

The Ombudsman and Local Government

**Resolving Complaints and Promoting
Good Administrative Practice**

**Presentation to the
2009 LGMA Annual State Conference**

**Chris Field, Ombudsman
19 November 2009**

Outline of presentation

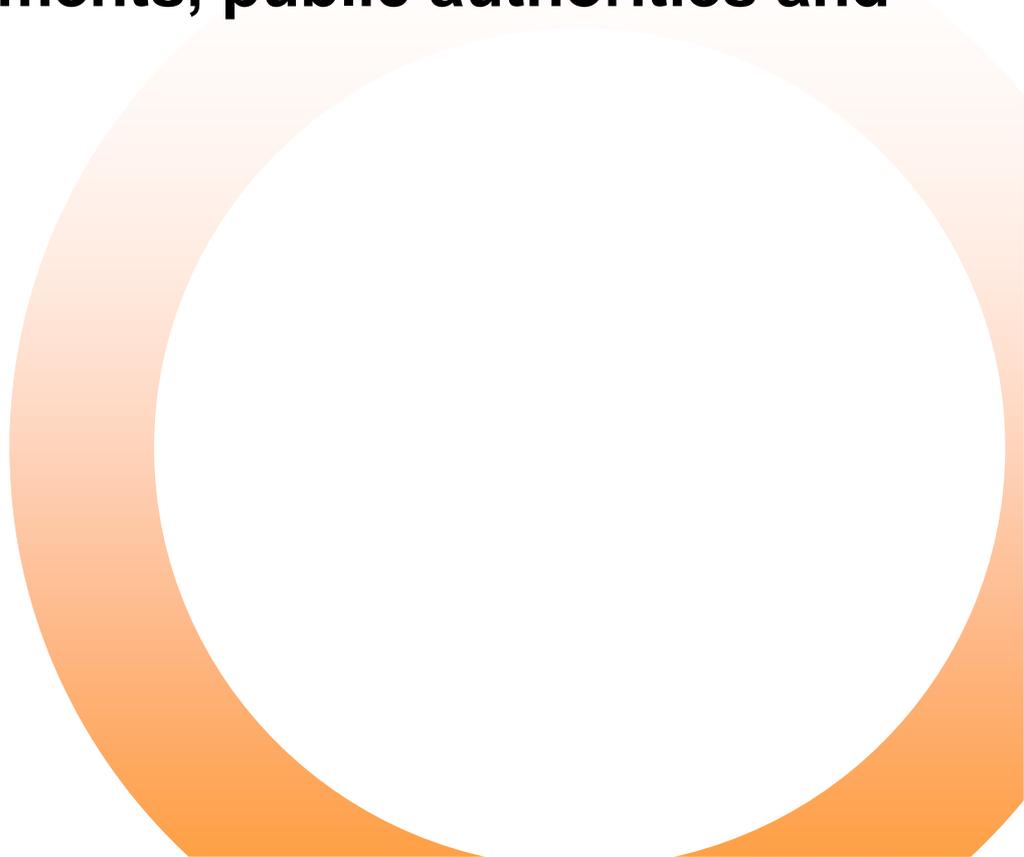
- **The role and function of the Ombudsman**
- **The Local Government sector and the Ombudsman – Statistics, issues and themes in complaints**
- **The Ombudsman's administrative improvement role**
- **Promoting good administrative practice**
- **Dealing with unreasonable complainant conduct**

The role and function of the Ombudsman

- **The key function of the Ombudsman is to ensure that public authorities are fair, accountable and responsive in their administration of the laws of Parliament.**
- **We undertake that function in two principal ways:**
 - **Resolving complaints about the administrative decision making of public authorities; and**
 - **Improving the standard of public administration.**

The role and function of the Ombudsman - What can we investigate?

We have a broad jurisdiction to investigate the administrative decisions of nearly all government departments, local governments, public authorities and public universities.

