1 and 2 September 2003. The theme of the conference was "Ombudsmen and the Rule of Law".

In December 2003, Darryl Goodman, Acting Assistant Ombudsman, attended a meeting of Deputy and Assistant Ombudsmen hosted by the Commonwealth Ombudsman, Professor John McMillan, in Canberra.

In March 2004, Senior Investigating Officer Sarah Cowie attended the Commonwealth Ombudsman's Advanced Investigations Course in Canberra between 21 and 26 March.

In June 2004, Acting Assistant Ombudsman Shayne Sherman participated in the Deputy and Assistant Ombudsman Meeting hosted by the Queensland Ombudsman, Mr David Bevan, in Brisbane. This forum was for senior officers from the various Australian Ombudsmen offices to discuss operational issues, major developments, and matters of national significance for accountability agencies, such as the accountability of cross-border law enforcement activity.

At the end of June 2004, I attended a meeting of Australian Ombudsmen in Hobart. This is an annual meeting, traditionally held the day before the annual Administrative Law Conference conducted by the Australian Institute of Administrative Law (AIAL). The AIAL Conference theme was "Shaping Administrative Law for the Next Generation: Fresh Perspectives". I also attended this conference.

As an initiative of the collocated agencies (State Ombudsman, Gas Industry Ombudsman, Office of the Public Sector Standards Commissioner, Office of the Information Commissioner, Office of Health Review and the Commonwealth Ombudsman), we have commenced a series of guest speakers as a staff development activity. During the reporting period we were fortunate to have the following guest speakers: Professor Richard Harding, Inspector of Custodial Services; Ms Margaret Maxwell from the Department of Justice Aboriginal Alternative Dispute Resolution Service; Ms Yvonne Henderson, Commissioner for Equal Opportunity; and Commissioner Pam Scott, Public Service Arbitrator.

Our performance

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

Mission

Our mission is:

To assist the Parliament of Western Australia to be confident that the public sector of the State is accountable for, and is improving the standard of, administrative decision-making, practices and conduct.

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

Key Performance Indicators

The performance indicators for the Office focus on two key aspects:

- Effectiveness - the extent to which we have been able to provide assistance to complainants and to influence agencies to improve their practices and procedures.
- Efficiency - how quickly and cost-effectively we are able to deal with complaints.

The Key Performance Indicators for the past year are set out in the following pages, followed by the Auditor General's opinion regarding them. Following the Auditor General's opinion is information about the performance targets which were contained in the 2003/2004 Budget Statements. That information is not subject to audit by the Auditor General.

Key Performance Indicators

The desired outcome from the activities of the office is that the public sector of Western Australia is accountable for, and is improving the standard of, administrative decision-making, practices and conduct.

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

During the year the work of the office was performed via the following three output groups:

Police Service and railway special constables (1 July to 31 December 2003)

Provide an effective and efficient system of investigating, and reviewing the adequacy of internal investigations of, complaints about the Police Service and railway special constables. Most of the functions performed by this group were transferred to the Corruption and Crime Commission on 1 January 2004.*

Other Public Sector Organisations

Provide an effective and efficient system of investigating complaints about public sector organisations other than allegations about the Police Service and railway special constables processed prior to 1 January 2004.*

Telecommunications Interception Audit

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

Key Effectiveness Indicators

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

Police Service and railway special constables (1 July - 31 December 2003*)

A total of 512ⁱ allegations were brought forward from 2002/2003 and a further 728 were received in the period 1 July - 31 December 2003. 679 allegations were finalised, and of these, assistance to the complainant (by way of apology, action expedited, act of grace payment, monetary charge reduced/withdrawn/refunded/rebate given, reversal or significant variation of original decision, explanation/reason provided by agency, criminal/disciplinary/infringement charge reduced or withdrawn, referral to another appropriate agency, or other action to assist the complainant) was provided in respect of 248 allegations. At the end of December 2003 there were 561 allegations on hand. 521 of these allegations were transferred to the Corruption and Crime Commission and 40 administrative matters were retained by the Parliamentary Commissioner for Administrative Investigations for processing by the Public Sector Organisations output group.

* Jurisdiction for investigating crime and misconduct allegations involving police officers or railway special constables transferred from the Parliamentary Commissioner for Administrative Investigations to the Corruption and Crime Commission on 1 January 2004. The Parliamentary Commissioner retains jurisdiction in respect to police officers and railway special constables for allegations concerning administrative matters only.

	2000	2001	2002	2003	2004
Percentage of allegations finalised where complainants received assistance ⁱⁱ	70%	43%	47%	50%	37%
Number of improvements to practices and procedures ⁱⁱⁱ	15	97	165	79	19
Number of allegations where Police or Railways took further action following a review of the agency internal investigation	110	141	78	19	4

Other Public Sector Organisations (Excluding Police and Railway Special Constable matters finalised in the period 1 July - 31 December 2003)

A total of 504 ⁱ allegations were brought forward from 2002/2003 and a further 1,827 were received during the year. In addition 40 allegations were received from the Police Service and railway special constables output group on 1 January 2004. 1,898 allegations were finalised and assistance to the complainant (by way of apology, action expedited, act of grace payment, monetary charge reduced/ withdrawn/ refunded/ rebate given, reversal or significant variation of original decision, explanation/reason provided by agency, criminal / disciplinary / infringement charge reduced or withdrawn, referral to another appropriate agency, or other action to assist the complainant) was provided in respect of 781 allegations.


	2000	2001	2002	2003	2004
Percentage of allegations finalised where complainants received assistance	79%	62%	41%	41%	41%
Number of improvements to practices and procedures	90	122	118	72	61

Key Efficiency Indicators

Key efficiency indicators cover the time taken to deal with complaints and the cost of the various outputs and activities.

<i>Police Service and railway special constables*</i>	2000	2001	2002	2003	2004*
Average time taken to finalise allegations (days)	130	148	162	119	128
Allegations finalised per full-time equivalent staff member ^{iv}	153	143	187	161	136
Percentage of allegations finalised in less than three months	54%	50%	44%	56%	57%
Percentage of allegations on hand at 31 December* less than three months old	44%	41%	42%	43%	42%
Cost per finalised allegation	\$606	\$672	\$521	\$617	\$765

* 1 July to 31 December 2003

<i>Other Public Sector Organisations</i>	2000	2001	2002	2003	2004
Average time taken to finalise allegations (days)	73	72	86	108	123
Allegations finalised per full-time equivalent staff member	128	118	129	118	83
Percentage of allegations finalised in less than three months	77%	77%	69%	69%	68%
Percentage of allegations on hand at 30 June less than three months old	43%	57%	35%	34%	42%
Cost per finalised allegation	\$676	\$787	\$715	\$851	\$1,181
<i>Telecommunications Interception Audit</i>	2000	2001	2002	2003	2004
Total cost of activity	\$49,344	\$44,499	\$40,095	\$44,984	\$43,560
<p>I hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the Parliamentary Commissioner for Administrative Investigations' performance, and fairly represent the performance of the Parliamentary Commissioner for Administrative Investigations for the financial year ended 30 June 2004.</p>					
					
<p>Accountable Officer 31 August 2004</p>					

ⁱ This number differs from the number that could have been calculated from the numbers contained in the 2003 Annual Report, and reflects the deletion and creation of certain allegations in the database after 30 June 2003 that had been received prior to that date. For Police/Railways that number was 442 allegations and for Other Public Sector Organisations that number was 483.

ⁱⁱ The figures for 2000 relate only to those allegations that were not finalised by way of a review of an internal investigation by Police or Railways and, therefore related only to a minority of allegations finalised. The figures for 2001, 2002, 2003 and 2004 relate to all allegations finalised by any means and, therefore better reflects the work of the office. For that reason the 2000 figures are not directly comparable with the figures for the subsequent years.

ⁱⁱⁱ The figures for 2000 reflect only changes that were recommended by the office. The figures for 2001, 2002, 2003 and 2004 include changes recommended and changes made voluntarily by the agency without a recommendation having to be made.

^{iv} The full-time equivalent (FTE) staff figure used for the purpose of this calculation includes investigating officers, an Assistant Ombudsman and a proportion of corporate services staff, the Ombudsman and Deputy Ombudsman.



AUDITOR GENERAL

INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS PERFORMANCE INDICATORS FOR THE YEAR ENDED JUNE 30, 2004

Audit Opinion

In my opinion, the key effectiveness and efficiency performance indicators of the Parliamentary Commissioner for Administrative Investigations are relevant and appropriate to help users assess the Parliamentary Commissioner's performance and fairly represent the indicated performance for the year ended June 30, 2004.

Scope

The Parliamentary Commissioner's Role

The Parliamentary Commissioner is responsible for developing and maintaining proper records and systems for preparing performance indicators.

The performance indicators consist of key indicators of effectiveness and efficiency.

Summary of my Role

As required by the Financial Administration and Audit Act 1985, I have independently audited the performance indicators to express an opinion on them. This was done by looking at a sample of the evidence.

An audit does not guarantee that every amount and disclosure in the performance indicators is error free, nor does it examine all evidence and every transaction. However, my audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the performance indicators.

A handwritten signature in black ink, appearing to read 'D D R Pearson'.

D D R PEARSON
AUDITOR GENERAL
September 30, 2004

Other performance measures

The following are the performance targets contained in the 2003/2004 Budget Statements and the actual performances achieved.

