

Overview of Ombudsman's Office

Executive summary – year's achievements

Complaint investigation and resolution

- Responded to 3,924 [enquiries](#) from members of the public seeking assistance and advice
- Finalised 1,542 [investigations](#)
- [Recommendations](#) to agencies accepted in 94% of cases
- Entered into a Memorandum of Understanding with the Department of Local Government and Regional Development to guide exchange of information in relation to complaints about local governments
- Completed a tender process for the delivery of a new case management system to improve our process of complaint investigation and resolution
- Provided negotiation and mediation training for investigation officers
- Implemented significant improvements to safety and security arrangements for staff

Major investigations

- Commenced an [own motion investigation](#) reviewing the use by Indigenous prisoners of the Department of Corrective Services' internal Prisoner Complaints Process
- Completed an own motion investigation [Report by the Ombudsman on complaints management processes in the Department of Education and Training](#)
- Tabled in Parliament a major [Report on Allegations Concerning the Treatment of Children and Young People in Residential Care](#)

Partnerships

- Until February 2007, chaired the [Integrity Coordinating Group](#) comprising the State Ombudsman, Corruption and Crime Commissioner, Auditor General and Commissioner for Public Sector Standards
- Partnered with the Commonwealth and New South Wales Ombudsmen in an AusAid-funded Project to strengthen the capacity of [Ombudsmen in Indonesia](#)
- Participated in a national project led by the New South Wales Ombudsman to develop better strategies for [dealing with challenging complainants](#) and commenced a national trial

Improved public administration

- In partnership with the Department of Corrective Services, provided training to all new prison officers about the role of the Ombudsman
- Developed and published on our website [*The Ombudsman's Redress Guidelines*](#)
- Developed and published on our website three new information sheets to enhance understanding of administrative and complaint handling processes by agencies and members of the public:
 - [*Tips on making a complaint to a State Government agency*](#)
 - [*Good record keeping*](#)
 - [*Information for boards and tribunals*](#)
- Made a number of presentations at conferences and to community groups, government agencies and ministerial advisory committees

Access to our services

- Secured an agreement from the Department of Corrective Services that all prisoners would have access to [*free telephone calls*](#) to our office
- Developed information to advise prisoners of the role of the Ombudsman and how and when to access our services
- Conducted the first [*Indigenous cultural awareness training*](#) for all Ombudsman staff
- [*Redesigned our website*](#) to bring content in line with current and future direction and improve accessibility

Operational structure

What does the Ombudsman do?

The Parliamentary Commissioner for Administrative Investigations - more commonly known as the Ombudsman - is an independent officer appointed by the Governor of Western Australia. The Ombudsman is responsible directly to the Parliament rather than to the Government of the day or a particular Minister.

The Ombudsman's governing legislation is the *Parliamentary Commissioner Act 1971* (the Act). The *Telecommunications (Interception) Western Australia Act 1996* also gives certain statutory responsibilities to the Ombudsman.

The Act provides that the core function of the Ombudsman is to investigate administrative action in public sector agencies and local governments, and make recommendations to remedy defective administration and prevent its recurrence.

We fulfil this role by:

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

Complaint investigation and resolution overview

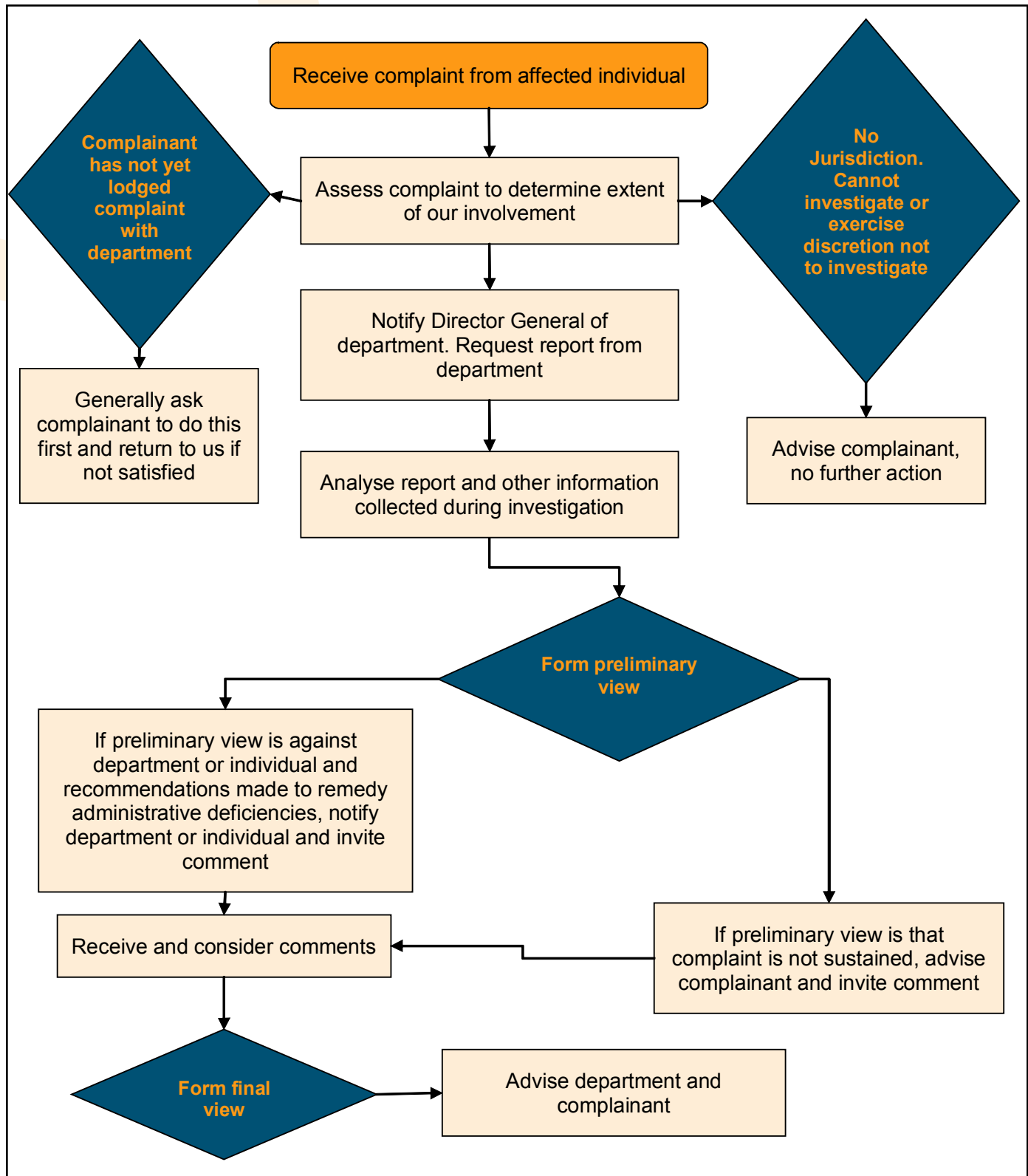
Process of investigating complaints

The Act provides wide-ranging discretionary powers to help determine the scope and nature of investigations. All complaints are assessed against the following criteria before an investigation commences:

1. We determine whether the agency complained about is within the Ombudsman's jurisdiction (a government department or authority, or local government).
2. We assess whether:
 - the action or decision complained about relates to a matter of administration
 - the action complained about was within the agency's powers or functions
 - the complainant is personally affected by the action or decision
 - the complainant became aware of the action or decision within 12 months of making the complaint

- the complainant has or had a legal remedy or a right of review or appeal.
3. We exercise a discretion about 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 where another complaint-taking body may be more appropriate
 - the complainant does not have a sufficient personal interest in the matter.
4. If a complaint is out of our jurisdiction or there is a more appropriate body to investigate the matter, we refer the complaint to the appropriate body.
5. If we decide not to investigate a complaint, we advise the complainant, providing the reasons for our decision. If we decide to investigate, we advise the agency and the complainant.
6. We choose whether to conduct a formal or informal investigation. The majority of our investigations are conducted informally. We prioritise these according to a range of factors such as whether there is any urgency attached to the outcome.
7. Complex investigations are more likely to be conducted formally and involve the Ombudsman's Royal Commission powers where:
- there is high public interest or public policy implications in the matter
 - there is a reasonable prospect of proving an allegation or group of allegations
 - practical outcomes can be achieved for the complainant
 - important systemic policy, procedural or legislative issues are involved.