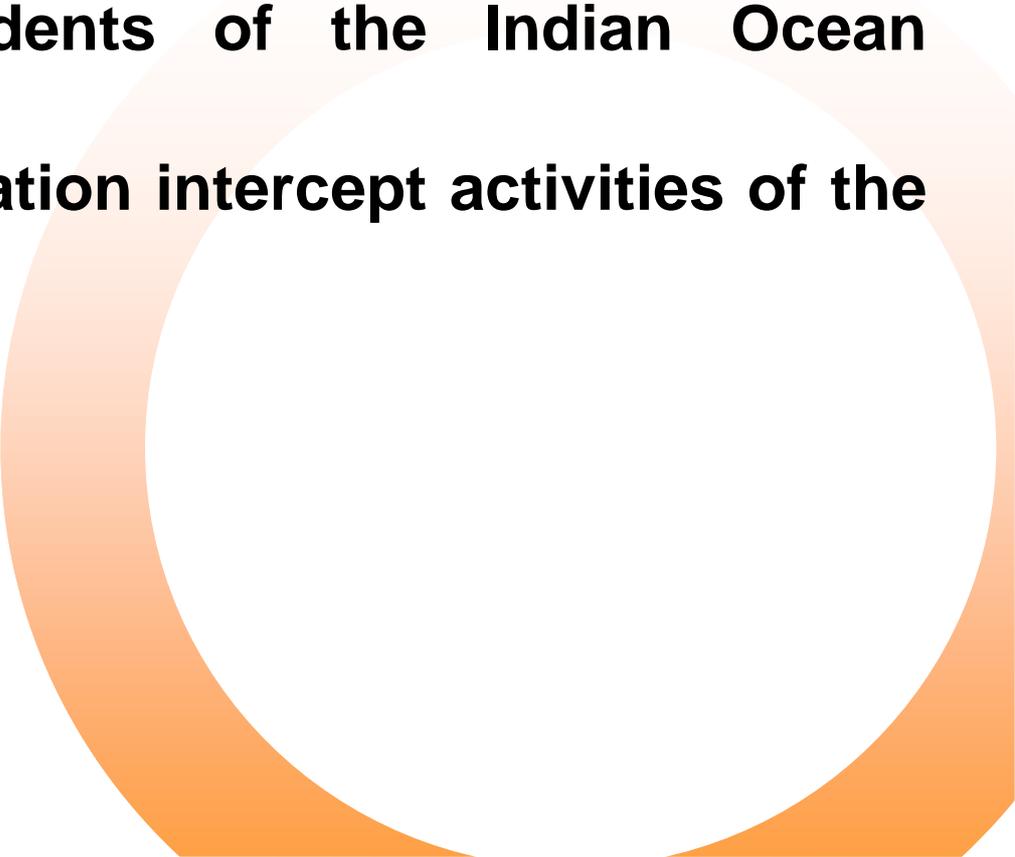


The role and function of the Ombudsman - What can we investigate? (cont.)

We are also given specific jurisdiction to undertake such activities as:

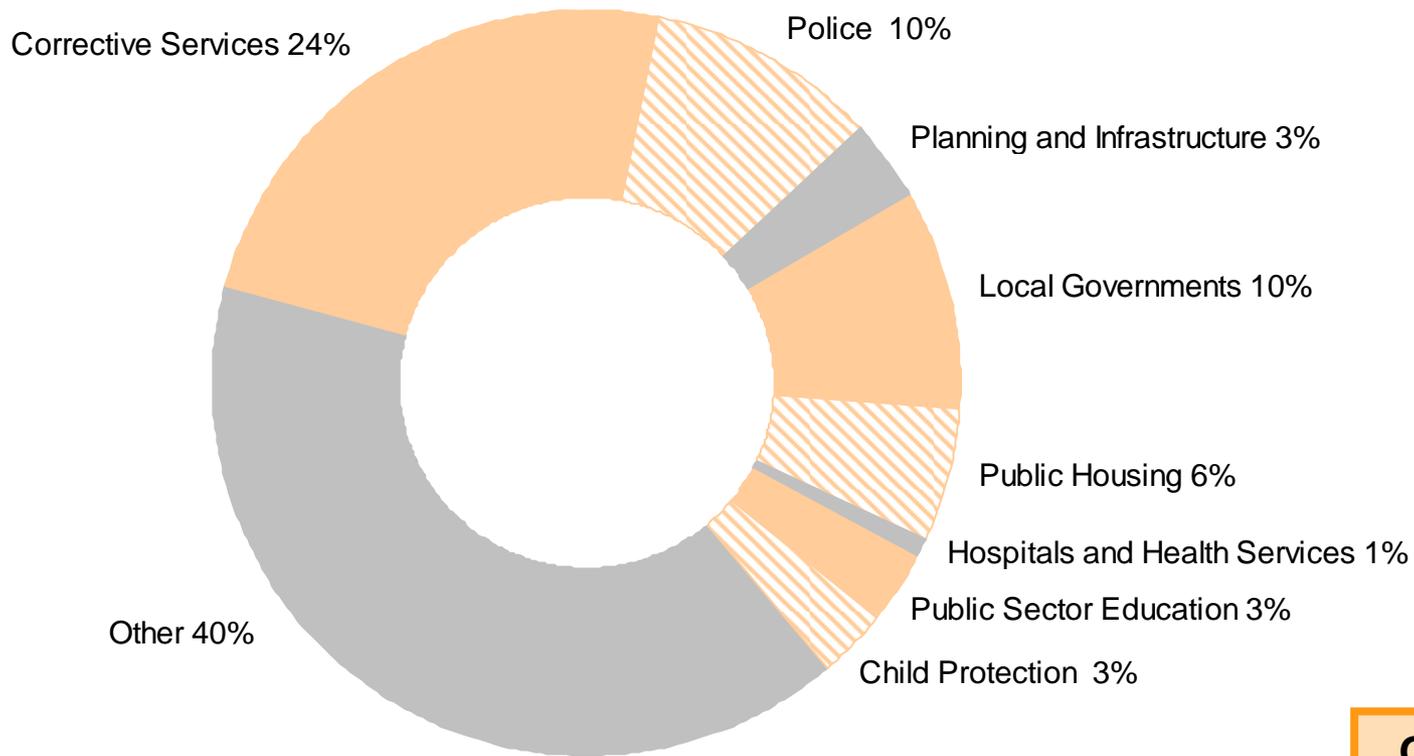
- **Reviewing and investigating the sudden or unexpected deaths of children and making recommendations to the Department for Child Protection and other public authorities.**
- **Receiving disclosures under the *Public Interest Disclosure Act*;**
- **Complaints from persons detained under the *Terrorism (Preventative Detention) Act*;**

The role and function of the Ombudsman - What can we investigate? (cont.)

