Annual Report 2000

2000 Annual Report

OMBUDSMAN

OMBUDSMAN

Western Australia

Western Australia

29th Annual Report of the Parliamentary Commissioner for Administrative Investigations

OMBUDSMAN
Western Australia

Mr President, Mr Speaker

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

In accordance with section 64(1) of the *Financial Administration and Audit Act 1985* (as modified by Part 1 of Schedule 1A) I submit my report for the year ended 30 June 2000, together with copies of the opinions of the Auditor General.

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

Murray Allen
Parliamentary Commissioner for
Administrative Investigations

21 November 2000

CONTENTS

CHAPTER 1

THE YEAR'S WORK

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

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

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

Complaints and allegations received

As I have pointed out in previous reports, when examining the statistics relating to the work of my Office it is important to bear in mind the following –

- The amount of work involved in an investigation varies considerably from case to case. Records are kept on the basis of both complaints and allegations (i.e. a complaint can involve one or more allegations), in an attempt to reflect the differing amount of work involved. However, there is no quantitative or qualitative weighting of the relative importance or complexity of allegations. This means that allegations requiring major investigations are treated the same way, statistically, as brief, straightforward ones.

- Unlike most other Ombudsman legislation, the *Parliamentary Commissioner Act 1971* does not provide for the receipt of oral complaints. This, together with other variations in jurisdiction, and the differences in recording criteria, makes valid comparisons between the statistics of Ombudsmen's Offices in Australia or elsewhere difficult. In particular, it should be noted that my Office handles many thousands of telephone enquiries each year, frequently from persons seeking information rather than wishing to make a complaint. Many have a grievance but require assistance to establish how and to whom a complaint can be made. We frequently assist enquirers to prepare written complaints.

- My Office has an important referral role. Even though I am unable to be of direct assistance to persons who approach my Office about matters that are not within my jurisdiction, I am often able to refer them to another appropriate source of assistance. Therefore, an outcome of "no jurisdiction" does not necessarily mean that I have not been of any assistance to the complainant.

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

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

Table 2 shows the geographical origin of the allegations received on the basis of the electoral districts of Western Australia.

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

Matters finalised

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

TABLE 3 Manner in which allegations finalised 1999/2000

Finalised without completed investigation	Number of allegations	%
• No jurisdiction	179	5
• Discretion exercised not to investigate	430	11
• Discontinued	136	4
• Withdrawn or lapsed	104	3
Finalised by completed investigation or review of internal investigation		
• Totally or substantially favourable to complainant	413	11
• Partially favourable to complainant	210	5
• Not substantiated	1580	42
• Police local resolution judged adequate	737	19
Total allegations finalised	**3789**	**100**

My staff and I continued our efforts to finalise as many older cases as possible and to reduce the time taken to complete each matter. Our achievements in this regard are reflected in the performance indicators shown in Chapter 2.

Our aim is to finalise matters as quickly as possible and to achieve this we focus on:

- the average time taken to finalise each allegation;
- the proportion of allegations finalised within three months; and
- the proportion of matters on hand that are less than three months old.

Remedial action

Of most interest to complainants is whether my Office can provide some form of assistance or action to remedy the problem complained about. Table 4 shows the extent to which it was possible to obtain some form of benefit for complainants or a change to the law, or the practice or procedure of a government agency.

TABLE 4 Assistance provided for allegations finalised 1999/2000

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

Table 5 (which is at the end of this chapter) gives details of allegations finalised in respect of individual departments, authorities and local governments. In addition, throughout this report are summaries of a number of interesting cases finalised during the year. Obviously, the cases referred to represent only a very small proportion of the matters finalised and, very importantly, they have not been selected because they necessarily reflect particularly poor administration by the government agency or local government concerned. Rather, the cases were selected because they illustrate the wide range of things that can go wrong and the kinds of remedial assistance which has resulted from the involvement of my Office. In most of the cases the agency concerned accepted my recommendations.

I should also mention that in a high proportion of cases I find that the complaint cannot be sustained. Sometimes this is because there is a conflict of evidence that cannot be resolved. However, in many cases I reach the conclusion that the agency has in fact acted reasonably and within its powers. As much as some complainants are reluctant to acknowledge it, public officers do not ordinarily go out of their way to inconvenience customers or to make unreasonable decisions. Such things do of course happen – but "the system" is not always wrong.