	<i>Target</i>	<i>Actual</i>
<u><i>Police Service and railway special constables</i></u>		
Quantity		
Allegations finalised	1,900	679*
Timeliness		
Average time taken to finalise an allegation (days)	130	128
Cost		
Cost per finalised allegation	\$541	\$765
<u><i>Other Public Sector Organisations</i></u>		
Quantity		
Allegations finalised	1,900	1,898
Timeliness		
Average time taken to finalise an allegation (days)	90	123
Cost		
Cost per finalised allegation	\$972	\$1,181
<u><i>Telecommunications Interception Audit</i></u>		
Quantity		
Audit reports completed in accordance with legislation	3	3
Timeliness		
Statutory time limits complied with	100%	100%

* Jurisdiction for investigating crime and misconduct allegations involving police officers or railway special constables transferred from the Parliamentary Commissioner for Administrative Investigations to the Corruption and Crime Commission on 1 January 2004. The Parliamentary Commissioner retains jurisdiction in respect to police officers and railway special constables for allegations concerning administrative matters only.

Police Service and Railways Commission special constables

On 1 January 2004 the Ombudsman's jurisdiction to deal with complaints about the conduct of police officers was transferred to the Corruption and Crime Commission. This brought to a close an important chapter in the history of the Ombudsman.

Movement towards a system of oversight of police conduct began in 1982 when the then Ombudsman took the view that he was able to investigate the adequacy of police internal investigations. The then Commissioner of Police disagreed. Both obtained legal advice, but this failed to settle the question.

In 1984, the *Complaints Against Police Bill 1984* was developed. It was based on the *Commonwealth Complaints (Australian Federal Police) Act 1981* and detailed the procedures for the receipt, investigation and handling of complaints by the Commissioner of Police about the actions of police officers, and the audit of such investigations by the Ombudsman. Had the Bill become law the Ombudsman would have been empowered to monitor and comment on police internal investigations; call for interim reports; interview complainants; interview other witnesses and access documents.

The Bill was defeated in the Legislative Council. Instead, section 14(1a) was inserted into the *Parliamentary Commissioner Act 1971*, effective from 1 July 1985. Section 14(1a) gave the Ombudsman the power to investigate complaints against individual police officers but only after the Commissioner had been provided with a reasonable opportunity to first conduct his own investigation.

Apart from minor streamlining of the system there were no significant changes to the Ombudsman's approach to the oversight of police investigations until October 1993, at which time a review system was introduced. This involved systematically reviewing the merits of selected police internal investigations against objective investigation standards. Prior to the introduction of the review system the Ombudsman only acted when complainants expressed their dissatisfaction with internal investigations.

However, the new system did not apply to all or even most police internal investigations. It applied to only selected matters based on agreed criteria - generally those matters involving serious allegations such as allegations of assault or use of excessive force or serious threats or intimidation. The change to the system was not supported by legislative amendment.

The subject of the investigation of complaints about police came under scrutiny again in April 1996, when the Commission on Government issued a report focussing on the role, function and purpose of the Ombudsman. The report contained these recommendations:

- that responsibility for the oversight and investigation of police complaints should be removed from the Ombudsman; and
- that responsibility for the investigation of minor complaints should remain with the police but with oversight by a new body - a Commission for the Investigation, Exposure and Prevention of Improper Conduct - which would also be responsible for the investigation of serious complaints against police.

In contrast, the Legislative Council Select Committee on the Western Australia Police Service in its June 1996 Interim Report recommended that:

- the Ombudsman should have the power to conduct direct primary investigations of complaints relating to conduct of the Commissioner or of a Deputy or Assistant Commissioner of Police and of complaints about the police, in the public interest;
- the Ombudsman should have the power to conduct “own motion” investigations into complaints about police; and
- a Police Anti-Corruption Commission be established to investigate police corruption and serious misconduct by police.

The Joint Committee on the Commission on Government in its Report in August 1996 supported the view that the Ombudsman should continue to have a major role in dealing with complaints against police.

The Government's response was to retain the status quo in respect of the role of the Ombudsman. However, as a result of the establishment of the Anti-Corruption Commission (ACC), the Ombudsman was required to report to the ACC any complaint about a member of the Police Service which involved corrupt or serious improper conduct.

In 1997, the Ombudsman and the Commissioner of Police agreed that all internal investigation files, including minor matters, would be sent to the Ombudsman for review. This step meant that the Ombudsman was involved in every case. This change in administrative arrangements, implemented from 1 January 1998, was another significant step forward. Although the change was not supported by legislative amendment, in effect the agreement marked the evolution of the system into the type of sophisticated review mechanism anticipated by the *Complaints Against Police Bill 1984*, albeit by administrative arrangement instead of by legislation.

The proclamation of the *Corruption and Crime Commission Act 2003* on 1 January 2004 concurrently removed section 14(1a) of the *Parliamentary Commissioner Act 1971*, thereby bringing to an end the Ombudsman's police conduct oversight role. The *Corruption and Crime Commission Act 2003* supports the review process developed over the preceding 18 years by placing it on a firm legislative basis.

The impact of the Ombudsman's oversight role on policing since 1985 is difficult to quantify with any precision. However, the Ombudsman's involvement has coincided with the Police Service developing a robust and more open complaint handling system. Today, complainants can approach the Police Service in the knowledge that their complaints will be dealt with transparently.

Among some of the more notable achievements during this period were the following:

- **1989 - Recommendation to amend procedures to make it clearer that police should summons rather than arrest people for minor offences**

Following an investigation into the use of police arrest powers the Ombudsman recommended that police procedures be amended to make it clearer that people should be brought before the courts by way of summons in preference to arrest when a summons is adequate to ensure their appearance. This recommendation was adopted.

- **1989 – Report on an Investigation into "The Bull-Peters Affair"**

On the basis of a request from Parliament, the Ombudsman investigated the circumstances that gave rise to the allegations that the then Commissioner of Police had carried out a secret surveillance of his then Deputy Commissioner (Administration).

- **1990 - Report on an Investigation into the Death of Stephen John Wardle at the East Perth Lockup**

The death of Stephen Wardle at the East Perth Lockup generated great public interest in the circumstances surrounding his arrest and detention. The Ombudsman's investigation was unable to sustain a number of serious allegations about the way police treated Stephen Wardle prior to his death. However, the Ombudsman made a number of recommendations about the way police discharge their duty of care obligations with respect to prisoners and the way in which deaths in police custody are investigated. These recommendations, together with subsequent refinement from experience, became part of established police practice in lockups.

- **1993 – Report on various Aspects of Police Conduct Arising from the Arrest, Charging and Detention of Joseph Bartlett Dethridge at Fremantle Police Station on 8/9 May 1993**

The Ombudsman's investigation focussed on a number of issues surrounding Mr Dethridge's detention and resulted in a range of recommendations designed to ensure that people in custody are able to exercise their rights to make a telephone call, access a legal adviser and complain about their treatment. These recommendations subsequently became routine police procedure.

- **1994 – Alleged Theft of Cash by Drug Squad Officers**

Following an investigation into the alleged theft of a large amount of cash during a search of a house by drug squad officers, the Ombudsman made a number of recommendations about the way in which policing units execute search warrants. These recommendations were the catalyst to the development of procedures such as capturing high-risk searches on videotape and issuing interim receipts for cash.

- **2001 – Report on the Falsification of Random Breath Testing Statistics**

An investigation into the alleged falsification of random breath testing statistics at a suburban police station revealed that 93.5% of recorded random breath tests conducted between September 2000 and March 2001 at the station were systematically falsified by 13 officers. This and another instance in which between 400 and 450 reported random breath tests were falsified demonstrated that the system of compiling breath-testing statistics was open to abuse. The Ombudsman's recommendations to ensure the use of consistent forms, the recording of sufficient detail to enable audit and the actual auditing of breath testing reports were accepted and implemented into standard police procedure.

- **2002 – Report on The Management, Supervision and Control of Operation Safe Trains**

Operation Safe Trains was a joint Police Service and the then Western Australian Government Railways Commission (WAGRC) taskforce aimed at dealing with unlawful behaviour on trains. The Ombudsman's investigation following allegations about overly aggressive policing tactics found that the operation did not meet ordinary accountability requirements and could not be said to have been successful because of the unreliability of its records. A number of recommendations were made, including that the Commissioner of Police and Commissioner of Railways undertake a joint evaluation of the management and communication structures for WAGRC in the light of the Operation Safe Trains experience. That evaluation was significant in the subsequent structuring of security and policing aspects of the WAGRC.

- **2003 – The Ombudsman's Law Enforcement Redress Guidelines**

This report set out a framework to assist law enforcement managers make decisions about resolving complainants' sense of grievance so that law enforcement agencies can better manage their business, improve the transparency of their processes, and ultimately enhance public confidence in their operations. Both the Commissioner of Police and Commissioner for Railways adopted the framework contained in the report.