- Appeals from international students under the *National Code for Overseas Students*;
 - Complaints from residents of the Indian Ocean Territories; and
 - Auditing telecommunication intercept activities of the Police and the CCC.
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The role and function of the Ombudsman - What do we receive enquiries about?

Enquiries by agency group 2008-09



**Over 5,500 people
contacted the office
in 2008-09**

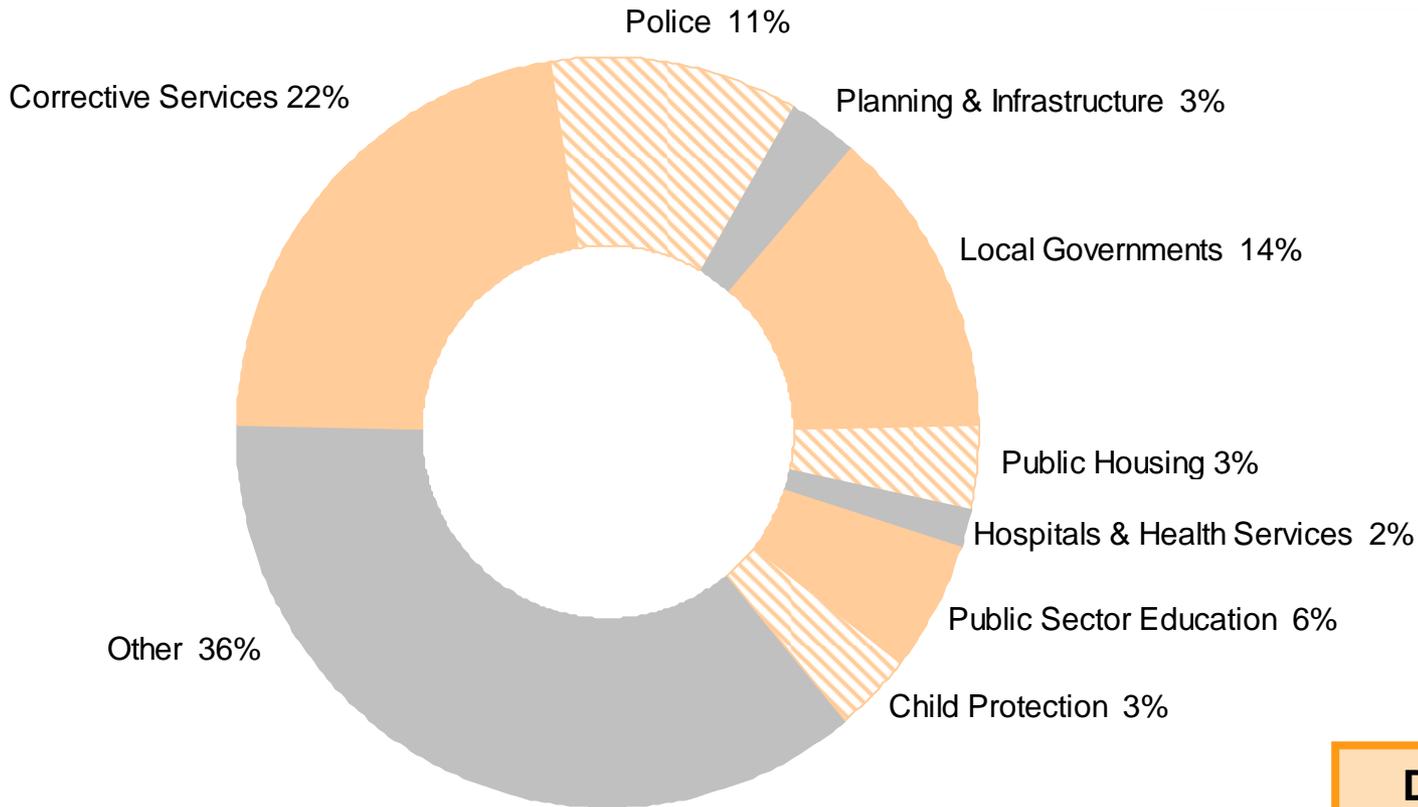
The role and function of the Ombudsman - Making a complaint to the Ombudsman

Complaints to the Ombudsman must be made:

- **In writing; and**
- **Within 12 months of the person being affected (unless special circumstances exist).**

The role and function of the Ombudsman – What complaints do we receive?

Complaints by agency group 2008-09



**Dealt with 1,238
complaints in
2008-09**

The role and function of the Ombudsman - What don't we investigate?