Complaint handling survey

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

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

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

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

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

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

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

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

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

Public Sector Complaint Handling Forum

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

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

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

Overseas visit and visitors

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

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

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

Departments and Authorities	Allegations Received	Finalised without completed investigation: No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Finalised by completed investigation: Partially favourable	Not substantiated	Police local resolution	Allegations finalised
Aboriginal Affairs Department	3	-	1	-	-	-	-	2	-	3
Agriculture – Department	11	2	-	1	-	2	1	2	-	8
Albany Port Authority	1	-	-	-	-	-	-	-	-	--
AlintaGas	10	-	5	-	-	2	1	2	-	10
Builders' Registration Board	1	1	-	-	1	-	1	-	-	3
Building Disputes Committee	5	1	1	-	1	1	-	2	-	6
Central Metropolitan College of TAFE	7	-	1	1	-	1	1	1	-	5
Conservation and Land Management - Department	9	-	1	-	1	1	1	2	-	6
Contract and Management Services - Department	1	-	1	-	-	-	-	-	-	1
Curriculum Council	2	-	-	-	-	-	1	1	-	2
Curtin University of Technology	7	-	-	1	1	-	-	4	-	6
Dairy Industry Authority	1	-	-	-	-	-	-	-	-	--
Dental Board	-	-	-	-	-	-	-	1	-	1
Disability Services Commission	1	-	1	-	-	1	1	5	-	8
East Perth Redevelopment Authority	4	-	-	2	1	-	-	-	-	3
Edith Cowan University	3	-	1	-	-	-	1	2	-	4
Education Department	25	4	8	7	1	2	4	6	-	32
Energy – Office of	1	-	-	-	-	1	-	-	-	1
Environmental Protection – Department	10	1	1	-	-	-	5	2	-	9
Fair Trading – Ministry	15	1	5	-	2	1	-	6	-	15
Family & Children's Services - Department	32	1	9	5	4	2	3	29	-	53
Finance Brokers Supervisory Board	5	3	2	-	-	-	-	-	-	5
Fire and Emergency Services Authority	1	-	-	-	-	-	-	1	-	1
Fisheries Department	1	-	-	-	-	-	-	1	-	1
Gold Corporation	1	-	-	-	-	-	-	1	-	1
Government Employees Housing Authority	-	-	-	-	-	1	1	-	-	2
Government Employees Superannuation Board	10	3	1	-	1	-	1	2	-	8
Great Southern Regional College of TAFE	1	-	-	-	1	-	-	-	-	1
Guardianship and Administration Board	6	-	4	-	-	-	-	3	-	7
Health Department	10	1	4	-	-	1	1	2	-	9
Health Review – Office of	6	-	-	-	-	-	-	8	-	8
Herd Improvement Service	1	-	1	-	-	-	-	-	-	1
Heritage Council	1	-	-	-	-	-	-	1	-	1
Hospital Boards	8	1	1	-	-	1	1	3	-	7
Housing – Ministry	137	-	39	3	10	25	23	49	-	149
Industrial Relations Commission - Dept of the Registrar	1	-	-	-	-	-	-	-	-	--
Insurance Commission	22	1	11	-	-	-	1	9	-	22
Justice – Ministry - Offender Management Division	541	14	154	47	26	73	37	207	-	558
- Other	103	4	15	3	3	14	16	45	-	100
Kalgoorlie-Boulder Cemetery Board	2	-	-	-	-	-	-	3	-	3
Kimberley College of TAFE	1	-	-	-	-	-	-	1	-	1
Land Administration – Department	21	1	7	-	-	3	6	3	-	20

