

Appendices

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Appendix 1 – Allegations Received and Outcomes of Allegations Finalised by Public Authorities

Departments and Authorities

Departments and Authorities	Allegations Received in 2008-09	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised in 2008-09 *
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to complainant's satisfaction	Referred back to public authority	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Agriculture – Department of	1											
Attorney-General - Department of the	15	4	6			1				1		12
Builders' Registration Board	4	1	3								6	10
Building Disputes Tribunal	6	4	2				1				1	8
Burswood Park Board	1										1	1
Busselton Water Board	1		1									1
Central TAFE	3		3			1						4
Challenger TAFE	1											
Child Protection - Department for	51	2	18	3	1	24	4		1	1	10	64
Commerce – Department of	16	2	10		1				1			14
Communities - Department for	1	1										1
Corrective Services - Department of	262	20	137	11	4	83	2	4	3	6	12	282
Country Housing Authority	1		1									1
Culture & the Arts - Department of	2				1						1	2
Curtin University of Technology	25		1			1	1		2	1	16	22
Disability Services Commission	2		1						3			4
East Perth Redevelopment Authority	1											
Edith Cowan University	17		1	1		1			1	2	16	22
Education & Training - Department of	26	5	9	1		7	1				11	34
Education Services – Department of							1		1		2	4
Electoral Commission	3	1	1	1								3
Energy – Office of	3		1			1						2
Environment & Conservation - Department of	5			1	1				2	3	1	8
Environmental Protection Authority		1										1
Fisheries - Department of	3		2		5							7
GSL (Aust) Pty Ltd - Transport	2											
Government Employees Superannuation Board	11		6	2	1	1					1	11
Hairdressers Registration Board	1					1						1
Health - Department of	26	5	9	1		2	4	1		2	5	29
Heritage Council	1	1										1
Housing - Department of	50	2	14	1	3	17	2	1	3		8	51
Indigenous Affairs - Department of	2	1			1							2
Insurance Commission of WA	2					2						2
Kimberley TAFE			1									1
Landgate	5	1	1			2						4

Departments and Authorities	Allegations Received in 2008-09	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised in 2008-09 *
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to complainant's satisfaction	Referred back to public authority	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Legal Aid WA	10	1	3	1		3	1					9
Legal Profession Complaints Committee	6		2		1	1					1	5
Local Government & Regional Development - Department of	8		3			1	1				2	7
Main Roads WA	7		5			2					2	9
Medical Board of WA	3		4									4
Mental Health Review Board	1				1							1
Metropolitan Cemeteries Board	1		4								5	9
Mines & Petroleum – Department of	3	1	2									3
Murdoch University	8		5			2			1	3	3	14
Nurses and Midwives Board of WA			1									1
Organisation not identified	10	3	3	2	1	2						11
Parliamentary Services – Department of	1	1										1
Planning & Infrastructure - Department for	38	2	13	3	9	12	1		1	2	3	46
Plumbers' Licensing Board	1		1									1
Prisoner Review Board	9		3			3						6
Premier & Cabinet - Department of	3	1	2			1					1	5
Psychologists Board of WA	2		2	1		1						4
Public Advocate	1		1									1
Public Prosecutions - Director of	1	1										1
Public Sector Standards Commissioner – Office of the	3			1		1						2
Public Transport Authority	20	2	5	2	2	5		1	1	2		20
Public Trustee	12		9		1	3					1	14
Racing, Gaming & Liquor - Department of	3	1	2								1	4
Real Estate and Business Agents Supervisory Board	5				1	1				2	6	10
SERCO - Acacia Prison	27	1	12		2	15		1		1	2	34
Small Business Development Corporation	1					1						1
State Revenue – Office of	7		14		1							15
Treasury & Finance - Department of	7		3	1		1						5
University of Western Australia	3					1					2	3
Water - Department of	2		2									2
Water Corporation	16	3	6	2	1	6	1				1	20
Western Australia Police	138	8	37	4	5	78	1		2	2	4	141
Western Australian College of Teaching	4		1		1						1	3
Western Australian Planning Commission	7		2			1					7	10
Western Power Corporation			2				1					3
Workcover	2		1			1		1	1	3	3	10
Sub Totals (Depts. & Authorities)	920	76	378	39	44	286	22	9	23	31	136	1044

* Allegations finalised in 2008-09 may include allegations which were received in earlier financial years.