- **We do not investigate all complaints we receive.**
- **We consider a range of matters in determining whether to investigate complaints, including:**
 - **Materiality and public interest of the complaint;**
 - **Prospect of proving allegations; and**
 - **Likelihood that any recommendations made would have a practical benefit.**

The role and function of the Ombudsman - What don't we investigate? (cont.)

- **We do not investigate decisions of Parliament or Ministerial decisions; and**
- **We do not investigate matters where the complainant has a right of review to the State Administrative Tribunal or Court (unless we believe it is not reasonable for the complainant to pursue this right).**

The role and function of the Ombudsman - What don't we investigate? (cont.)

- **We may also refuse to investigate complaints where:**
 - 1. the matter is trivial;**
 - 2. the complaint is frivolous or vexatious;**
 - 3. the person does not have a sufficient personal interest in the matter; and**
 - 4. the investigation would be unnecessary or unjustified.**

The role and function of the Ombudsman – What don't we investigate? (cont.)

“Standing” means:

- **A person or body of persons is affected by a decision beyond that of an ordinary member of the public.**

Community groups can complain to the Ombudsman by:

- **Acting on behalf of a person who is adversely affected by a decision more than the public generally; or**
- **Establishing a special financial, cultural or historic interest in the decision.**

The role and function of the Ombudsman - What don't we investigate? (cont.)

- **In the first instance, in almost all cases, we refer complaints back to local governments where the complainant hasn't first been to the local government.**
- **The majority of complaints (79%) are resolved at an early stage – taking an average time of 25 days to finalise.**

The role and function of the Ombudsman – How do we undertake our investigations?

- **Most of our investigations are undertaken informally (although they are always rigorous and evidence-based).**
- **We always observe a strictly independent and impartial approach to the conduct of investigations.**
- **In undertaking our investigations, we observe procedural fairness at all times (a “no surprises” approach).**

The role and function of the Ombudsman - How do we undertake our investigations? (cont.)

- **Investigations are conducted in private and information obtained by the Ombudsman in an investigation is confidential.**
- **Documents obtained by the Ombudsman in the course of an investigation that are prepared specifically for the investigation are privileged and not admissible in a court.**
- **We are able to exercise all of the powers of a Royal Commission in investigations that we undertake.**

The role and function of the Ombudsman - What can we do following an investigation?

At the end of an investigation, we can make recommendations to local government to do such things as:

- **Rectifying administrative actions;**
- **Varying current administrative practice;**
- **Improving record keeping;**
- **Providing staff training; and**
- **Reconsidering the law which underpins administrative action.**

The role and function of the Ombudsman - What can we do following an investigation? (cont.)

We can also make recommendations that assistance be provided to the person who made the complaint covering such things as:

- **The giving of an apology;**
- **Providing an explanation or reasons for a decision;**
- **Expediting action;**
- **Providing compensation or the refunding of fees/costs; and**
- **Reversal or variation of an original decision.**

The role and function of the Ombudsman - What can we do following an investigation? (cont.)

- **We place strong emphasis on making practical recommendations about material matters proportionate to the problem identified;**
- **We do not make recommendations unless we consider that they will be beneficial. We also consider the costs for agencies of our recommendations (in other words, we seek to make recommendations that create a net benefit); and**
- **In 2008-09, 100% of our recommendations were accepted by local governments.**

The role and function of the Ombudsman - Timeliness of our investigations

- **Over the last three years we have substantially improved the timeliness of our investigations including:**
 - **open complaints older than 6 months – down from 199 to 22; and**
 - **open complaints older than 12 months – down from 97 to 6.**
- **The timeliness of local government responses to our inquiries has greatly assisted this performance.**