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

Departments and Authorities	Allegations Received	Finalised without completed investigation				Finalised by completed investigation				Allegations finalised
		No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Partially favourable	Not substantiated	Police local resolution	
Legal Aid	9	-	4	1	-	1	1	3	-	10
Legal Practitioners Complaints Committee	5	-	2	-	-	-	-	3	-	5
Local Government – Department	7	1	-	-	-	5	-	-	-	6
Lotteries Commission	9	-	1	-	1	-	1	6	-	9
Main Roads	4	-	1	-	-	-	-	1	-	2
Medical Board	3	-	1	-	-	-	-	1	-	2
Mental Health Review Board	1	-	-	-	-	-	-	-	-	--
Metropolitan Health Service Board	19	2	14	3	-	-	-	3	-	22
Midland College of TAFE	1	-	-	-	-	-	1	1	-	2
Minerals and Energy - Department	2	-	-	-	-	-	-	2	-	2
Murdoch University	5	-	-	-	2	-	-	1	-	3
Museum Board	-	-	-	-	-	-	1	-	-	1
National Trust Of Australia (WA)	1	-	-	-	-	-	-	-	-	--
Occupational Health, Safety and Welfare - Commission	-	-	-	-	-	-	-	1	-	1
Planning – Ministry	16	-	4	-	-	1	2	8	-	15
Planning Commission	-	-	-	-	-	-	-	2	-	2
Police Department	1996	7	50	52	33	188	43	819	737	1929
Port Hedland Port Authority	2	-	-	-	-	-	-	2	-	2
Productivity & Labour Relations - Department	9	-	-	-	1	4	1	2	-	8
Racing, Gaming & Liquor - Office	1	-	1	-	-	-	-	-	-	1
Regional Forest Agreement Steering Committee	-	-	2	-	-	-	-	-	-	2
Resources Development - Department	4	-	4	-	-	-	-	-	-	4
Rottnest Island Authority	2	-	-	-	-	-	-	2	-	2
South East Metropolitan College of TAFE	-	-	-	-	-	-	1	-	-	1
South Metropolitan College of TAFE	2	-	-	-	-	-	-	1	-	1
South West Regional College of TAFE	1	-	-	-	-	-	1	-	-	1
State Revenue Department	10	3	1	-	1	2	-	2	-	9
State Supply Commission	1	-	-	-	-	-	-	1	-	1
State Training Board	-	-	-	-	-	-	1	-	-	1
Swan River Trust	2	-	-	-	1	-	-	1	-	2
Tertiary Institutions Service Centre	2	-	-	-	-	-	-	2	-	2
Totalisator Agency Board	2	-	-	-	-	1	-	2	-	3
Tourism Commission	18	-	-	-	-	-	-	18	-	18
Training – Department	2	-	-	1	-	-	-	1	-	2
Transport – Department	62	1	4	-	1	11	5	31	-	53
University of Western Australia	7	-	5	-	-	-	-	1	-	6
Veterinary Surgeons' Board	3	-	2	-	-	-	-	1	-	3
Water and Rivers Commission	2	-	1	-	-	-	-	1	-	2
Water Corporation	27	-	10	6	-	3	-	4	-	23
Water Regulation – Office of	1	-	-	-	-	1	1	2	-	4
Western Australian Trotting Association	5	-	-	-	-	-	-	-	-	--
Western Power Corporation	93	-	5	1	1	16	14	37	-	74

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

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

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

Loval Governments	Allegations Received	Finalised without completed investigation: No jurisdiction	Discretion Exercised	Discontinued	Withdrawn or Lapsed	Totally or substantially favourable	Finalised by completed investigation: Partially favourable	Not substantiated	Police local resolution	Allegations finalised
Harvey – Shire	1	-	-	-	-	-	-	-	-	--
Jerramungup – Shire	2	-	-	-	-	-	1	1	-	2
Joondalup – City	5	-	2	-	-	-	-	3	-	5
Kalamunda – Shire	6	-	-	-	-	-	-	7	-	7
Kwinana – Town	6	-	5	-	-	1	-	2	-	8
Mandurah – City	12	-	2	-	-	1	3	7	-	13
Manjimup - Shire	6	-	-	-	-	2	-	4	-	6
Melville – City	12	-	-	-	1	2	4	10	-	17
Menzies – Shire	1	-	-	-	-	1	-	-	-	1
Mingenew – Shire	1	-	-	-	-	-	-	1	-	1
Mosman Park – Town	5	-	3	-	-	2	-	-	-	5
Mundaring – Shire	6	-	-	-	-	2	-	7	-	9
Murray – Shire	3	-	1	-	-	-	-	2	-	3
Nannup – Shire	2	-	1	-	-	-	-	1	-	2
Nedlands – City	9	-	2	-	-	2	3	1	-	8
Northampton – Shire	-	-	-	-	-	-	-	1	-	1
Peppermint Grove – Shire	1	1	-	-	-	-	-	-	-	1
Perth – City	6	-	-	-	1	-	1	4	-	6
Port Hedland – Town	-	-	-	-	-	-	-	1	-	1
Quairading – Shire	1	-	-	-	-	-	-	1	-	1
Ravensthorpe – Shire	1	-	-	-	-	-	-	1	-	1
Rockingham – City	2	-	-	-	-	1	1	1	-	3
Serpentine/Jarrahdale – Shire	1	-	-	-	-	-	-	1	-	1
South Perth – City	5	-	-	-	-	-	-	3	-	3
Stirling – City	14	-	-	-	-	1	1	15	-	17
Subiaco – City	3	-	-	-	-	1	-	2	-	3
Swan – City	13	-	1	-	1	1	-	14	-	17
Victoria Park – Town	10	-	2	-	1	-	5	5	-	13
Victoria Plains – Shire	1	-	-	-	-	1	-	-	-	1
Vincent – Town	5	-	1	-	-	2	-	2	-	5
Wanneroo – City	6	-	-	-	-	1	-	5	-	6
Waroona – Shire	1	-	-	-	-	-	-	1	-	1
West Arthur – Shire	1	-	-	-	-	-	-	-	-	--
Williams – Shire	2	-	1	-	-	-	-	2	-	3
Wyndham/East Kimberley – Shire	1	-	-	-	-	1	-	-	-	1
York – Shire	13	-	-	-	1	-	-	12	-	13
Sub Total	**244**	**1**	**39**	**-**	**6**	**35**	**28**	**159**	**-**	**268**
Organisations not within jurisdiction	129	128	-	-	-	-	-	-	-	128
Grand Total	**3838**	**181**	**429**	**135**	**104**	**413**	**210**	**1580**	**737**	**3789**