• 2003 – Report on an Investigation into the Police Response to Assault in the Family Home

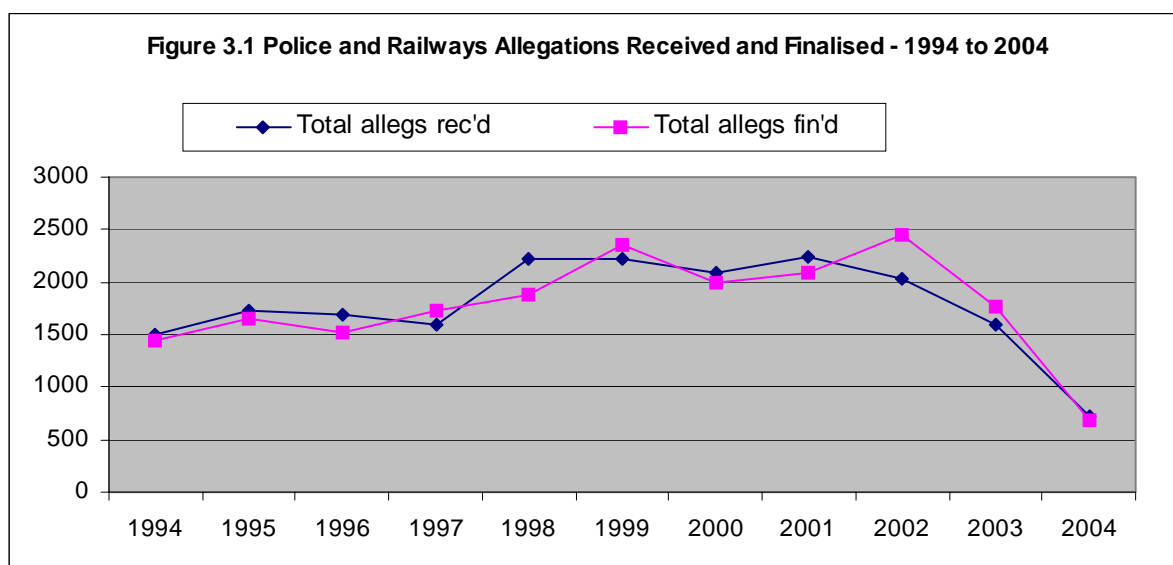
My Office conducted an investigation into the way in which victims of assault in the family home and other stakeholders such as women's refuges perceived the police response. This highlighted the need for consistent standards by police across the State, and for improvements in communication. A number of recommendations were made, particularly the development of minimum standards protocols to guide police attending incidents and the development of legislation for a system of cautionary restraining orders. These recommendations were accepted, including the Government proposing a Bill to establish a cautionary restraining order system.

Achievements 1 July to 31 December 2003

The Police Team assisted in the achievement of the Ombudsman's mission by ensuring that complaints about the Western Australia Police Service and Western Australian Government Railways Commission special constables were efficiently and effectively investigated.

The Ombudsman's jurisdiction over police conduct finished on 31 December 2003. The Police Team did not commence any new major investigation projects in the 2003/2004 financial year or recruit new staff given the transfer of this jurisdiction to the Corruption and Crime Commission on 1 January 2004.

Figure 3.1 shows the ten-year trend in allegations received and finalised. A total of 728 allegations about police or railways special constables were received in the period 1 July to 31 December 2003 and 679 allegations were finalised. The number of allegations received in this period was 54% less than in 2002/2003. Given that these data represent a half year result only, it is difficult to interpret whether 2003/2004 would have been a third year in the downward trend in allegations received. The number of allegations finalised decreased by 62%.

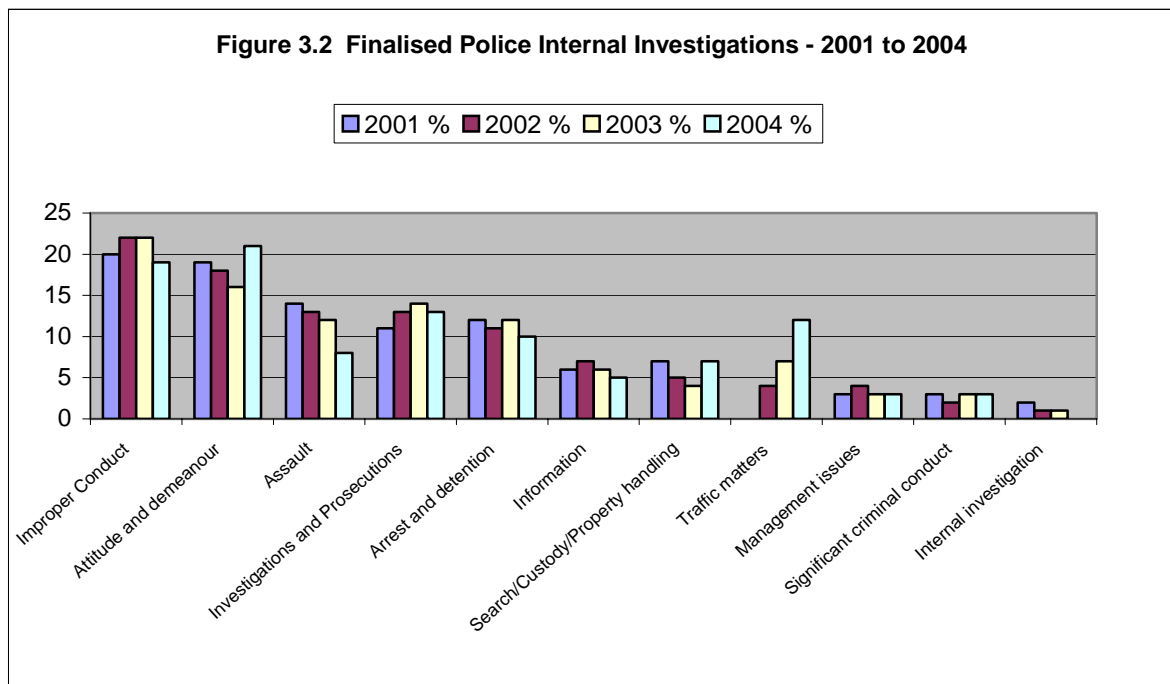


Of the 679 allegations finalised, 668 allegations related to the Police Service. These allegations were classified into the following categories:

- Improper conduct - e.g. misuse of office, regulatory breaches
- Attitude and demeanour - e.g. abusive remarks, disrespect
- Assault - e.g. common assault, improper use of pepper spray
- Investigations and prosecutions - e.g. forced confessions, failure to prosecute

- Arrest and detention issues - e.g. personal searches, improper detention
- Information - e.g. disclosure of confidential information, inaccurate records
- Search/custody/property handling - e.g. unlawful detention, loss of property
- Traffic matters - e.g. issue of infringements, manner of driving
- Management issues - e.g. administration of warrants, condition of cells
- Significant criminal conduct - e.g. theft, fraud
- Internal investigation of complaints - e.g. failure to record complaints, inadequate investigation.

Figure 3.2 shows the percentage of allegations about police finalised on a category basis over the past four years.



Eleven allegations about railways special constables were finalised during the reporting period. Because of their relatively small numbers, allegations about railways special constables were grouped into three broad categories:

- Conduct - e.g. excessive force, demeanour
 - Nine allegations finalised
- Decision or action - e.g. infringement notice, improper arrest
 - One allegation finalised
- Policies and procedures - e.g. delay in investigation, infringement policy
 - One allegation finalised.

The review program

This constituted the bulk of the Police Team's work. The aim of the review program was to enhance the accountability of the Police Service and the Railways Commission by reviewing internal investigations to ascertain whether:

- all reasonable and relevant issues highlighted by complainants, including specific allegations and related matters, were considered
- all relevant and reasonably available evidence was gathered
- the evidence gathered was logically analysed and reasonable conclusions reached
- conclusions and outcomes were reasonably communicated to complainants
- efficient and effective investigating practices were followed and documented in ways that would allow external review.

This process included:

- conducting our own inquiries into issues that were not properly addressed during the internal investigation
- consulting with internal investigators at an early stage of their investigations to provide them with advice and support
- actively seeking out the opinions of complainants by interviewing them and by recording and considering their responses to a standard questionnaire
- consulting and negotiating with Police Service and Railways Commission management about internal investigation outcomes.

Inadequate internal investigations were returned for further work and then reviewed a second time.

Reviews of internal investigations into 342 allegations were conducted during the period 1 July to 31 December 2003. The breakdown between Police Service and the Railways Commission reviews and their adequacy is shown in Table 3.1.

TABLE 3.1		Reviews of internal investigations 1 July to 31 December 2003		
	Adequate	Inadequate	Total	
All first reviews	325 (99%)	4 (1%)	329	
All second reviews	12 (92%)	1 (8%)	13	
TOTAL REVIEWS	337 (99%)	5 (1%)	342	
First reviews Police Service	314 (99%)	4 (1%)	318	
Second reviews Police Service	12 (92%)	1 (8%)	13	
Total Police Service reviews	326 (98%)	5 (2%)	331	
First reviews Railways Commission	11 (100%)	0 (0%)	11	
Second reviews Railways Commission	0 (0%)	0 (0%)	0	
Total Railways Commission reviews	11 (100%)	0 (0%)	11	

Comparing the data in Table 3.1 with data from 2002/2003 reveals that the encouraging positive trend in the adequacy of Police Service and Railways Commission internal investigations achieved during the 2000/2001 to 2002/2003 period has been maintained:

- The overall level of adequacy of Police Service and Railways Commission internal investigations improved slightly from 98% in 2002/2003 to 99% in 2003/2004
- The level of adequacy for Police Service internal investigations was maintained at 98% for 2002/2003 and 2003/2004

The level of adequacy of Railways Commission internal investigations improved from 95% in 2002/2003 to 100% in 2003/2004.

Timeliness

The Police Service deals with complaints in two ways. Minor matters are dealt with using a process known as local complaint resolution (LCR). The LCR process is an informal one that focuses on speedy resolution. On average it took the Police Service 114 days to complete LCRs. In 2003/2004 it took an average of 55 days. Given the emphasis on speedy resolution in the LCR process, this is a disappointing result.