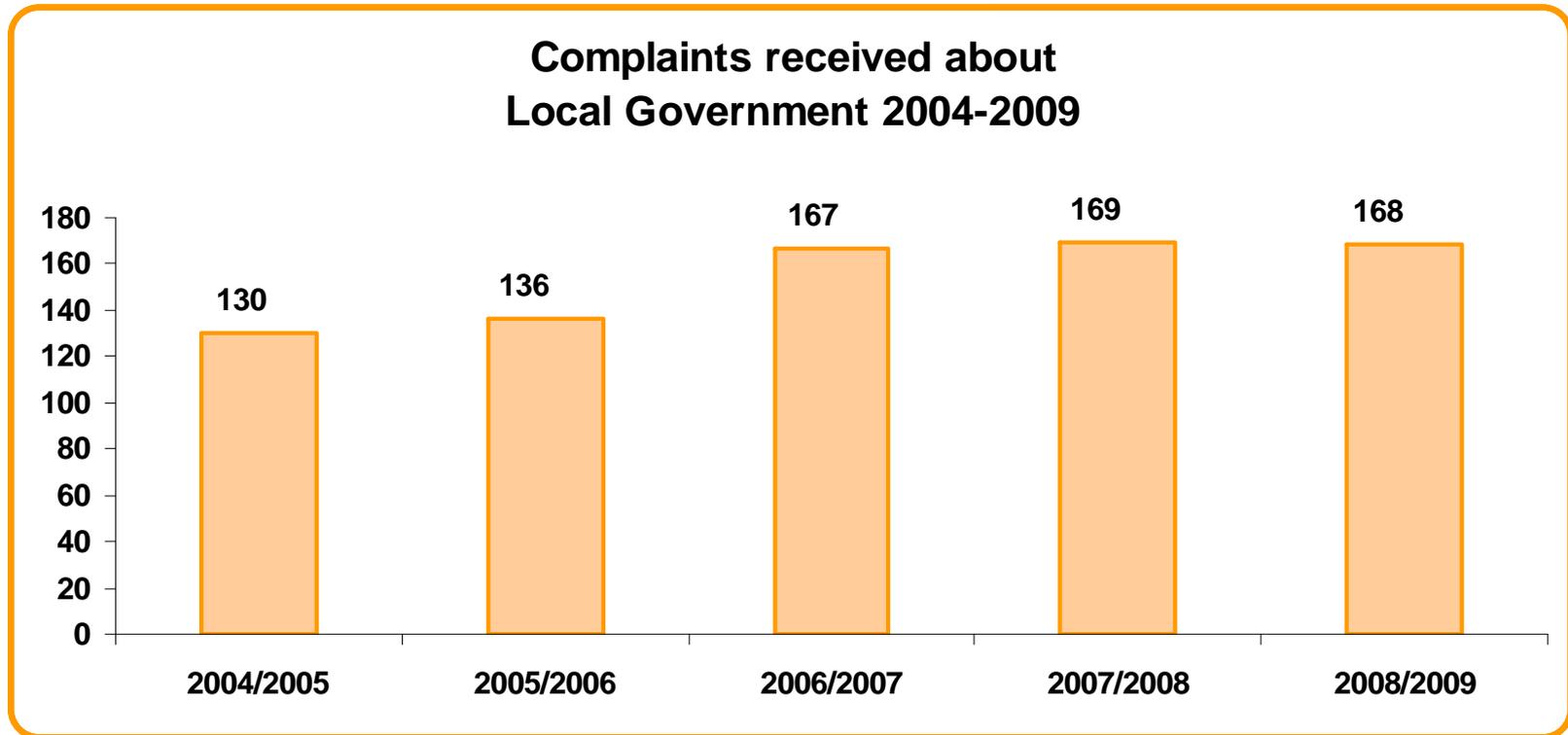
The Local Government Sector and the Ombudsman - Statistics, issues and themes in complaints

In 2008-09:

- **The local government sector generated the second highest number of complaints received by our office.**
- **We received 168 written complaints about local governments (14% of all complaints received).**
- **Complaints were received about 57 local governments.**

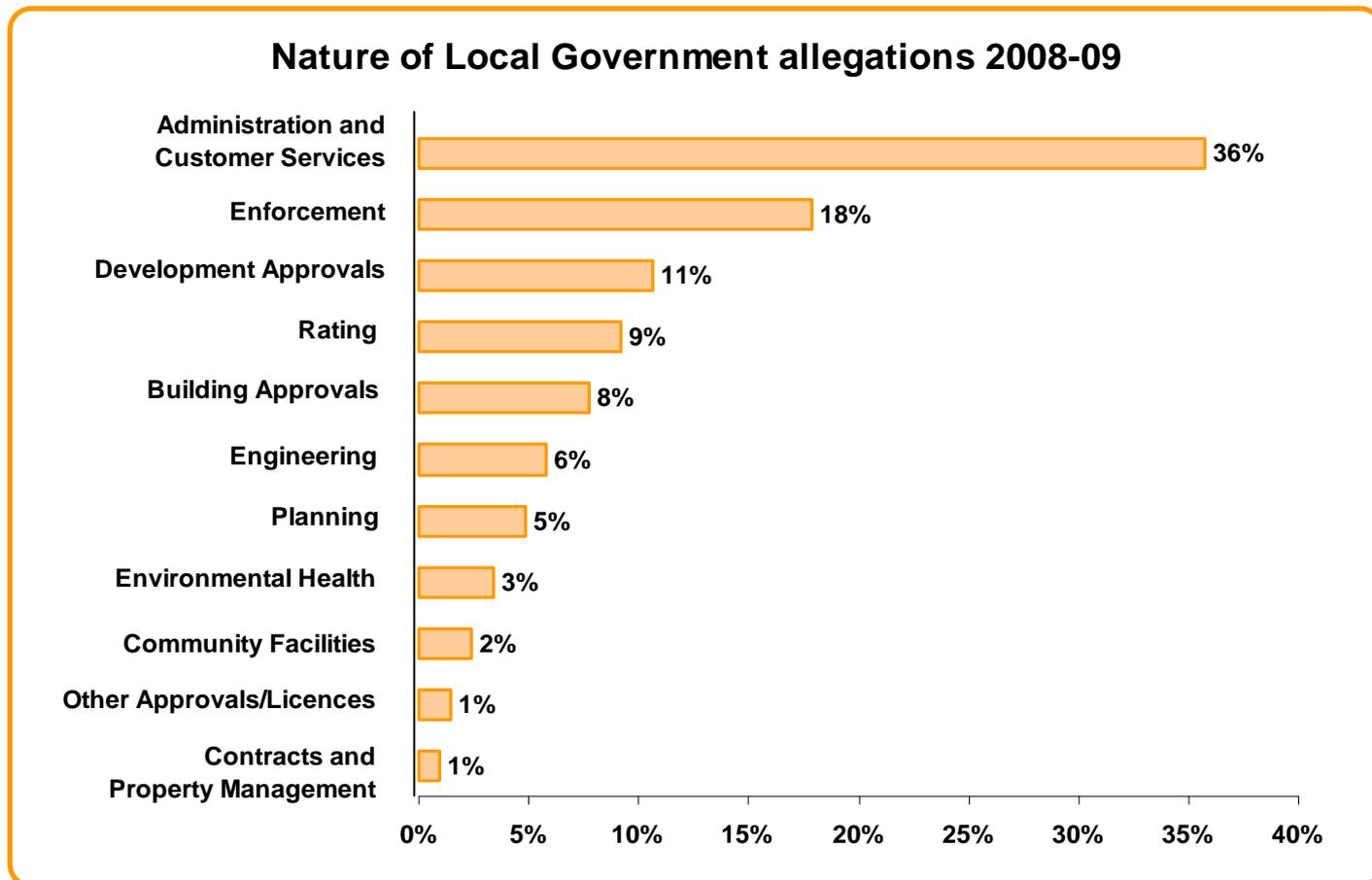
The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