Local Governments

Local Governments	Allegations Received in 2008-09	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised in 2008-09 *
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to complainant's satisfaction	Referred back to public authority	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Albany - City of	7	1	1							2	2	6
Armadale - City of	3	1									2	3
Augusta-Margaret River – Shire of	2			1								1
Bayswater - City of	2				1						1	2
Belmont – City of	4	1	1							1	1	4
Beverley - Shire of	1		1									1
Broome - Shire of	2								1			1
Bunbury - City of	5		2					1		2	2	7
Busselton - Shire of	3		2						1			3
Cambridge - Town of	2		2									2
Canning - City of	6	1				2			1		2	6
Capel – Shire of	4	1	1									2
Chittering - Shire of	2								1		1	2
Claremont - Town of	2		1								1	2
Cockburn - City of	6		5	1							1	7
Collie - Shire of	3										2	2
Coorow - Shire of	1	1										1
Cranbrook – Shire of	1	1										1
Denmark - Shire of	1		1									1
Donnybrook / Balingup - Shire of	4		4								1	5
Dumbleyung - Shire of	2		1						1			2
Eastern Metro Regional Council	1		1									1
East Fremantle – Town of	1		1									1
Esperance - Shire of	2					1					1	2
Exmouth – Shire of	1											
Fremantle – City of	1											
Gosnells - City of	5		4			1					3	8
Harvey - Shire of	1		1									1
Joondalup - City of	8	1	2			2	1					6
Kalamunda - Shire of	8		3			5						8
Kalgoorlie-Boulder – City of	1											
Mandurah - City of	5		3			1	1		1	1	1	8
Manjimup - Shire of			1									1
Melville - City of	5		1	1		1					3	6
Merredin - Shire of	3	1	1			1						3
Mosman Park - Town of	2								1		1	2
Mundaring - Shire of	2										2	2
Murray - Shire of	6		2	1							3	6
Narrogin – Town of	1										1	1
Nedlands - City of									1			1

Local Governments	Allegations Received in 2008-09	Finalised at initial stage					Finalised by completed investigation or review					Allegations finalised in 2008-09 *
		No jurisdiction	Discretion exercised	Withdrawn or not proceeded with	Finalised to complainant's satisfaction	Referred back to public authority	Withdrawn or not proceeded with	Could not be determined	Sustained partly	Sustained wholly or substantially	Not sustained	
Northam – Shire of	1											
Northampton - Shire of	1					1						1
Perth - City of	9	1	3			1	1				3	9
Plantagenet – Shire of	1		1									1
Port Hedland – Town of	1										1	1
Ravensthorpe – Shire of	1		1									1
Rockingham - City of	2		1									1
Serpentine / Jarrahdale - Shire of	4								2	1		3
Shark Bay – Shire of	1		1									1
South Perth - City of	9		2						1		6	9
Stirling - City of	20		9								6	15
Subiaco – City of	6		2						1		3	6
Swan - City of	9		2						4		10	16
Toodyay - Shire of	1								1			1
Victoria Park - Town of			1									1
Victoria Plains – Shire of	1		1									1
Vincent - Town of	4		1			1			1		1	4
Wanneroo - City of	11		7	1		3		1	1		1	14
Wyndham / East Kimberley - Shire of	3	1	1	1		1						4
York - Shire of	6		2			1				1		4
Sub Totals (Local Governments)	207	11	77	6	1	22	3	2	19	8	62	211
Organisation not within jurisdiction	230	218	3	2		1						224
Grand Totals (Departments & Authorities and Local Governments)	1357	305	458	47	45	309	25	11	42	39	198	1479

* Allegations finalised in 2008-09 may include allegations which were received in earlier financial years.

Appendix 2 - Process for Assessing and Handling Complaints and Dealing with Enquiries

Assessing Complaints

The **Parliamentary Commissioner Act 1971** provides wide-ranging discretionary powers to help determine the scope and nature of investigations. All complaints are assessed before an investigation commences to determine whether the matter is within the Ombudsman's jurisdiction. This involves assessing whether:

- The authority complained about is within jurisdiction (State Government departments or agencies, prisons, schools, technical colleges, universities and local governments);
- The action or decision complained about relates to a matter of administration;
- The action complained about was within the public authority'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; and
- The complainant has or had a legal remedy or a right of review or appeal.

The Ombudsman can exercise discretion to investigate a complaint in situations where special circumstances exist for matters over 12 months old and where the complainant has a legal remedy or right of review or appeal and it is not reasonable to expect the complainant to resort to that remedy.

The Ombudsman can also exercise discretion not to investigate where:

- The complaint appears 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 public authority is still investigating the complaint, or where another complaint-taking body may be more appropriate; or
- The complainant does not have a sufficient personal interest in the matter.

Investigating Complaints

If a complaint is out of the Ombudsman's jurisdiction or there is a more appropriate body to investigate the matter, the complainant is referred onto that body.

If a decision is made not to investigate a complaint, the complainant is advised and provided with reasons for the decision. If a decision is made to investigate, the public authority and the complainant are advised.

A formal or an informal investigation may be conducted. The majority of the investigations undertaken by the office are conducted informally. Investigations are prioritised according to a range of factors such as whether there is any urgency attached to the outcome.