Major matters are dealt with using a more traditional, evidence-based investigating process. On average it took police 210 days to complete internal investigations into major matters. In 2003/2004 it took an average of 182 days.

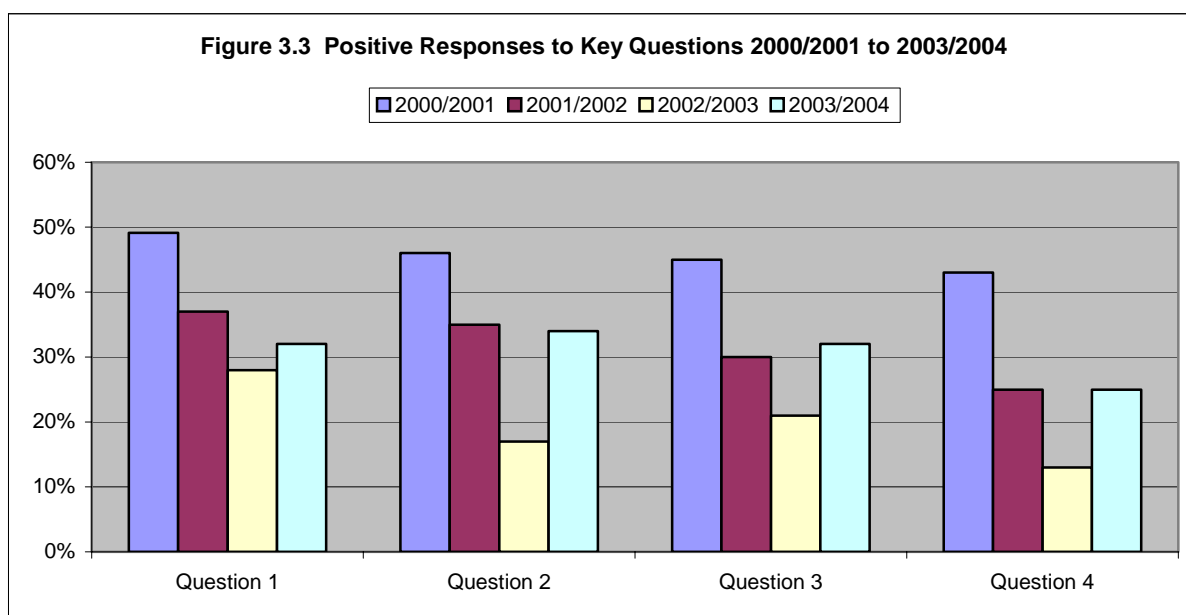
The time taken to complete Police Service internal investigations has been an issue of concern for the Ombudsman for many years. It is unfortunate that for all the improvement in the standard of internal investigations over the last decade, the critical issue of timeliness remains outstanding.

Feedback from complainants

All complainants were sent a questionnaire to ascertain their views about the adequacy and timeliness of the internal investigation into their complaint in relation to the following key areas:

- Question 1** Are you satisfied with the process followed by police to investigate your complaint?
- Question 2** Do you think that all of the issues that you raised were dealt with during the police investigation?
- Question 3** Are you satisfied that all relevant information and evidence was taken into account during the police investigation?
- Question 4** Are you satisfied that the conclusions reached and the actions taken by police (if any) as a result of your complaint were appropriate?

Responses were received in relation to 77 allegations (23%). Figure 3.3 illustrates the trend in positive responses to these questions over the past three years. The 2003/2004 data indicate a welcome reversal of the previous year's data.



Exercising Discretion

During 2003/2004 the Ombudsman exercised discretion not to review 324 allegations. These matters accounted for 48% of the 679 allegations finalised. Overwhelmingly these matters involved LCRs and minor police internal disciplinary matters. The decision to exercise discretion in this way was taken because in 2002/2003 the overall levels of complainant satisfaction with the LCR process was in the vicinity of 90%. That, together with overall levels of adequacy of 98%, indicated that the process was working well.

As well, the decision to create the Corruption and Crime Commission, having been announced, meant we were effectively in a caretaker period. For that reason, staff who left were not replaced.

Reviews of complaints about Railways Commission special constables

There is no LCR equivalent in Railways Commission internal investigations. They all involve an investigative process aimed at establishing facts from the available evidence. Railways Commission internal investigations accounted for 3% of the internal investigations reviewed. Of those reviews, 100% were found to be adequately investigated, compared to 95% in 2002/2003 and 89% in 2001/2002.

In terms of both the number of complaints received and the outcome of internal investigations conducted, it would appear that changes made to the security function of the Railways Commission in 2000/2001 have proved to be positive. As a means of comparison, 88 allegations about Railways Commission special constables were received in 2000/2001 and the overall level of adequacy of internal investigations reviewed was 83%.

Other public sector organisations

Complaints

In the reporting period, 1,827 allegations were received concerning public sector agencies. This figure excludes the 728 Police Service and WA Government Railways Commission allegations received between 1 July 2003 and 31 December 2003.

The Office finalised 1,898 general public sector allegations during the year, which represents a small decrease in the number finalised (approximately 5%) compared to the 2,000 allegations finalised in the previous year. The number finalised was also slightly below the target for the year of 1,900. The average time taken to finalise an allegation was 123 days compared to the average time taken in the previous year (108 days), and was above our target of 90 days. One reason for this is that we made a concerted effort during 2003/04 to finalise matters that had been with the Office for over twelve months. The number of allegations more than twelve months old on hand at 30 June 2004 was 101, compared with 168 the previous year.

Details about allegations received on an agency-by-agency basis can be found at Table 1.5, page 9. The information in this Chapter relates to those agencies about which the most allegations were received.

Department of Justice - offender management

We received 594 allegations about offender management during the year. Of these, 540 related to prisons (133 to Acacia Prison and 407 to prisons run by the Department of Justice); 42 to prison services or administration; and 12 to prison transport and court security services provided by AIMS Corporation.

Table 4.1 shows the source of allegations received over the past four years.

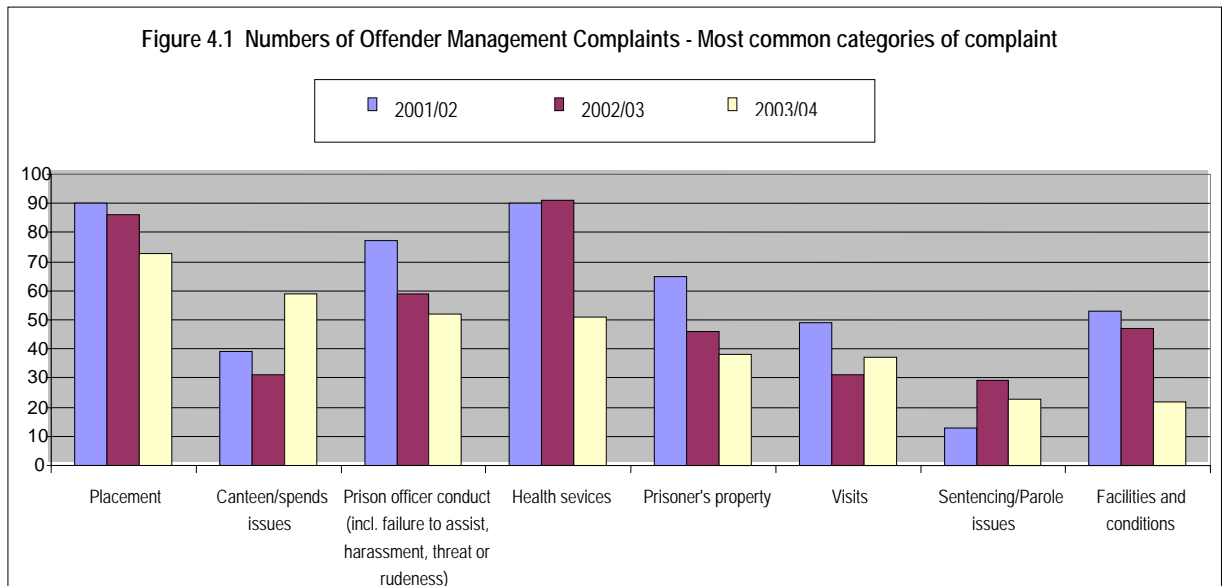
TABLE 4.1		Source of allegations received 2001–2004			
Prison	Allegations				
	2001	2002	2003	2004 (Number)	(%)
Acacia (AIMS)	1	177	245	133	22
Acacia (Dept. of Justice)	-	12	4	20	3
Albany	25	7	12	6	1
Bandyup	36	25	64	40	7
Banksia Hill	1	1	0	5	1
Broome	9	0	5	2	0
Bunbury	55	20	13	14	2
Casuarina	233	167	70	121	20
Eastern Goldfields	9	1	8	4	1
Greenough	32	18	16	16	3
Hakea Prison – Remand	55	21	2	2	0
Hakea Prison	133	166	159	113	19

TABLE 4.1 (cont'd)		Source of allegations received 2001–2004			
Prison		Allegations			
		2001	2002	2003	2004
					(Number) (%)
Karnet		22	29	13	15 3
Nyandi		9	8	3	9 2
Pardelup		8	1	closed	closed closed
Rangeview Remand Centre		5	0	0	5 1
Riverbank		2	1	closed	closed closed
Roebourne		20	4	4	9 2
Wooroloo		11	24	37	18 3
Not allocated to a prison		30	66	50	62 10
TOTAL		696	748	705	594 100

Table 4.2 shows the nature of allegations received by category during 2003/2004.