Local government complaint trends have been relatively consistent over the last five years.



The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

In 2008-09 the nature of allegations covered a diverse range of local government functions.



The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

In 2008-09:

- 211 local government allegations were finalised.
- 117 (55%) were finalised at the initial stage without the need for investigation.
- 94 allegations (45%) were finalised after an investigation was conducted.

Outcome of investigated complaints

Sustained wholly or partly	27
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Not sustained	62
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Other*	5
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* Discontinued, withdrawn or could not be determined

The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

Remedies provided to the complainant were:

Remedy for the complainant	
Action/decision expedited or varied	8
Apology	2
Monetary remedy	2
Other assistance or explanation	2
Direct benefit for complainant	14

The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

Improvements to public administration were:

Improved public administration	
Changes to policies/procedures	14
Public authority training	4
Individual staff training	1
Changes to system	2
Improved public administration	21

The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

Examples of remedies provided to complainants or improvements to public administration include:

- **A local government offered a member of the public alternative accommodation during an annual fund raising event in light of their noise complaints associated with similar events in previous years;**
- **A local government introduced policies and procedures to improve communication with ratepayers about major developments;**

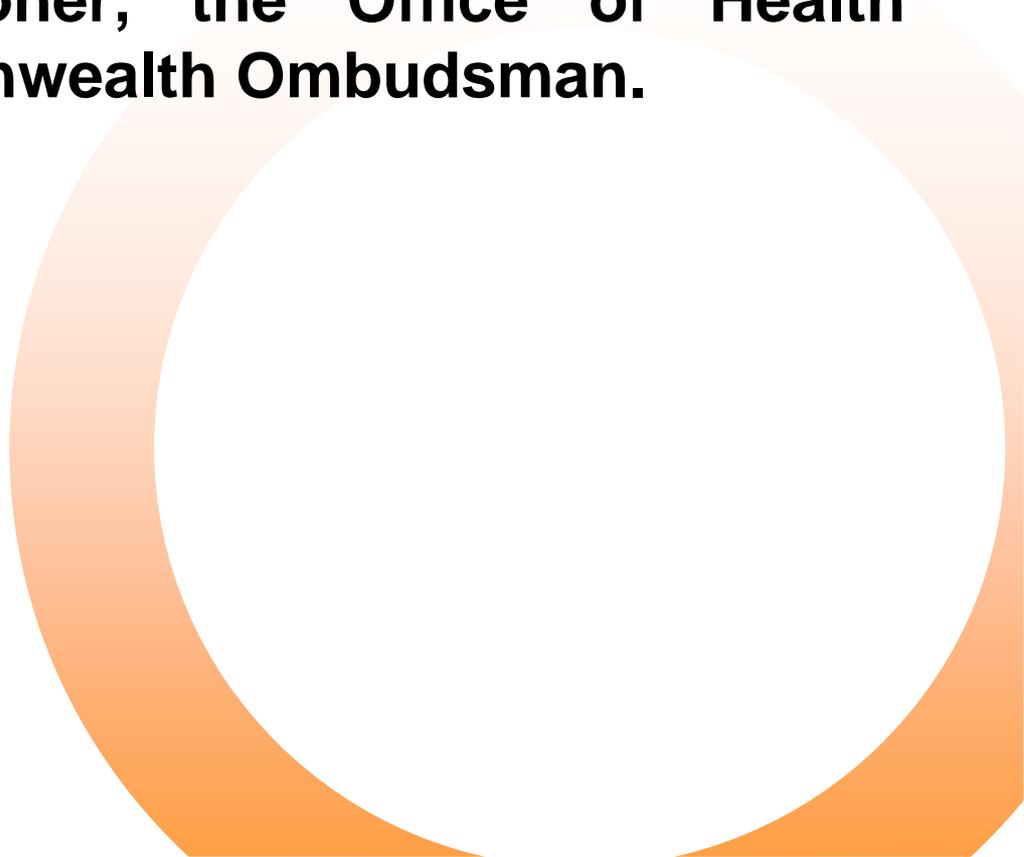
The Local Government Sector and the Ombudsman – Statistics, issues and themes in complaints (cont.)

