

When a complaint is made to Ombudsman Western Australia, we assess it to find out whether we can investigate, according to the *Parliamentary Commissioner Act 1971*. A decision is then made about whether we should investigate the complaint. These guidelines outline the process we follow and the factors we take into consideration when presented with a complaint, particularly with respect to our legislation.

### What is the Ombudsman's role?

The Ombudsman is an independent and impartial person who investigates complaints about Western Australian government departments, statutory authorities and local governments. The *Parliamentary Commissioner Act 1971* describes the Ombudsman's jurisdiction - what the Ombudsman can and cannot investigate. The Ombudsman reports directly to the Parliament of Western Australia, not to the government of the day.

The Ombudsman's main role is to help the people of Western Australia resolve disputes with State public sector agencies and help those agencies be accountable for and improve the standard of their administrative decision-making, practices and conduct.

The Ombudsman's office does this by:

- providing an effective and efficient system for handling and resolving complaints about the administrative practices of public sector agencies;
- identifying the causes of problems and making recommendations for changes to procedures, practices, policies or legislation to prevent similar problems; and
- encouraging public sector agencies to establish internal complaint handling systems in the interests of good public administration.

We also investigate disclosures made under the *Public Interest Disclosure Act 2003* where the disclosure concerns matters within the Ombudsman's jurisdiction under that Act.

### Our assessment process

While we encourage people to initially make telephone enquiries so we can provide advice on the best way to proceed, the Ombudsman can only respond to written complaints. In some cases, we can make an assessment of whether we can deal with a complaint based on the information in a written complaint.

In other situations however, we need to make preliminary, informal enquiries to help assess whether we can deal with the complaint or other avenues that may be available to the complainant if we can't. When we advise the complainant if we will investigate, we will also let the complainant know if we have made any preliminary enquiries.

If a complaint is about something we can and should investigate, an Investigating Officer will write to the complainant. The Officer will describe their understanding of the complaint and either request confirmation that their understanding is correct or ask the complainant to clarify the issues. The complainant will also be advised of any action already taken or action that will be taken in response to the complaint. At that stage the complainant will be informed of the process the Officer will follow.

### What we can investigate

The Ombudsman investigates complaints from those personally affected by the actions of Western Australian government departments, statutory authorities and local governments where those actions:

- were or are performed in the course of the department or authority exercising its powers and functions; and
- relate to a matter of administration.

If a complaint is about a government department or authority, we can only investigate it if the complaint affects the complainant directly or personally. If someone wants to make a complaint but cannot act for themselves for any reason, they may nominate a representative and authorise us to deal with that person on their behalf.

### What we cannot investigate

It is important to understand that we cannot investigate certain matters because they are outside of the Ombudsman's jurisdiction, as described by our Act. We cannot investigate complaints about:

- private individuals or organisations;
- Members of Parliament, committees of Parliament, the Clerk or the Deputy Clerk of either House of Parliament, the staff of Parliament or electorate offices;
- any of the courts, judges, masters, registrars, deputy registrars, magistrates, commissioners of courts, coroners;
- the Governor or the Governor's staff;
- any of the organisations in Schedule 1 of the *Parliamentary Commissioner Act 1971* (these are listed on page 3 of these guidelines);
- any action taken by a person acting as a legal adviser or as counsel;
- decisions made by Cabinet or by a Minister of the Crown;
- a matter that the complainant became aware of more than 12 months before making the complaint (except in special circumstances);
- matters which can be remedied through appeal, review or legal proceedings (except in special circumstances);
- an action which has not directly affected the complainant.

### Complaints about matters more than 12 months old

If the complainant shows that special circumstances apply, we may investigate a complaint about matters more than 12 months old. If the complainant wants the Ombudsman to investigate such a matter, they will be asked to provide information about why it should be accepted and what they hope to achieve by having the complaint investigated.

In deciding whether to investigate, we will consider:

- if there is a good reason why the complainant did not make the complaint within time;
- the likelihood of being able to obtain evidence;
- the likelihood of any practical outcome for the complainant;
- the likelihood of any practical benefit to public administration; and
- the public interest in the investigation of the issues raised (note that this does not refer to public curiosity, but the potential benefit to the community as a whole).

### Complaints that can be dealt with by appeal, review or legal proceedings

We may investigate a complaint that could be dealt with by appeal, review or legal proceedings if we believe that it was not reasonable to expect you to have taken that course of action.

The cost of dealing with a complaint in this manner may not be sufficient reason for the Ombudsman to investigate. The Ombudsman is not an alternative to the court system and cannot make binding decisions in the way that a court or some other tribunals can.

In deciding whether to investigate, we will consider:

- whether there are good reasons why you cannot deal with the complaint by appeal, review or legal proceedings
- whether the potential benefit would be substantially outweighed by the cost of it
- the particular nature of the matter

- the public interest in the investigation of the issues raised.

## Organisations the Ombudsman cannot investigate

- The Corruption and Crime Commission
- The Parliamentary Inspector of the Corruption and Crime Commission
- The Director of Public Prosecutions and the Deputy Director of Public Prosecutions
- The Economic Regulation Authority established by the *Economic Regulation Authority Act 2003* to the extent of its functions referred to in section 36(1) of the *Gas Pipelines Access (Western Australia) Act 1998* and section 20(1) of the *Railways (Access) Act 1998*
- The Electoral Commissioner within the meaning of the *Electoral Act 1907* to the extent of the Electoral Commissioner's functions other than that of chief executive officer of the Western Australian Electoral Commission
- The Deputy Electoral Commissioner within the meaning of the *Electoral Act 1907*
- The Commissioner for Equal Opportunity
- The Director of Equal Opportunity in Public Employment
- The Auditor General appointed under the *Financial Administration and Audit Act 1985* to the extent of the Auditor General's functions other than that of chief executive officer of the Office of the Auditor General
- The Information Commissioner
- The Inspector of Custodial Services under the *Inspector of Custodial Services Act 2003*.
- The Ombudsman and Deputy Ombudsman.
- The Commissioner for Public Sector Standards under the *Public Sector Management Act 1994* to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under that Act
- Racing and Wagering Western Australia established under section 4 of the *Racing and Wagering Western Australia Act 2003*
- Any Royal Commission constituted under the *Royal Commissions Act 1968* and any member of a Royal Commission
- The Solicitor-General
- The State Administrative Tribunal established under the *State Administrative Tribunal Act 2004*.



### Ombudsman Western Australia