TABLE 4.2		Nature of allegations received 2003-2004	
		Allegations	
Placement		73	
Canteen/spends issues		59	
Prison officer conduct (incl. failure to assist, harassment, threat or rudeness)		54	
Health services		51	
Prisoner's property		38	
Visits		37	
Sentencing/parole issues		23	
Facilities and conditions		23	
Discipline (incl. loss of privileges/prison charges)		21	
Communication - telephones		21	
Security classification		17	
Food and diet		14	
Prisoner employment		14	
Drug detection (prisoners)		12	
Education courses and facilities		12	
Communication - mail		11	
Prisoner transport (AIMS)		9	
Rehabilitation programs		7	
Assault (by prison officer or AIMS officer)		7	
Individual Management Plan		6	
Prison officer grievances		5	
Authorised absences/funerals		4	
Assault (by prisoner)		4	
Separate confinement		1	
Other		71	
TOTAL		594	

Figure 4.1 shows the most common categories of complaint for the past three years.



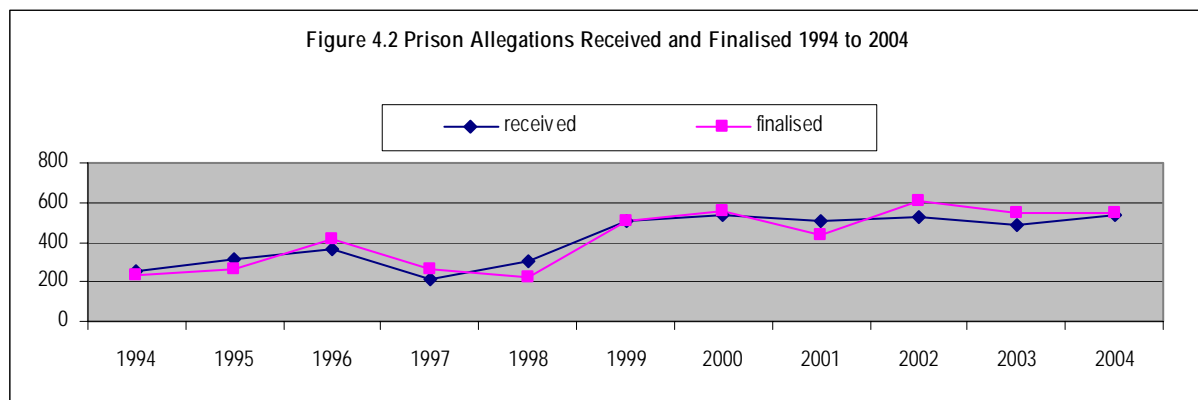
We have established from the Office of Health Review (OHR) that the number of prisoner health complaints received in the last financial year was about 40% up on the previous year. This appears to be commensurate with the down-turn in health complaints to this Office. We see this as an indication that the message that complaints about the quality of health services are more appropriately dealt with by OHR is getting through.

Prisons

We received 540 allegations about prisons during the year. This represents a 10% increase in allegations received from last year.

Figure 4.2 shows the nine-year trend for allegations finalised and received. This year the Office finalised 544 allegations.

Note - Allegations received for 2001 may be slightly inaccurate due to anomalies in the recording of telephone queries.



Finalised allegations/queries

Of the 544 allegations finalised during the year, their outcomes are shown in tables 4.3 and 4.4.

TABLE 4.3		Manner in which allegations/queries finalised		
	AIMS - Prisoner Transport and Courts	AIMS - Acacia Prison	Dept. of Justice Prisons	Total
Finalised without investigation				
Misconduct matter within CCC jurisdiction	0	0	2	2
No jurisdiction	2	5	53	60
Discretion exercised not to investigate*	0	50	43	93
Withdrawn or not proceeded with	0	7	40	47
Finalised to satisfaction of complainant	2	12	44	58
Referred back to the agency	6	27	156	189
Sub total	10	101	338	449
Finalised by completed investigation				
Sustained wholly or substantially	0	4	4	8
Sustained partly	0	1	1	2
Not sustained	4	25	42	71
Could not be determined	0	4	7	11
Withdrawn or not proceeded with	0	2	1	3
Sub total	4	36	55	95
TOTAL ALLEGATIONS FINALISED	14	137	393	544
* "Discretion exercised not to investigate" does not necessarily indicate that no enquiries about the matter raised were undertaken, nor does it imply that no assistance was provided.				

TABLE 4.4	Assistance provided - allegations finalised by investigation		
	Voluntary	Formally recommended	Total
Benefit for complainant			
Act of grace payment made	5	1	6
Action/decision expedited	55	11	66
Apology	6	2	8
Explanation or reasons provided by agency	18	5	23
Reversal or significant variation of original action	18	4	22
Monetary charge reduced/withdrawn/refunded/rebated	1	-	1
Other	39	20	59
TOTAL BENEFIT FOR COMPLAINANT			185
Changes to law, practice or procedure			
Change policy/procedure	37	16	53
Improve record-keeping	4	4	8
Other change to system	16	-	16
Training issue	11	-	11
TOTAL CHANGES TO LAW, PRACTICE OR PROCEDURE			88

Prison and Inspectorate visits

During the year, our Office established a closer working relationship with the Office of the Inspector of Custodial Services. An Investigating Officer accompanied the Inspector on his inspections to monitor the effectiveness of complaint handling processes and to receive individual complaints. This liaison proved to be successful and was formalised in a Memorandum of Understanding.

Roebourne Regional Prison visit

Between 10 and 14 November 2003, one of our Investigating Officers accompanied the team of the Inspector of Custodial Services on its re-inspection of Roebourne Regional Prison. Our representative assessed the use of grievance process and complaint handling systems including confidential yellow envelopes and access to the Ombudsman's office by telephone. The conclusions reached were that Roebourne Prison's complaint handling was inappropriate for the prison population and that the Ombudsman's recommendations about the handling of confidential mail as embodied in *Superintendent's Circular 10/2003* were not being adhered to. We advised the Department of Justice of our views, as noted below.

Broome Regional Prison visit

One of our Investigating Officers also accompanied the team of the Inspector of Custodial Services on its re-inspection of Broome Prison between 4 and 6 May 2004. After observing the lack of an auditable complaint handling process in Broome Prison, we advised the Executive Director of Prisons that, in relation to Broome and Roebourne Prisons, *Superintendent's Circular 10/2003* regarding the handling of confidential mail was not being adhered to; 'grievances' did not appear to be recorded correctly; the confidential mail handling process did not appear to have been audited; and a culturally appropriate, alternative, oral complaints system should be considered for Aboriginal prisoners, specifically at regional prisons.

Rangeview Remand Centre

On 21 and 22 June 2004, one of our Investigating Officers accompanied the Inspector's Team on its inspection of Rangeview, a young offender remand facility. As a result of this inspection, it was concluded that the adult offender complaints and grievance system was not appropriate for juvenile offender use. The Department of Justice is now formulating a specific juvenile complaints strategy.

Greenough Regional Prison visit

On 24 and 25 September 2003, two of our Investigating Officers visited Greenough Regional Prison in response to a written complaint. In addition to investigating the complaint, a tour was made of the facility.

Metropolitan

During the year, our Investigating Officers visited Acacia, Bandyup, Casuarina, Hakea and Wooroloo Prisons to investigate complaints received, to meet with prisoner peer support groups and to speak to prison staff.

Formal Inquiry

A formal inquiry into a complaint about the ability of a prisoner to contact his victim from prison was undertaken during the year and will be finalised in the next reporting period.

Local government

Complaints received

One hundred and eleven complaints involving 225 specific allegations were received this year. These concerned 53 of the State's 142 local governments and a regional council. This represents a further decrease in the number of individual complaints received about local government compared with the 132 complaints received last year and the 203 complaints received in each of the previous two years. Table 4.5 shows the types of allegations received in the reporting period.

TABLE 4.5 Nature of allegations received about local governments 2003/2004	
Building Control	
Refusals, conditions of applications, objections, construction and demolition matters	18
Community Services	
Cultural and community services, parks and recreation reserves and facilities	4
Contracts and Property Management	
Tenders and contracts for goods and services, resumption of property, leases, other property transactions	3
Corporate and Customer Services	
Complaint-handling, provision of information, liability claims, meetings/elections, conduct of officers and elected members, staffing issues	65
Development	
Refusals, conditions of application, objections, home occupations	30
Enforcement	
Enforcement of development and building conditions, unauthorised development, parking and traffic, control of animals, fire control and other statutes and local laws	47
Engineering	
Roads, footpaths, rights of way, construction/maintenance, traffic management, road closures, access	8
Environmental Health Issues	
Noise and other pollution, public health issues, waste disposal and other environmental issues	15
Other Approvals and Licences	
Refusals, conditions/objections	6
Rates and Charges	
Valuations and ratings, payments, collection, rebates, other charges	16
Town Planning	
Subdivision, land use, town planning schemes, rezoning	13
TOTAL	225

Complaints finalised

Two hundred and sixty allegations were finalised this year. Of those, 96 were finalised at the assessment stage (that is, the complaint was withdrawn or not proceeded with; discretion not to investigate was exercised; the issue of complaint was outside jurisdiction; it was referred back to the original agency; or it was finalised to the satisfaction of the complainant). One hundred and sixty-four were finalised by an investigation. Of those, two allegations could not be determined; 95 were not sustained; 12 were sustained in part; and 36 were sustained wholly or substantially. The other 19 were withdrawn or not proceeded with. Twelve resulted in changes to practice or procedure.

Table 4.6 shows the kinds of voluntary assistance given to complainants following the involvement of this Office.