Figure 1. Overview of complaints investigation process



Enquiry service

Unlike some other Ombudsman legislation, the Act does not currently enable us to receive oral complaints. However, we do have an enquiry service for people seeking information, and offer advice and assistance to make a complaint. Many people with a grievance contact us for our help in understanding who to direct their complaint to and how to do this. A number of concerns are resolved over the telephone without further intervention required. This year we received 3,924 enquiries, of which 105 involved face-to-face meetings. This is a small increase on the 3,890 enquiries we received last year.

The office also has an important referral role. While unable to be of direct assistance about matters outside our jurisdiction, we often refer people to the appropriate body to pursue their complaint.

More information about our complaint investigation and resolution role can be found in our [report on operations](#).

Telecommunications Interception

Telecommunications interception activities are carried out under the *Telecommunications (Interception) Western Australia Act 1996* and the *Telecommunications (Interception) Western Australia Regulations 1996*. These, together with the *Telecommunications (Interception) Act 1979* of the Commonwealth and the *Corruption and Crime Commission Act 2003*, enable designated 'eligible authorities' to carry out strictly regulated telecommunications interceptions.

'Eligible authorities' permitted to carry out telecommunications interceptions are the Western Australia Police (WAPOL) and the Corruption and Crime Commission (CCC). These activities are monitored by the Ombudsman.

As Principal Inspector, the Ombudsman must inspect the records of telecommunications interceptions by eligible authorities at least twice a year to ensure compliance with the relevant legislation. The Ombudsman reports in writing to the Minister of the eligible authority about the results of these inspections. In accordance with the legislative requirements, a report on WAPOL inspections for the financial year ended 30 June 2006 was presented to the Minister for Police. A report on CCC inspections for the financial year ended 30 June 2006 was presented to the Attorney General.

During the current reporting period, 11 inspections of the operations of the WAPOL were carried out, including visits to the premises of the Telecommunications Interception Unit, and two external units in the metropolitan area. We undertook six inspections at the CCC.

Energy Ombudsman (Western Australia)

Western Australia's Gas Industry Ombudsman scheme was established in 2004 and the Electricity Ombudsman scheme in 2005, when these roles were combined to form the Energy Ombudsman. The governing body of the two schemes is Energy Industry Ombudsman (Western Australia) Limited. The costs of the governing body and the Energy Ombudsman are met by industry members.

The functions of the Energy Ombudsman are in addition to and separate from the State Ombudsman role. The *Parliamentary Commissioner Act 1971* was amended in 2003 and 2004 to enable the State Ombudsman to serve in this role and allow State Ombudsman's staff to provide assistance.

During the reporting period, 172 gas-related complaints were received. Some 98% of these complaints were resolved within 10 business days without the need for investigation. We received 1021 electricity complaints, 987 (96%) of which were also resolved within 10 business days.

Indian Ocean Territories

A service delivery arrangement between the State Ombudsman and the Commonwealth Government enables the Ombudsman's office to offer its services to residents of the Indian Ocean Territories (Christmas and Cocos (Keeling) Islands). This covers agencies in the Ombudsman's jurisdiction that operate in the Territories at the Commonwealth's request. Under that arrangement, two complaints were received during the reporting period.

State Records Commission

The Ombudsman is a member of the State Records Commission which was established July 2001 under the *State Records Act 2000*. Other members of the Commission are the Auditor General, the Information Commissioner, and a person with record keeping experience from outside government who is appointed by the Governor for a three year term.