CHAPTER 2

OUR PERFORMANCE

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

Mission and Outputs

The "mission" of my Office is "**To assist the Parliament of Western Australia to be confident that the public sector of the State is accountable for, and is improving the standard of, administrative decision-making, practices and conduct".** To achieve this, my Office aims to provide effective and efficient systems for handling complaints received about the administrative actions and conduct of government agencies, thereby identifying the underlying causes of complaints and making recommendations for changes to procedures, practices, policies or legislation which will prevent similar problems recurring.

Key Performance Indicators

The performance indicators that have been identified for my Office in recent years focus on two key aspects:

- efficiency - in terms of how quickly we are able to deal with complaints; and
- effectiveness - in terms of the extent to which we have been able to provide assistance to complainants and have agencies improve their practices and procedures.

In last year's report I mentioned that I was reviewing the statistical data my Office collects about complaints and that I planned to collect additional data which would result in improved performance indicators. Unfortunately this project has not been completed. I hope to be able to report enhanced performance indicators next year.

The key performance indicators for the past year are set out in the following pages, followed by the Auditor General's opinion regarding them. Following the Auditor General's opinion is information about the performance targets which were contained in the 1999/2000 Budget Statements. That information is not subject to audit by the Auditor General.

KEY PERFORMANCE INDICATORS

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

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

The work of my Office is performed via the following four output groups:

Police Service

Provide an effective and efficient system of investigating, and reviewing the adequacy of internal investigations of, complaints about the Police Service and Westrail Special Constables.

Other Public Sector Organisations

Provide an effective and efficient system of investigating complaints about public sector organisations other than the Police Service and Westrail Special Constables.

Information and Advisory Services

A range of activities is undertaken to provide members of the public and personnel of public sector organisations with information about the role of the Ombudsman and advice about good administrative practices.

Telecommunications Interception Audit

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

KEY EFFECTIVENESS INDICATORS

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

Police Service

A total of 710 allegations were brought forward from 1998/99 and a further 2,082 were received during the year. 1,991 allegations were finalised, 1,770 by review. Of the remaining 221 finalised allegations, assistance to the complainant (by way of apology, action expedited, act of grace payment, charge reduced or rebate given, reversal or significant variation of original action, or by the provision of an adequate explanation) was provided for 157 allegations.

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

Other Public Sector Organisations

A total of 340 allegations were brought forward from 1998/99 and a further 1,756 were received during the year. 1,798 allegations were finalised and assistance to the complainant (by way of apology, action expedited, act of grace payment, charge reduced or rebate given, reversal or significant variation of original action, or by the provision of an adequate explanation) was provided for 1,414 allegations.

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

KEY EFFICIENCY INDICATORS

Key efficiency indicators cover the timeliness with which we deal with complaints and the cost of the various outputs and activities.