TABLE 4.6 Voluntary assistance provided to local government complainants 2003/2004	
Apology	2
Act of grace payment	1
Adequate explanation or reasons given	2
Charge reduced or rebate given	11
Reversal or significant variation of original decision	7
Explanation only	141
TOTAL ALLEGATIONS FINALISED BY INVESTIGATION	164

Department of Housing and Works

We received 100 complaints containing 138 allegations about the Department of Housing and Works in 2004. This was 34 complaints more than 2003 when 66 complaints were received containing 125 allegations. In other words, the number of complaints received increased by 52% and the number of allegations increased by 10%. The number of complaints received over recent years has fluctuated as shown in Table 4.7.

TABLE 4.7		Complaints and allegations received 1998–2004					
	1998	1999	2000	2001	2002	2003	2004
Number of individual complaints	66	111	128	68	98	66	100
Number of allegations	67	121	137	104	132	125	138

The majority of allegations received concerned the rental operations program of the Department, which attracted 112 allegations. This trend is similar to 2003 when 90 allegations were received about this program. Of these 112 allegations, 39, or one third, concerned the property allocation and transfer process. This was less than in 2003, when 47, or more than half of the allegations received, concerned the allocation and transfer process.

There was, however, a significant rise in the number of allegations about behaviour of tenants and the eviction process, with 29 allegations being received in 2004 compared with six in 2003. This area will be monitored during the coming year in order to see whether it indicates a possible emerging issue.

The number of allegations about property condition and maintenance gave rise to 22 allegations being received, compared with 23 in 2003.

Table 4.8 shows details of the number of allegations received this year compared with previous years in a range of areas.

TABLE 4.8	Nature of allegations received				
	2000	2001	2002	2003	2004
			-	-	
Actions of agency officers/employee management issues	27	8			
Administration	-	-	12	25	16
Rental operations					
- Property allocations and transfers	51	38	28	47	39
- Tenant liability	29	13	8	4	4
- Property condition and maintenance	10	9	20	23	22
- Behaviour of tenants/evictions	3	12	11	6	29
- Rental/bond assistance	6	5	7	5	2
- Debt repayments	-	-	4	2	4
- Other	-	-	29	3	12
Property purchase	4	3	4	-	3
Construction and development	-	-	2	-	1
Other	7	16	7	10	6
TOTAL	137	104	132	125	138

In finalising our inquiries during 2004 we made a range of suggestions for process improvements, which were generally well received by the Department. In particular, a number of complaints highlighted inadequacies in the Department's record keeping. As a result the Department issued a memorandum to staff raising awareness about when and how to record information in file notes. Other suggestions included reminding staff about their responsibility to offer pre-vacation property inspections in accordance with departmental policy; identifying policy improvements in the property allocation and tenancy management processes; and referral of suggestions for improvements to the appeals process to the Appeals Coordinator for consideration as part of the Department's review of its appeals system.

Tables 4.9 and 4.10 show the outcome of complaints finalised in 2003/2004. There was a higher number of allegations finalised (158) in 2004 than allegations received (138). This outcome included completing a range of complex older matters.

TABLE 4.9	Manner in which allegations finalised	
	Allegations	%
Finalised without investigation		
Discretion exercised not to investigate	26	17
Withdrawn or not proceeded with	8	5
Finalised to satisfaction of complainant	3	2
Referred back to Department	26	17
No jurisdiction	1	1
Finalised by completed investigation		
Sustained wholly or substantially	18	11
Sustained partly	10	6
Not sustained	56	35
Could not be determined	3	2
Opinion unnecessary	7	4
TOTAL	158	100

TABLE 4.10	Assistance provided – allegations finalised by investigation	
		Allegations
Benefit for complainant		
Monetary charge reduced, withdrawn or refunded		8
Action/decision expedited		2
Explanation or reasons provided by agency		2
Reversal or significant variation of original decision		2
Apology given		6
Other assistance given		3
Explanation only		71
TOTAL		94

During the last twelve months our Office has continued regular six-monthly meetings with officers at the Department to discuss issues arising during investigations and other matters associated with the investigation of complaints. In addition, we have met on a number of occasions with the Tenants Advice Service (TAS) to provide advice to tenancy advocates about the role of the Ombudsman in dealing with complaints about the public housing system. This initiative was well received by TAS and we look forward to strengthening our communication links with this body.

Western Power Corporation

During the year, 63 written complaints containing 77 allegations were received about Western Power. This represents a decrease of approximately 18% from the 77 complaints in 2002/2003 and also a decrease in allegations of approximately 17% from the 93 allegations received in that period. It also represents a further decrease from the figures of 93 complaints and 112 allegations received in 2001/2002.

The number of allegations relating to damaged electrical appliances or other effects of power interruptions was 18, or 23%. This is similar to the previous year. As in previous years, the single biggest cause of complaints (42%) was in relation to billing or account issues, including allegations of excessively high accounts or consumption; debt repayment arrangements; demands for payment of old debts, including debts related to other properties or other tenants; disconnection threats; or non-connection of power to new premises where the customer has unpaid accounts. Nevertheless, the number of allegations is significantly less than the 51 allegations received relating to these matters in 2002/2003. To some extent, I believe this is due to increased dialogue between my Office and staff of Western Power about certain customer service issues that have concerned us, and responses to that dialogue by Western Power during the year.

A total of 91 allegations were finalised during the year compared to 117 finalised last year, a decrease of approximately 22%. Table 4.11 shows the outcome of those 91 allegations finalised and Table 4.12 shows the assistance provided to complainants.

TABLE 4.11	Outcome of allegations finalised	
	Allegations	%
Finalised without investigation		
Discretion exercised not to investigate	27	30
Finalised to satisfaction of complainant	9	10
Referred back to agency	6	7
Complaint withdrawn or not proceeded with	4	4
	3	3
Finalised by completed investigation		
Sustained wholly or substantially	10	11
Sustained partly	3	3
Not sustained	17	19
Could not be determined	1	1
Withdrawn or not proceeded with	11	12
TOTAL ALLEGATIONS FINALISED	91	100

TABLE 4.12	Assistance provided – allegations finalised by investigation
	Allegations
Benefit for complainant	
Act of grace payment made	2
Action/decision expedited	1
Apology	1
Explanation or reasons provided by agency	1
Reversal or significant variation of original decision	11
Monetary charge reduced, withdrawn or refunded	9
TOTAL	25

I reported in 2003 that we had developed protocols with Western Power that changed the way complaints were handled by both agencies. In essence, my Office would not take up a complaint unless Western Power had been given the opportunity to provide the complainant with as detailed an explanation as possible about the complaint. If the complainant remained dissatisfied, my Office would then consider investigating the complaint. In my view, this has contributed to the reduction of complaints to the Ombudsman, presumably because of the more detailed explanations now provided by Western Power.

During the early part of 2004, I noted with interest media articles on the subject of pole top fires. At that time, Western Power's response to outages caused by pole top fires was that such incidents occur because of Western Australia's climatic conditions and that many of them cannot be prevented, despite Western Power's maintenance schedule.

This matter was discussed at a meeting with the Director of the Energy Safety Division of the Department of Consumer and Employment Protection. The meeting was arranged to discuss a number of matters of mutual interest and co-operation but also to discuss this Office's response to complaints about pole top fires, following media statements by the Director. He also provided me with a statement that provided background to his media release of 7 April 2004, in which he commented that Western Power had *"responded positively to...[his]...request to give pole top fire containment a much higher priority."* At the time of writing, I have also noted recent statements by Western Power about a more frequent maintenance schedule for power poles, including the gradual introduction of non-flammable materials on pole tops.

Nevertheless, the Energy Safety Division's view that pole top fires are not unpreventable has prompted me to consider whether Western Power's past responses to certain complainants were fair and reasonable. In my view, it is arguable that Western Power should accept some responsibility for damage resulting from outages caused by pole top fires and should consider providing reasonable compensation to claimants. This matter will be discussed with the Managing Director of Western Power in the near future.

Education – Departments, schools, universities and TAFE colleges

During the year 58 complaints were received, involving 94 individual allegations, about the Department of Education and Training, individual schools, universities and TAFE colleges. A total of 97 allegations was finalised. Table 4.13 shows details of allegations received and finalised during the year compared with the previous year together with a list of the institutions complained about.

TABLE 4.13	Allegations received and finalised			
	2003/2004		2002/2003	
Agency	Allegations Received	Allegations Finalised	Allegations Received	Allegations Finalised
Department of Education and Training (administration and individual schools)	55	54	37	28
Department of Education Services	4	-	-	-
Curtin University	7	14	8	1
Edith Cowan University	1	-	-	3
Murdoch University	10	13	21	28
University of Western Australia	5	6	3	2
WA Department of Training ¹	-	-	1	3
Central TAFE	4	3	2	2
Central West College of TAFE	-	-	1	4
Challenger TAFE	2	2	3	3
Kimberley TAFE	1	-	-	-

¹ On 3 February 2003 the Education Department and the Department of Training (WADOT) amalgamated to form the Department of Education and Training. Allegations recorded against WADOT were received before then.