- **A local government introduced a policy on the release of information provided by developers to avoid sensitive or confidential advice being provided; and**
- **A local government reviewed information provided on its website about resident parking permits to avoid confusion about the circumstances when permits may be issued.**

The Ombudsman's Regional Awareness and Accessibility Program

- **In 2009 we initiated our Regional Awareness and Accessibility Program to increase awareness of, and accessibility to, our office for regional and Indigenous Western Australians.**
- **The Program is also intended to strengthen links with local government and public authorities in the regions and help those authorities and local governments deal with complainants.**

The Ombudsman's Regional Awareness and Accessibility Program (cont.)

- **The Program has been undertaken in conjunction with the Public Sector Standards Commissioner, the Information Commissioner, the Office of Health Review and the Commonwealth Ombudsman.**
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The Ombudsman's Regional Awareness and Accessibility Program (cont.)

- **We have conducted three visits in 2009 – the Goldfields, Midwest and Peel regions.**
- **During the visits we presented to public sector organisations, local governments, community organisations and indigenous groups about our work, met with local governments and conducted complaint handling and unreasonable complainant conduct workshops.**
- **The Program has been well attended by local governments.**
- **The program will continue in 2010.**

The Ombudsman's administrative improvement role

- **In June 2008 we established a specialist Administrative Improvement team focusing on a critical area of our work – improving the standard of public administration**
- **Two main projects in 2009:**
 - **A complaints management project examining state and local government agencies; and**
 - **The management of personal information by state government agencies.**

The Ombudsman's administrative improvement role – Complaint Management project

Why are we undertaking this project?

- **We recognise that state government agencies and local governments deal with a variety of complaints, including complaints that are referred back to them by our office.**
- **To provide us with confidence that complaints are being dealt with effectively, we periodically conduct surveys across state government agencies and local governments to assess their management of complaints.**
- **The last survey was conducted in 2001.**

The Ombudsman's administrative improvement role – Complaint Management project (cont.)

- A complaints management survey was sent to all local governments earlier this month;
- The survey is based on the Ombudsman's *Guidelines for effective handling of complaints*;
- The survey also draws on other guidance material, including the Australian Standard *Customer satisfaction – Guidelines for complaints handling in organisations*; and
- We will be conducting a more detailed examination of a sample of organisations' complaint handling systems, using completed surveys and additional fieldwork.

The Ombudsman's administrative improvement role – Complaint Management project (cont.)

- **The survey will also:**
 - **Provide public sector organisations and local governments with a tool to identify strengths and areas for improvement in their complaint handling systems; and**
 - **Gather public sector and local government views on complaint handling standards.**
- **The project will result in a de-identified report and potentially a self assessment tool and supporting resources, to help local governments continuously improve their complaint handling.**

The Ombudsman's administrative improvement role – Complaint Management project (cont.)

Local government views:

- **The Ombudsman has consulted with WALGA, LGMA and DLG to ensure the survey is appropriate for local government.**
- **The Ombudsman recognises that not all elements of the survey are relevant for all organisations and that the survey has been designed accordingly.**
- **Your views will assist our office to develop practical resources for local governments and to refine future surveys.**

Promoting good administrative practice

- **We have a range of products to assist you to deal with complaints and to promote good administrative practice:**
 - **Guidelines on complaint handling covering complaint handling systems, a complaint handling systems checklist, guidelines on making your complaint handling system accessible and guidance for complaint handling officers; and**
 - **Guidelines on dealing with unreasonable complainant conduct (developed in conjunction with other Ombudsman offices across Australia).**

Promoting good administrative practice (cont.)

- **We have a range of guidelines to assist you to strengthen your administrative decision making processes including guidelines covering:**
 - **Good record keeping;**
 - **Procedural fairness;**
 - **Conducting administrative investigations;**
 - **Remedies and redress;**
 - **Exercise of discretion in administrative decision-making; and**
 - **Reasons for decisions.**

Promoting good administrative practice (cont.)

We recently launched our new website including a specific focus on products to assist public authorities with their complaint handling and decision making roles.