Police Service[3] and 4

	1997[1]	1998[1]	1999	2000
• Average time taken to finalise allegations (weeks)	18	18	17	19
• Allegations finalised per full-time equivalent staff member[5]	130	141	165	153
• Percentage of allegations finalised in less than three months	56%	58%	51%	54%
• Percentage of allegations on hand at 30 June less than three months old	62%	67%	39%	44%
• Cost per finalised allegation	n/a	n/a	$513	$606

Other Public Sector Organisations

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

Information and Advisory Services

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

Telecommunications Interception Audit

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

Certification

The above performance indicators are based on proper records and fairly represent the performance of the Office of the Parliamentary Commissioner for Administrative Investigations for the year ended 30 June 2000.

Accountable Officer

1 These years only related to police and did not include complaints about Westrail Special Constables

2 Allegations where the internal investigation was only reviewed by my Office are not included in the calculation of these figures because the categories of assistance included in the Office's statistical system are not applicable to them.

3 The figures for 1997 and 1998 only related to police and did not include complaints about Westrail Special Constables.

4 Allegations where the internal investigation was only reviewed by my Office are included for the purpose of these calculations.

5 The Full Time Equivalent (FTE) staff figure used for the purpose of this calculation includes investigating officers and a proportion of corporate services staff, the Ombudsman and the Deputy Ombudsman.

Auditor General

To the Parliament of Western Australia

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS PERFORMANCE INDICATORS FOR THE YEAR ENDED JUNE 30, 2000

Scope

I have audited the key effectiveness and efficiency performance indicators of the Parliamentary Commissioner for Administrative Investigations for the year ended June 30, 2000 under the provisions of the Financial Administration and Audit Act 1985.

The Parliamentary Commissioner is responsible for developing and maintaining proper records and systems for preparing and presenting performance indicators. I have conducted an audit of the key performance indicators in order to express an opinion on them to the Parliament as required by the Act. No opinion is expressed on the output measures of quantity, quality, timeliness and cost.

My audit was performed in accordance with section 79 of the Act to form an opinion based on a reasonable level of assurance. The audit procedures included examining, on a test basis, evidence supporting the amounts and other disclosures in the performance indicators, and assessing the relevance and appropriateness of the performance indicators in assisting users to assess the Parliamentary Commissioner's performance. These procedures have been undertaken to form an opinion as to whether, in all material respects, the performance indicators are relevant and appropriate having regard to their purpose and fairly represent the indicated performance.

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

Audit Opinion

In my opinion, the key effectiveness and efficiency performance indicators of the Parliamentary Commissioner for Administrative Investigations are relevant and appropriate for assisting users to assess the Parliamentary Commissioner's performance and fairly represent the indicated performance for the year ended June 30, 2000.

D D R PEARSON
AUDITOR GENERAL
October 31, 2000

4th Floor Dumas House 2 Havelock Street West Perth WA 6005 Western Australia Tel: (08) 9222 7500 Fax: (08) 9322 5664

Other Performance Measures

The following are the performance targets contained in the 1999/2000 Budget Statements and the actual performances achieved.

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

CHAPTER 3

POLICE

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

The key features of the year were:

- The number of complaints received about police decisions and conduct decreased by 23.1% - from 1530 to 1176. The number of individual allegations involved decreased also – down 7.1% from 2149 to 1996. Included in this number are 232 issues involving matters such as attempts at self-harm by persons in custody or issues of conduct where there was no complaint by a member of the public but where police initiated their own investigation and then referred the matter to my Office for review.

- The number of allegations finalised decreased by 16.1% - declining from 2299 to 1929.

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

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

The nature of the complaints

The 1996 individual allegations contained within the complaints received during the year fell into the categories set out in Table 1.