TABLE 4.13 (cont'd)	Allegations received and finalised			
	2003/2004		2002/2003	
Agency	Allegations Received	Allegations Finalised	Allegations Received	Allegations Finalised
Midland College of TAFE ¹	-	-	1	1
South East Metro College of TAFE ²	-	-	1	1
Swan TAFE	1	1	-	-
West Coast TAFE	4	4	-	-
TOTAL	94	97	78	76

The 97 allegations finalised during 2003/2004 covered the following general areas:

TABLE 4.14	General areas of complaint		
	No.	%	As compared to % 2002/3
Academic assessment	14	14	20
Enrolment/fees/charges	15	15.5	8
Home schooling	2	2	3
Quality of teaching/organisation of courses	15	15.5	4
Staff employment issues	27	28	35
Student discipline	3	3	4
Miscellaneous	21	22	26
TOTAL	97	100	100

These allegations were dealt with as follows:

TABLE 4.15	Manner in which allegations finalised		
	No.	%	As compared to % 2002/3
Withdrawn or not proceeded with prior to commencement of investigation	2	2	1
Finalised to complainant's satisfaction without investigation	1	1	-
No jurisdiction	5	6	4
Discretion exercised not to investigate	18	18	30
Referred back to agency	18	18	11
Finalised after investigation	53	55	54
TOTAL	97	100	100

Of the 53 allegations for which an investigation was commenced, two were resolved wholly in favour of the complainant, 22 were not sustained, nine could not be determined and 20 were discontinued.

The assistance that was able to be provided as a result of recommendations made by the Ombudsman or voluntary action by the agency concerned in relation to matters finalised by investigation is shown in Table 4.16.

¹ On 1 January 2003 Midland TAFE and the South East Metropolitan College of TAFE amalgamated with part of the West Coast College of TAFE to form Swan TAFE. Allegations recorded were received prior to amalgamation.

² Now part of Swan TAFE. Allegation concerned matters prior to amalgamation.

TABLE 4.16 Assistance provided for allegations finalised after investigation commenced 2003/2004		
	No. of instances	As compared to 2002/2003
Action expedited	1	3
Apology given	2	4
Explanation only by Ombudsman and/or agency	34	24
Monetary charge reduced, withdrawn or refunded	-	4
Other	1	1
Reversal or significant variation of original decision	2	5
TOTAL	40	41¹

Examples of the assistance received by complainants subsequent to making a complaint to the Ombudsman are:

- a former teacher in a government school received over \$7,000 for salary and allowances either overlooked or disputed at the time of his resignation;
- a TAFE college agreed to continue to run a course that it had originally proposed to cancel; and
- a university agreed to accept an 'out of time' appeal against academic assessment from a student.

Systemic changes

In eight instances, in response to specific recommendations by the Ombudsman or voluntary initiatives by the agency concerned, changes to agency policies and procedures occurred subsequent to an investigation. These included:

- Curtin University and the Pharmaceutical Council modified arrangements for the exchange of information about final year students² in order to decrease the chances of misunderstandings occurring;
- the Department of Education and Training modified its processes for responding to queries from employees about salary issues in order to make them more timely;
- a Department of Education and Training Education District amended the format of the certificates of registration it issues to home educators to include the name of the home educator as well as the children concerned. Also the new format did not include any wording which could wrongly be interpreted as indicating that annual renewal was required;
- the Division of Science and Engineering at Murdoch University changed its submission procedures for appeals against academic assessment in order to ensure that appellants are aware of their right to sight and comment about staff submissions to the Appeals Committee; and
- admission procedures for the Veterinary Science course at Murdoch University were modified to stress to assessors the need to carefully check the arithmetic accuracy of their assessments. An independent check for arithmetic and transcription errors in the assessments of applicants to be offered a place (and those of the next 20 ranked applicants) was also introduced.

Investigation underway as at 30 June 2004

The way the Department of Education and Training responds to complaints is a matter that has been raised with our Office on a number of occasions in the past few years. In response to these complaints, we planned to undertake a formal investigation to consider in broad terms the

¹ It is possible for a complainant to receive more than one form of assistance with respect to the one allegation.

² This information is needed for the Council to determine whether students are eligible to undertake the practical training required to become a registered pharmacist.

Department's complaint management process. However, when complaints were received about the Department's handling of allegations of physical contact between a male teacher and several female students, concerns were raised about the process. Given these, we decided to focus our investigation on what had transpired in this particular case, including the Department's complaint management process and whether there were any implications for this process more generally, taking into account the other complaints we had received. This investigation will be completed by the end of 2004. Our aim is to provide recommendations that will assist the Department with its overall complaints management processes.

Overview of other activities

Public Interest Disclosures

The *Public Interest Disclosure Act 2003* (the PID Act) came into effect on 1 July 2003. The PID Act deals with disclosures by anyone who has reason to believe that something is wrong with the way a government official or public authority or government contractor is acting or going to act. The disclosure must be about "public interest information", which means information that tends to show:

- improper conduct;
- an act or omission that constitutes an offence under State law, including corruption;
- a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources;
- conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment; or
- a matter of administration that can be investigated by the Ombudsman under the *Parliamentary Commissioner Act 1971*.

The PID Act facilitates the making of such disclosures by providing protection for those who disclose the information and also those who are the subject of the information. The information must be disclosed to an appropriate "proper authority" under the Act. The Ombudsman is such an authority when the disclosure relates to:

- something that falls within the Ombudsman's jurisdiction – that is, a complaint about an action taken in the exercise of a power or function, relating to a matter of administration and that has affected someone in their personal capacity; or
- a public officer other than a Member of Parliament, a Minister of the Crown, a judicial officer or an officer referred to in Schedule 1 of the *Parliamentary Commissioner Act 1971*.

My Office received a small number of disclosures during the year and one of those is currently the subject of an investigation. My nominated Public Interest Disclosure officer also participated in meetings of the Public Interest Disclosure Coordination Committee. This committee was established by the Office of the Public Sector Standards Commissioner as a specialist forum to assist those agencies that are prescribed as "proper authorities" to comply with their obligations under the PID Act.

Administration and staffing

The position of Parliamentary Commissioner for Administrative Investigations (or Ombudsman, as it is more commonly 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 the Ombudsman reports direct to the Parliament, and it is to the Parliament – not the Government of the day – that the Ombudsman is responsible.

The responsibility for the administration of the Act (as distinct from the responsibility for the Ombudsman's office) is allocated to the Premier. The Department of the Premier and Cabinet provides a bureau service for such matters as human resource management, financial management and information technology.

In December 2003, legislative changes to the Act through the *Statutes (Repeals and Minor Amendments) Bill 2001* provided the Ombudsman with the employing authority to appoint staff in the discharge of functions. Prior to this, appointments within the Office were made by the Governor pursuant to section 5(2) of the Act.

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 Ombudsman, the Deputy Ombudsman, an Acting Ombudsman or officers of the Ombudsman.

Staffing

The year saw a number of staff changes in the Office.

In October 2003, Paul O'Connor joined as Manager Corporate Services for the Offices of the Ombudsman and the Public Sector Standards Commissioner.

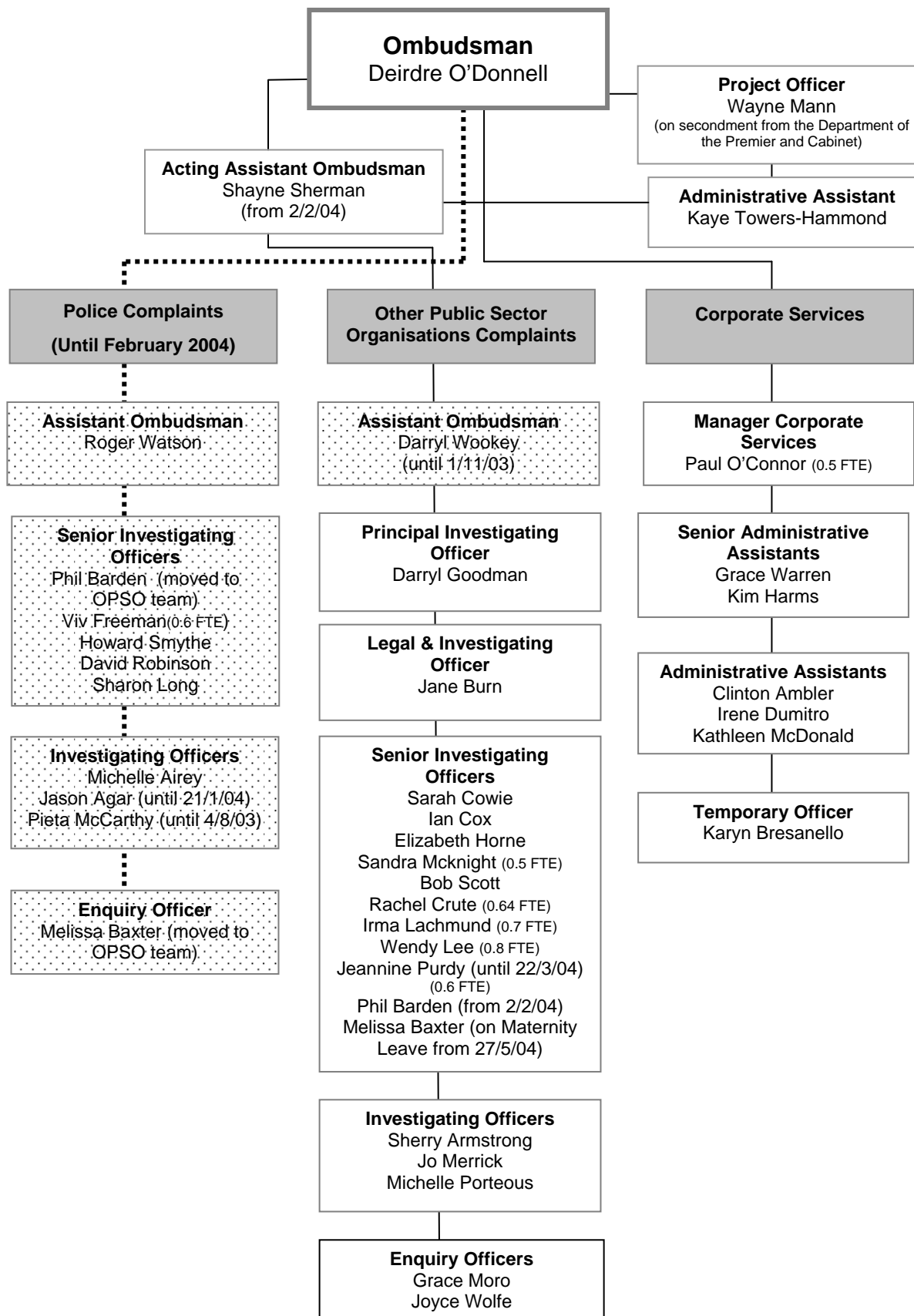
At the start of November 2003, Assistant Ombudsman Darryl Wookey took up the position of Acting Information Commissioner, on leave of absence from our Office for the duration of her appointment.