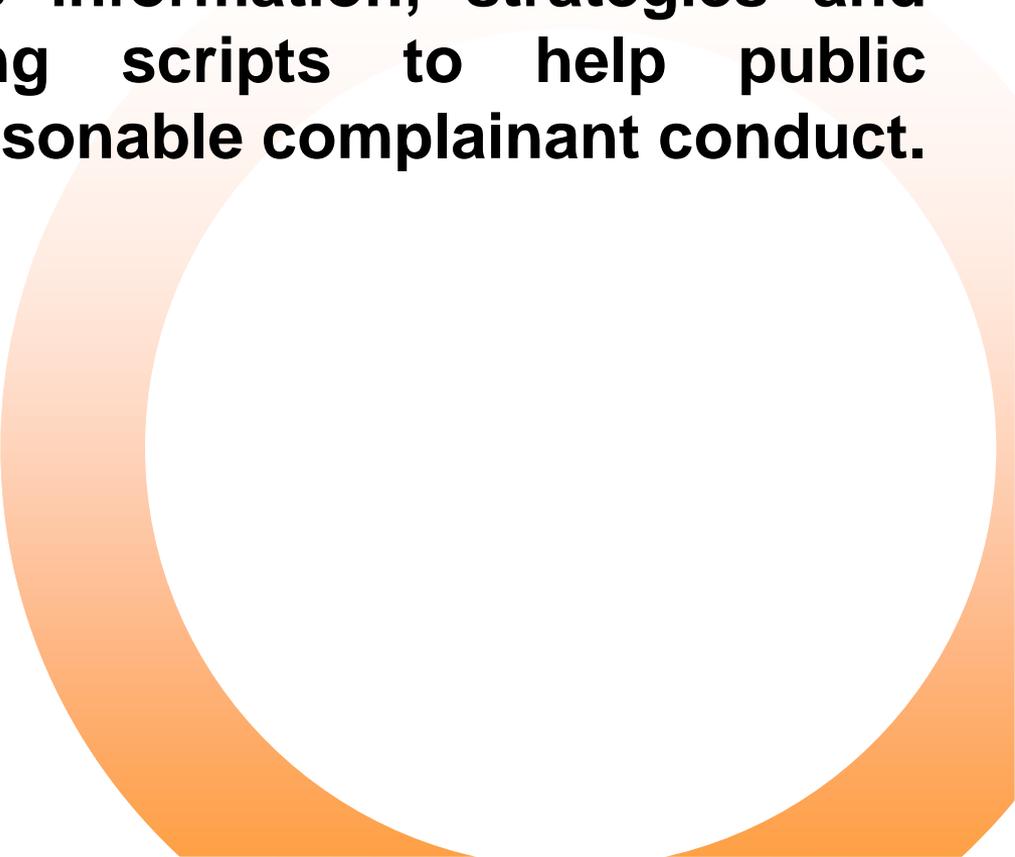
The products can be found at www.ombudsman.wa.gov.au at “Helping Public Authorities” on the website’s home page.

Dealing with unreasonable complainant conduct

- **Local governments deal with many complainants each year.**
- **Most complainants act reasonably.**
- **Occasionally the conduct of some complainants can be unreasonable.**
- **In 2006, a joint national Parliamentary Ombudsman project was launched to develop a tool to assist staff to deal with those complainants whose conduct can be unreasonable.**

Dealing with unreasonable complainant conduct (cont.)

The outcome of the project is the release this year of a practice manual “Managing unreasonable complainant conduct” which provides information, strategies and practical tools, including scripts to help public authorities deal with unreasonable complainant conduct.



Dealing with unreasonable complainant conduct (cont.)

The manual includes five categories of unreasonable behaviour and management strategies to address them:

- **Unreasonable persistence;**
- **Unreasonable demands;**
- **Unreasonable lack of cooperation;**
- **Unreasonable arguments; and**
- **Unreasonable behaviours.**

Dealing with unreasonable complainant conduct (cont.)

- **The Ombudsman also has shorter, quick reference guidelines which provide information on:**
 - **Understanding complainant behaviour;**
 - **Options for responding to complainant behaviour;**
 - **Strategies for agency staff;**
 - **Administrative controls;**
 - **Managing angry and aggressive behaviour; and**
 - **Recommended actions for agencies.**

Our approach to our work – Key Principles

- **Rigorous:** We only undertake work on the basis that it is a materially important matter that is supported by an appropriate evidence base. The complaints received by the Ombudsman are an important source of evidence for our work.
- **Fair:** We observe procedural fairness at all times and use a ‘no surprises’ approach to our investigations and recommendations.
- **Responsible:** All recommendations for change to public administration must be proportionate to the problem identified, practical and must demonstrate a net benefit to the Western Australian public.

Our approach to our work – Key Principles (cont.)

- **Efficient:** We undertake our work in a timely way at least cost. Our work can build upon but should never duplicate the work of other agencies.
- **Independent:** The Ombudsman is an officer of the Parliament, independent of the government of the day, but it should be, and is, accountable for its performance and proper expenditure of taxpayers money.
- **Collaborative:** We value working with other organisations committed to furthering good public administration, including with the Integrity Coordinating Group members, other accountability agencies, universities and others.

Further Information

Further information on any of our work can be obtained from my staff at our conference exhibition booth.





QUESTIONS



Our contact details

**Western Australian Ombudsman
Level 12, St Martins Tower
44 St Georges Terrace
Perth WA 6000**

**Tel: 08 9220 7555 or 1800 117 000 (toll free)
Fax: 08 9325 1107**

**Email: mail@ombudsman.wa.gov.au
Website: www.ombudsman.wa.gov.au**