TABLE 1 Nature of allegations received about police during 1999/2000

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

Changes to the police complaints system

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

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

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

Timeliness

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

TABLE 2 Targets for finalising internal investigations

	Year ending 30 June		
Major complaints	**1999**	**2000**	**2001**
• Within 42 days	30%	35%	40%
• Within 43-90 days	35%	40%	45%
• Within 91-150 days	35%	25%	15%
	100%	100%	100%
Local Resolution complaints			
• Within 30 days	100%	100%	100%

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

TABLE 3 Time to complete police internal investigations

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

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

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

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

Outcomes of matters finalised

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

TABLE 4 Outcome of allegations against police finalised 1999/2000

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

Complaint investigations

The review process

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

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

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

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

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

General observations

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

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

Case one

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

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

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

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

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

Cooperative investigations

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

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

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

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

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

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

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

Examples of other investigations

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

Case two

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

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

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

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

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

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

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

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

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

Case three

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

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

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

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

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

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

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

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

Complaints from police officers

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

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

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

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

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

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

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

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

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

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

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

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

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

The lack of an effective and comprehensive Police Service media policy

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

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

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

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

Case four

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

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

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

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

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

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

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

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

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

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

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

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

Case five

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

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

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

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

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

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

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

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

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

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

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

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

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

Case six

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

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

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

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

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

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

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

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

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

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

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

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

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

Case seven

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

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

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

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

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

Acceptance of recommendations

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

Case eight

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

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

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

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

Other complaints by police officers

Case nine

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

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

Case ten

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

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

Case eleven

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

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

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

Police identification

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

Case twelve

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

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

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

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

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

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

Regulation 405 states:

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

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

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

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

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

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

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

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

Duty of care – alcohol and drug affected drivers and passengers

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

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

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

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

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

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

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

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

Decisions to charge

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

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

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

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

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

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

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

Research project

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

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

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

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

CHAPTER 4

MINISTRY OF JUSTICE

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

Offender Management Division

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

Complaints received

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

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

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

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

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

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

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

Table 3 Outcome of allegations finalised 1999/2000

	Number of Allegations	%
Finalised without investigation		
• No jurisdiction	14	2
• Discretion exercised not to investigate*	154	28
• Discontinued , withdrawn or lapsed	73	13
Finalised after completed investigation		
• Totally or substantially favourable to complainant	74	13
• Partially favourable to complainant	37	7
• Not substantiated	206	37
Total allegations finalised	558	100

* "Discretion exercised not to investigate" does not necessarily indicate that no enquiries about the matter raised were undertaken, nor does it imply that no assistance was provided

Table 4 Assistance provided for allegations finalised 1999/2000

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

Prison officer - prisoner relations

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

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

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

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

Prison Justice - discipline, punishment and Visiting Justices

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

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

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

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

Case one

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

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

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

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

Case two

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

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

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

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

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

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

Urine Testing

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

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

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

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

Case three

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

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

Access to rehabilitation programs

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

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

Case four

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

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

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

Smoking

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

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

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

Collective punishment

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

Case five

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

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

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

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

Racial discrimination

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

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

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

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

Complaints dealt with informally

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

Case six

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

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

Inspector of Custodial Services

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

Investigation into Deaths in Prisons

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

Other parts of theMinistry

The Ministry consists of a number of other divisions and associated specialist offices which, for convenience, are grouped together and considered in this part of the report. I should make it clear that many of the entities referred to below are quite independent of the Ministry in terms of their functions and operations.

During the year I received a total of 103 allegations relating to these areas compared with 71 allegations received last year. The increase came about as a result of significant increases in the number of complaints received concerning the Public Trust Office and courts administration. Although only six written allegations were received about fines enforcement matters my officers received quite a number of enquiries over the telephone about this area and many of these were resolved without a written complaint being lodged.

TABLE 5 Allegations received about Ministry of Justice (other than the Offender Management Division)

	Number of Allegations		
	1997/98	1998/99	1999/2000
General administration	4	22	4
Public Trustee	5	14	41
Parole Board	8	10	9
Courts administration	22	7	32
Public Advocate	2	6	4
Fines enforcement	4	6	6
Criminal injuries compensation	1	2	4
Strata Titles Referee	-	2	1
Small Claims Tribunal	7	1	2
Coroner	-	1	-
Registrar General	2	-	-
	55	71	103

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

Case seven

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

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

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

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

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

I take the view that:

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

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

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

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

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

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

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

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

"The rules of fair play -

Decision makers must act fairly and without bias

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

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

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

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

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

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

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

Case eight

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

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

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

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

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

Case nine

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

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

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

CHAPTER 5

LOCAL GOVERNMENT

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

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

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

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

TABLE 1 Assistance provided for allegations finalised 1999/2000

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

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

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

Table 2 Nature of allegations about local governments 1999/2000

Building Control	
Refusals, conditions of application, objections, construction/demolition matters	17
Community Services	
Parks and recreation reserves and facilities, cultural and community services and facilities	6
Contracts and Property Management	
Tenders and contracts for goods and services, resumption of property, leases, other property transactions	12
Corporate and Customer Service	
Complaint handling, provision of information, liability claims, meetings/elections, conduct of officers and elected members, staffing issues	50
Development	
Refusals, conditions of application, objections, home occupations	42
Enforcement	
Enforcement of development and building conditions, unauthorised development, parking and traffic, control of animals, fire control and other statutes and local laws	41
Engineering	
Roads, footpaths, rights of way, construction/maintenance, traffic management, road closures, access	17
Environmental Health Issues	
Noise and other pollution, public health issues, waste disposal and other environmental issues	12
Other Approvals and Licences	
Refusals, conditions/objections	1
Rates and Charges	
Valuations and ratings, payments, collection, rebates, other charges	29
Town Planning	
Subdivision, land use, town planning schemes, rezoning	17
TOTAL	244

Table 3 shows how the local governments which were the subject of complaints this year are distributed across the broad categories into which local governments are classified according to the Australian Classification of Local Governments.

Table 3 Complaints about local governments by population category 1998/99

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

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

Complaint handling systems

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

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

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

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

Advice, help and investigations

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

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

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

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

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

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

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

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

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

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

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

Case one - Department of Local Government

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

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

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

Case two – Shire of Busselton

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

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

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

Case three – City of Melville

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

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

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

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

Dogs

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

Case four – Shire of Dundas

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

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

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

CHAPTER 6

MINISTRY OF HOUSING

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

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

Table 1 Complaints and allegations received 1996 – 2000

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

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

Table 2 Manner in which allegations finalised 1999/2000

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

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

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

Table 3 Nature of allegations received

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

Table 4 Assistance provided for allegations finalised 1999/2000

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

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

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

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

I have three concerns about evaluating medical evidence:

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

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

Case one

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

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

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

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

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

Case two

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

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

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

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

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

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

Case three

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

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

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

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

Case four

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

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

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

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

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

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

The complainant was satisfied with this outcome.

Case five

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

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

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

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

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

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

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

Case six

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

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

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

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

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

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

CHAPTER 7

EDUCATION – SCHOOLS, UNIVERSITIES AND TAFE COLLEGES

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

TABLE 1 Allegations received and finalised

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

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

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

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

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

Table 2 Assistance provided for allegations finalised 1999/2000

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

Education Department

School charges

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

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

Staff salaries

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

Case one

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

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

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

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

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

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

Examples of other matters finalised

Case two

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

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

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

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

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

Case three

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

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

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

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

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

Curriculum Council

Case four

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

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

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

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

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

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

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

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

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

Universities

Case five

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

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

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

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

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

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

Case six

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

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

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

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

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

This was unacceptable to TISC and the member universities because:

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

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

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

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

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

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

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

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

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

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

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

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

Case seven

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

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

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

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

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

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

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

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

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

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

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

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

TAFE Colleges

Case eight

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

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

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

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

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

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

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

CHAPTER 8

WESTRAIL SPECIAL CONSTABLES

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

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

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

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

TABLE 1 Allegations received and finalised

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

TABLE 2 Nature of allegations received

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

Complaints alleging criminal misconduct

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

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

The system for dealing with complaints

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

Timeliness of Investigations

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

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

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

TABLE 3 Number and percentage of allegations finalised

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

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

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

Examples of reviews of Westrail investigations

Case one

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

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

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

Case two

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

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

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

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

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

CHAPTER 9

OTHER AGENCIES

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

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

WESTERN POWER CORPORATION (WPC)

Case one

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

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

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

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

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

Case two

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

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

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

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

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

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

Case three

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT FOR FAMILY AND CHILDREN'S SERVICES

Case four

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

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

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

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

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

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

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

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

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

Case five

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

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

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

DEPARTMENT OF TRANSPORT

Case six

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

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

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

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

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

MINISTRY FOR PLANNING

Case seven

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

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

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

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

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

HEALTH DEPARTMENT

Case eight

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

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

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

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

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

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

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

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

OFFICE OF HEALTH REVIEW

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

Case nine

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

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

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

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

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

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

For these reasons I did not sustain the complaint.

STATE TRAINING BOARD

Case ten

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

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

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

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

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

My final views after carrying out enquiries were that:

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

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

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

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

I had concerns about:

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

I recommended to the Board that it:

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

All my recommendations were accepted.