The Commission monitors the operation of and compliance with the legislation, monitors record keeping compliance by government bodies and makes inquiries into alleged breaches of the legislation. The Commission reports directly to Parliament and submits a separate annual report to Parliament.

The Ombudsman participated in six meetings of the Commission during the reporting period.

How is the Ombudsman regulated?

The *Parliamentary Commissioner Act 1971* sets out the functions and powers of the Ombudsman, including:

- the Ombudsman may, at any time, table in Parliament a report on any matter arising in connection with the exercise of his functions
- the Ombudsman has wide investigative powers, including those of a Royal Commission
- the Ombudsman cannot investigate the decisions of courts, Cabinet or ministers of the Crown, but may investigate recommendations made to ministers
- the Ombudsman may commence an investigation:
 - in response to a written complaint from any person or organisation personally affected by an administrative act or omission of a department or authority under the Ombudsman's jurisdiction
 - on referral by either House of Parliament, a committee of either House, or a joint committee of both Houses

- on the Ombudsman's own motion
- in certain circumstances, the Ombudsman has the discretion whether to commence or continue an investigation
- the Ombudsman cannot make adverse comments in a report about any person unless that person is given the opportunity to respond
- investigations are conducted in private and the Ombudsman can only disclose information or make a statement about an investigation in accordance with the Act
- the Ombudsman does not have determinative powers, but may recommend to an agency that redress be given to a complainant and that practices, procedures or legislation be reviewed to prevent recurrence
- if the Ombudsman's recommendations are not accepted within a reasonable timeframe, he can provide the Premier with a copy of the report, the recommendations and relevant correspondence, or table a report in Parliament.

Other relevant legislation

- *Corruption and Crime Commission Act 2003*
- *Disability Services Act 1993*
- *Equal Opportunity Act 1984*
- *Financial Management Act 2006*
- *Indian Ocean Territories (Administration of Laws) Act 1992*
- *Inspector of Custodial Services Act 2003*
- *Occupational Safety and Health Act 1984*
- *Prisons Act 1981*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Royal Commissions Act 1968*
- *Royal Commission (Police) Act 2002*
- *State Administrative Tribunal Act 2004*
- *State Records Act 2000*
- *State Supply Commission Act 1991*
- *Telecommunications (Interception) Act 1979* (Commonwealth)
- *Telecommunications (Interception) Western Australia Act 1996*
- *Terrorism (Preventative Detention) Act 2006*
- *Workers' Compensation and Rehabilitation Act 1981*

Legislation relevant to our Energy Ombudsman function

- *Economic Regulation Authority Act 2003*
- *Electricity Industry Act 2004*
- *Energy Coordination Act 1994*
- *Parliamentary Commissioner Act 1971* (section 34)

Organisational structure

As illustrated in the organisational chart, the Ombudsman's office has three operational teams supported by a Business Services team, which is shared with the Office of the Public Sector Standards Commissioner.

The **Assessments and Outreach** team carries out the first stage of the complaints handling process, aiming to ensure that as many complaints as possible are resolved quickly.

The team looks at whether the issue complained about is in the Ombudsman's jurisdiction, if any action is warranted and if further investigation is needed.

The **Investigations and Major Projects** team investigates complaints referred by the Assessments team as well as significant systemic issues through 'own motion investigations'. The majority of investigations are conducted informally, but more formal, detailed investigations are carried out for complex matters. In particular, formal investigations are commenced where there is a significant public interest, public policy implications or systemic, procedural or legislative issues.

The **Energy Ombudsman** team investigates and facilitates the resolution of complaints from residential and small business customers about electricity and gas providers, both government and privately owned.

The **Business Services** team provides wide-ranging administrative support including:

- reception and customer service
- budget and financial management
- procurement and asset management
- HR management
- records management and services
- IT management and services
- accommodation and admin services.

The office is also supported by an **Executive and Research** team responsible for executive management and support, projects and research.

Organisational chart