Formal investigations may involve the Ombudsman's Royal Commission powers and are used where there are high public interest or public policy implications in the matter or informal resolution is unlikely to be successful, and where:

- There is a reasonable prospect of proving an allegation or group of allegations;
- Practical outcomes can be achieved for the complainant; and
- Important systemic policy, procedural or legislative issues are involved.

Once an investigation is finalised, if the Ombudsman's office considers that the complaint is not sustained and that no administrative improvements are required, the complainant will be advised and will generally be given the opportunity to comment before a final decision is made.

If it is considered that a complainant has been adversely affected by the actions or decisions of the public authority, both the authority and the complainant will be advised and given the opportunity to respond to any issues. The office may also make recommendations for change to the public authority and, in this case, the relevant Minister will be advised.

Generally the public authority will agree with the Ombudsman's recommendations or suggestions and will take action that will assist the complainant and/or improve the authority's policy and processes. The complainant will be advised of any outcome. If the action needed may take some time to implement, the office will ask the public authority to advise when it has been completed or follow-up with the authority later. In the event that the public authority does not agree with a recommendations or suggestion, the Ombudsman may provide a report to the Premier and Parliament if required.

Complaint outcomes

Complaints may be finalised at the initial stage without the need for an investigation, for the following reasons:

- An assessment is made that the complaint is out of jurisdiction, usually because it relates to the decision of a Minister or Cabinet, is not an administrative matter, or the public authority complained about is not covered by the Ombudsman's jurisdiction;
- The complainant has a reasonable alternative legal remedy or right of review or appeal;
- The complaint has been informally resolved to the satisfaction of the complainant;
- The complainant withdraws the complaint or decides not to proceed, for example if the person is satisfied with an explanation provided or action taken by the public authority;
- The matter is referred back to the public authority, for example, where the public authority is still investigating the complaint. In this case, the complainant may come back to the Ombudsman if the matter is not resolved by the authority; or
- Further investigation does not appear to be warranted in the circumstances. This may occur where initial investigation reveals another body, such as the Corruption and Crime Commission, may be more appropriate (or is already investigating the matter), the matter is out of jurisdiction or, in rare circumstances, where the complaint appears to be frivolous, trivial, vexatious, or not in good faith.

The remaining complaints are finalised following an investigation with one of the following outcomes:

- The complaint was wholly or partly sustained. In these cases the Ombudsman may make recommendations and suggestions for remedial action for the complainant and to improve administrative practices to prevent reoccurrence;
- The complaint was not sustained. In some cases the investigation process highlights areas for improvement to administrative practices and the authority may initiate action to make appropriate changes;
- The complainant withdraws the complaint;
- The complaint is closed without a finding when it becomes clear it is inappropriate to continue the investigation for a variety of reasons including:
 - it is not possible, based on the evidence, to reach a conclusion;
 - there is a more appropriate public authority to deal with the complaint;
 - the matter is reasonably resolved by the voluntary action of the public authority complained about; and
 - the potential benefits of pursuing an investigation are clearly outweighed by the costs of doing so.