TOTALISATOR AGENCY BOARD

Case eleven

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 10

ADMINISTRATION AND STAFFING

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

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

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

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

Staffing

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

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

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

PARLIAMENT

Ombudsman
Murray Allen

Police Complaints Group

Assistant Ombudsman
Peter Fisk

Principal Investigating Officer
Darryl Goodman

Senior Investigating Officers
Roger Watson
Eamon Ryan
Sharon Retzlaff
David Robinson

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

Enquiry Officer
Melissa Baxter

Other Public Sector Agencies Group

Deputy Ombudsman
Alex Errington

Legal Officers
Laurene Dempsey
Jane Burn

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

Investigating Officers
Ian Wilson
Kathleen Foley

Enquiry Officer
Grace Moro

Corporate Support Group

Executive Officer
Terry Waldron

Aboriginal Liaison Officer
Joseph Wallam

Information Technology Officer
Sam McComb

Enquiry Officers/Senior Administrative Assistants
Grace Warren
Kim Harms

Administrative Support Officers
Tina Morton
Irene Dumitro
Jacinta Mack
Joyce Wolfe

Secondment of police officers

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

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

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

Workplace agreement

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

Office accommodation

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

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

Information technology

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

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

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

Year 2000 compliance

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

Legislation impacting on the Office

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

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

Freedom of information

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

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

Public Sector Management Act

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

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

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

Occupational Safety and Health

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

Equal Employment Opportunity

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

Disability services

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

Electoral Act 1907

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

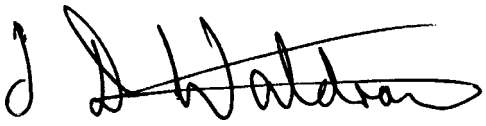
CHAPTER 11

FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2000

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

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

Accountable Officer



Principal Accounting Officer

25 August 2000

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

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

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

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

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

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

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

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

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

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

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

1. Departmental mission and funding

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

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

2. Significant accounting policies

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

(a) General Statement

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

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

(b) Basis of Accounting

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

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

(c) Appropriations

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

(d) Operating accounts

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

(e) Depreciation of non-current assets

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

Useful lives for each class of depreciable asset are:

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

(f) Employee entitlements

Annual and long service leave

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

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

Superannuation.

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

The superannuation expense comprises the following elements:

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

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

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

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

(g) Leases

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

(h) Accounts Payable and Accrued Salaries

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

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

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

(i) Net Fair Values of Financial Assets and Liabilities

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

3. Outputs of the Office

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

The outputs of the Office and their objectives are:

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

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

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

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

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

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

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

	1999/00 $	1998/99 $

18. Accrued Salaries

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

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

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

19. Employee entitlements

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

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

20. Equity

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

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

21. Asset revaluation reserve

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

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

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

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

	1999/00 $	1998/99 $

23. Lease Commitments

Motor Vehicles

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

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

Property Lease

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

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

24. Remuneration and retirement benefits of Senior Officers

Remuneration

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

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

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

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

Retirement benefits	0	0
Redundancy payments	0	0

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

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

25. Explanatory Statement

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

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

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

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

Explanation of variations

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

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

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

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

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

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

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

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

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

26. Additional Financial Instruments Disclosures

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

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

27. Indian Ocean Territories

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

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

Auditor General

To the Parliament of Western Australia

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

Scope

I have audited the accounts and financial statements of the Parliamentary Commissioner for Administrative Investigations for the year ended June 30, 2000 under the provisions of the Financial Administration and Audit Act 1985.

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

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

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

Audit Opinion

In my opinion,

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

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

D D R PEARSON
AUDITOR GENERAL
October 31, 2000

4th Floor Dumas House 2 Havelock Street West Perth WA 6005 Western Australia Tel: (08) 9222 7500 Fax: (08) 9322 5664

THE OMBUDSMAN'S MISSION

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

The Ombudsman's Office is located at:

17th Floor, 44 St Georges Terrace, Perth WA

Postal address: PO Box Z5386
St Georges Terrace
PERTH WA 6831

Telephone: (08) 9220 7555
1800 117 000 (free call)

Facsimile: (08) 9325 1107

Email: mail@ombudsman.wa.gov.au

Website: www.ombudsman.wa.gov.au