In January 2004, our Police jurisdiction transferred to the Corruption and Crime Commission. The staff involved who moved to that Office in February 2004 were: Roger Watson, Howard Smythe, Viviana Freeman, Sharon Long, David Robinson and Michelle Harries. Jason Agar moved to the UK, and Melissa Baxter and Phil Barden moved across to the Other Public Sector Organisations complaints team.

In February 2004, Shayne Sherman took up the position of Acting Assistant Ombudsman until the end of 2004.

A number of temporary Investigating Officers assisted us during the year, making a valuable contribution to our reduction in old matters on hand and to our improved model of assessing complaints at receipt. These officers were: Sandra Mcknight, Rachel Crute, Irma Lachmund, Wendy Lee and Jeannine Purdy.

In 2003/04 the Office was staffed as shown in the following chart.



Compliance reports

Disability Service Plan

The Office is committed to providing optimum access and service to people with disabilities, their families and carers. A Disability Service Plan will be developed in 2004/05. There were no formal complaints received during the year regarding the Office's provision of appropriate facilities or access to services.

Equal Employment Opportunity

The Office has continued to provide employment opportunities in the workplace and to develop staff awareness. Flexible working arrangements are well used with a number of staff taking up flexible working conditions, including part-time employment, working from home and paid parental leave.

Cultural Diversity and Language Service Outcomes

The Office works with a diverse range of cultural and linguistic groups. Complainants are able to use the Translating and Interpreting Service if English is not their first language, or the National Relay Service if they have hearing or speech impairments.

Youth Outcomes

The Office provides opportunities for graduate students throughout the year. During the reporting period, six students from Murdoch University and the University of Western Australia had short-term work assignments with the Office.

Compliance with Public Sector Standards

Human Resource Management Standards

The Office adopts the policies of its bureau service provider, the Department of the Premier and Cabinet, that relate to human resource management. These comply with the Standards. All staff are required to adopt these policies which are readily accessible on our intranet. There were no breach of standards applications lodged within the Office during the year.

Ethical Codes

The Office complies with the Public Sector Code of Ethics and has its own Code of Conduct. No internal grievances were lodged relating to non-compliance with the ethical codes and no complaints were made to external authorities.

Recordkeeping Plan

An Office Recordkeeping Plan, as required by the *State Records Act 2000*, was developed and submitted to the State Records Commission. Additional work is being done on this document and on the Office's policies and procedures in accordance with the *State Records Act 2000*, particularly in the areas of developing a staff training program, revising our Recordkeeping manual, and developing a plan for management of electronic records. The Office is committed to improving its recordkeeping practices in accordance with the Standards promulgated under the *State Records Act 2000*. A report on progress will be provided in our 2005 Annual Report.

Advertising and Sponsorship Expenditure (Electoral Act)

The Office has not engaged any companies or organisations relating to advertising, market research, polling, direct mail or media advertising that require disclosure under s.175ZE of the *Electoral Act 1907*.

Complaints Handling

The Office received no formal complaints about its services from the public during the year.

Waste Paper Recycling

The Office has continued its commitment to paper recycling and makes proper use of recycling providers and actively encourages staff to recycle paper. Waste paper recycling practices for confidential papers are incorporated in the Office through the use of security shredding bins. In 2003/04, 41 recycling and 13 security bins of 240-litre capacity were used to recycle paper.

Evaluations

No formal evaluations of operations were undertaken under section 7(e) of the *Public Sector Management Act 1994* during the reporting year.

Energy Smart Government Program

In accordance with the Energy Smart Government policy the Office has committed to achieve a 12% reduction in non transport-related energy use by 2006-07 with a 2% reduction targeted for 2003/04.

Energy Smart Government program	Baseline Data	2003/04 Actuals	Variation %
Energy Consumption (GJ)	322	310	3.73
Energy Cost (\$)	14,976	13,984	
Greenhouse Gas Emissions (tonnes of CO ₂)	82	82	
Performance indicators			
MJ/sqm	356	342	
MJ/Occupancy.	11,116	10,695	

The following energy saving initiatives have been undertaken:

- fit outs of the new accommodation used energy saving initiatives such as utilising natural light wherever possible
- staff awareness has been improved.

Report on operations

Corporate Services Bureau Support

The Department of the Premier and Cabinet continues to provide corporate service functions to our Office, including:

- human resource management – salary payments, policy development, leave processing, classification determination and recruitment services;
- financial management – account payments, financial reporting, chart maintenance, asset management, purchasing and supply, and fleet management; and
- information technology - permanent connection to the Internet.

Accommodation

In August 2003 the Office's corporate services staff moved into shared accommodation on the 12th floor of St Martins Tower together with corporate services staff of the Office of the Public Sector Standards Commissioner. The shared corporate services arrangements also provide reception and other services for the Office of Health Review, the Commonwealth Ombudsman and the Information Commissioner under a memorandum of understanding currently being developed.

The Office also completed a fitout on the 16th floor accommodation of St Martins Tower in June 2004 to put effect to the Machinery of Government Task Force recommendation that the State Ombudsman collocate with the Office of the Information Commissioner.

Information Technology

Our information technology staff provided support to the Office's information technology environment, upgrading essential corporate servers to improve system performance and service internal clients. The planning for the Network Integration Project commenced this year aiming to allow the sharing of information, emails and resources between this Office and the Office of the Public Sector Standards Commissioner. The Office also commissioned the installation of a fibre optic connection, which has increased the speed of Internet connectivity and is expected to decrease ongoing expense in this area.

Supply Function

A review by the State Supply Commission was conducted of compliance with State Supply policies. A sample of contracts awarded during the year was examined and the Office was found to have fully complied with relevant policies. The collocation of the Office of the Public Sector Standards and this Office has provided opportunities for joint contracts to manage the supply functions for both Offices.

Occupational Health, Safety, and Welfare

The Office continues to provide a safe and secure working environment for employees. There were no compensation claims processed during the year.

The Office regularly updated emergency contact information posters with information from other collocated agencies and conducted training in emergency procedures, including building evacuation and first aid training. Security and safety features, including policy and procedures, have been included in areas of public access and in interview rooms in the newly shared reception area. A collocation Occupational Health, Safety and Welfare Committee will be in operation in the next financial year.

An employee assistance program provider was contracted to enable access to confidential counselling services to staff and their immediate family if required.

Risk Management

The Risk Management Manual providing a comprehensive and systematic methodology for managing risks was developed and will be submitted to RiskCover in the new financial year. Workshops in risk management at strategic, operational and project levels will be conducted by RiskCover later in 2004.

Human Resources

The Office has engaged a human resource consultant to assist in the development and classification of positions within the Office. The consultant is also contracted to assist in recruitment processes.

Industrial Relations

The 'Omnibus' Bill was proclaimed during the year, which now enables the Ombudsman to appoint staff in the Office, rather than by appointment by the Governor in Executive Council.

No industrial disputes were recorded during the year.

Freedom of information

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

Agencies that receive applications for access to documents that have originated from this Office or have been specifically prepared for the Ombudsman are required to notify us of such applications so that we have the opportunity to point out any sensitivities in the documents.

Legislation impacting on the Office

The Office does not administer any legislation. However, the *Parliamentary Commissioner Act 1971* provides the basis for the existence of the Office, and the *Telecommunications (Interception) Western Australia Act 1996* places certain statutory responsibilities on the Ombudsman.

Other written laws which have an impact on our activities are:

- *Anti-Corruption Commission Act 1998*
- *Corruption and Crime Commission Act 2003*
- *Corruption and Crime Commission Amendment and Repeal Act 2003*
- *Disability Services Act 1993*
- *Equal Opportunity Act 1984*
- *Financial Administration and Audit Act 1985*
- *Inspector of Custodial Services Act 2003*
- *Library Board of Western Australia Act 1951*
- *Occupational Health, Safety and Welfare Act 1987*
- *Public Sector Management Act 1994*
- *Royal Commissions Act 1968*
- *Royal Commission (Police) Act 2002*
- *State Records Act 2000*
- *State Supply Commission Act 1991*
- *Statutes (Repeals and Minor Amendments) Act 2003*
- *Workers' Compensation and Rehabilitation Act 1981.*

In relation to our new Gas Industry Ombudsman function, the following Acts have impacted us:

- *Economic Regulation Authority Act 2003*
- *Energy Legislation Amendment Act 2003.*