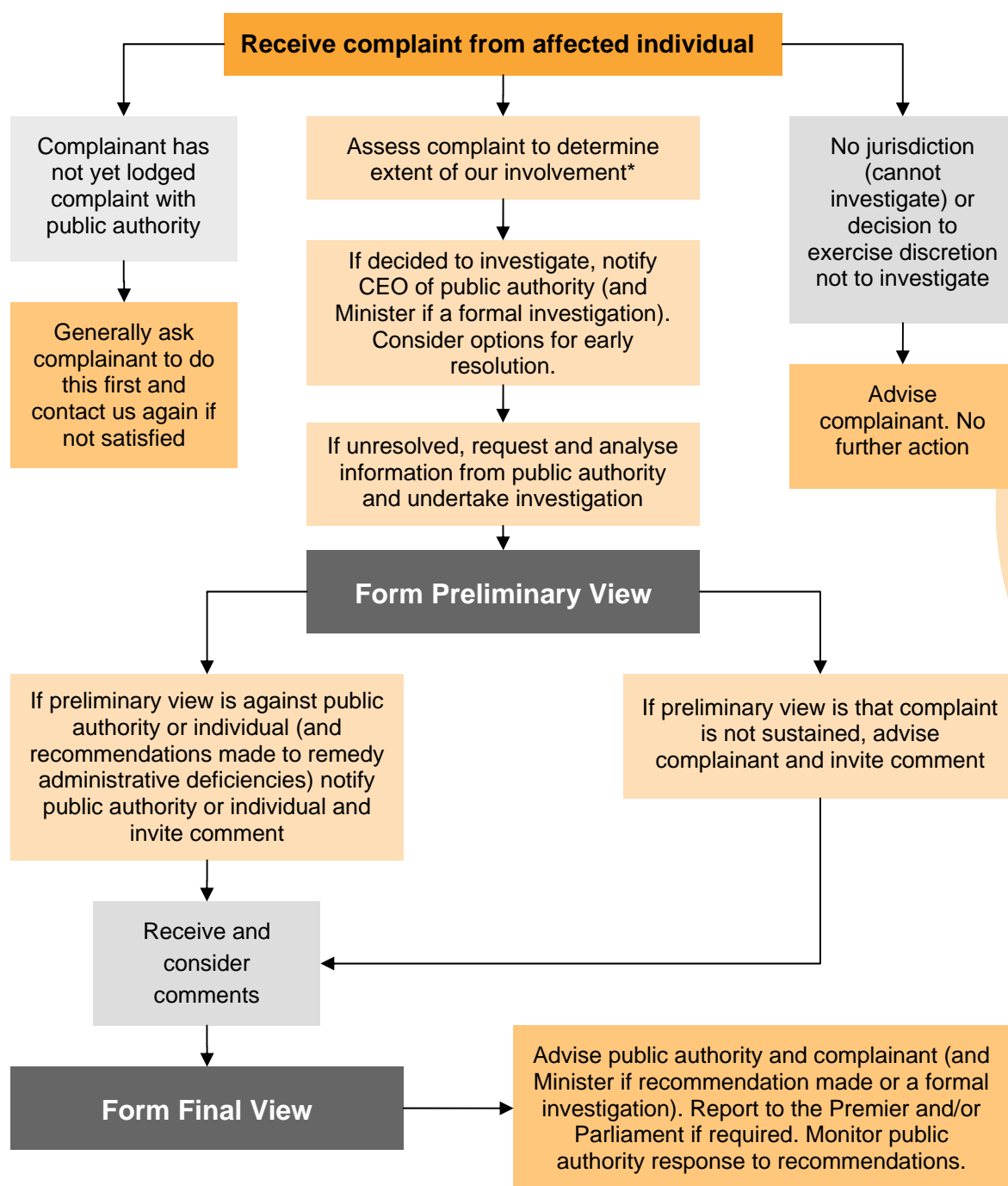
It is not necessary for an investigation to be completed and the allegation to be sustained for the complainant to receive an appropriate remedy and/or the public authority to implement administrative improvements. This can also occur at the initial stage and prior to completion of an investigation.

The Enquiry Service

The Ombudsman's office handles enquiries via the telephone or from people visiting the office. Enquiries may come from the public seeking general information or from public authorities seeking advice, but most are from people asking for assistance in making a complaint. As far as possible the office provides advice and assistance to people making enquiries. Where the person's complaint relates to a matter outside the Ombudsman's jurisdiction, they are generally referred to an appropriate alternative agency. If the matter is within jurisdiction, but the person has not already raised the matter with the public authority concerned, they are referred back to the relevant public authority in the first instance and are advised to come back to the Ombudsman if the matter is not resolved. Enquiry Officers provide information about the public authority's complaint processes if appropriate. The Ombudsman has an information sheet called *Making a complaint to a State Government agency*, which is provided to people making enquiries. It is also available on the Ombudsman's website at www.ombudsman.wa.gov.au

If an enquiry relates to a matter that the Ombudsman may be able to investigate and the person has already attempted to resolve the matter with the public authority, people are asked to submit a complaint in writing to the Ombudsman. If the person is unable to put their complaint in writing, the Enquiry Officer will work with them to ensure that a written complaint can be submitted.

Overview of the complaint investigation process



* For a full explanation of the assessment process, see the Ombudsman Information Sheet *How we assess complaints*

Appendix 3 - Publications

The following publications are available electronically on the Ombudsman's website at www.ombudsman.wa.gov.au and in hard copy by request to mail@ombudsman.wa.gov.au:

Brochures

Ombudsman Western Australia

Guidelines and Information Sheets

For Complainants

How to complain to the Ombudsman (with complaints process flow chart)
Ombudsman Western Australia & Energy Ombudsman Western Australia
Overview of the complaints management process
Making a complaint to a State Government agency
How we assess complaints
Assessment of complaints checklist
Being interviewed by the Ombudsman
Requesting the review of a decision
Complaining to the Ombudsman - Information for prisoners

For Agencies

Information for agencies - About the Ombudsman
Effective handling of complaints made to your organisation - An overview
Complaint handling system checklist
Making your complaint handling system accessible
Guidance for Complaint Handling Officers
Conducting administrative investigations
Investigation of complaints
Procedural fairness (Natural justice)
Dealing with unreasonable complainant conduct
Remedies and redress
Good record keeping
Information for boards and tribunals