



Can we investigate? - Assessing jurisdiction

*Subject to this Act, the Commissioner shall investigate any decision or recommendation made, or any act done or omitted, **that relates to a matter of administration and affects any person or body of persons in his or its personal capacity** in or by **any department or authority to which this Act applies** in the exercise of any power or function.* [s14\(1\) PC Act](#)

1. Does the Act apply to the agency or decision maker complained about?

CAN INVESTIGATE	CANNOT INVESTIGATE
All State government departments and authorities other than those specifically excluded s13(1) PC Act	Authorities listed in Schedule 1 and section 13(2) PC Act
Local government and regional local government s4A(1)(a) PC Act	Houses of Parliament, Courts, Coroner, Governor s13(2) PC Act
Western Australia Police (with respect to matters of administration only) s4A(1)(b) PC Act	Ministers of the Crown, Cabinet s14(3) PC Act
A body or holder of an office, post or position established for a public purpose under a written law or by the Governor or a Minister, e.g. Special Constables, universities (including Notre Dame), colleges, boards, commissions, RSPCA General Inspectors s4A(1)(c) PC Act	Legal advisor/ legal counsel (include police prosecutors acting as legal counsel for WAPOL in court) s14(6) PC Act
Corporations or associations over which the State, a Minister or a department can exercise control, e.g. Small Business Development Corporation, government School Councils and Parents and Citizen's Associations s4A(1)(d) PC Act	Commonwealth government departments
An individual or body which has been delegated the exercise of any power or the performance of any function of a State government department or local government s4A(1)(e) PC Act	Private organisations or individuals
Court security and custodial services subcontractors and contractors (including custodial transport services) s4A(1)(f) PC Act	

- If the agency/decision maker is not in jurisdiction the Ombudsman is precluded from investigating – advise complainant, refer to another complaint-taking body if appropriate, and close file.
[\(Click here for Assessment letters – Out of Jurisdiction – Agency\)](#)
- If the agency/decision maker is in jurisdiction, consider question 2.

2. Is the complainant personally affected (i.e. does the complainant have standing)?

PERSONALLY AFFECTED (STANDING)	NOT PERSONALLY AFFECTED (NO STANDING)
The agency's administrative actions or decisions affect the complainant directly	The complainant is affected indirectly by the agency's decision and has only an interest held in common with other members of the community e.g. The 'concerned citizen'
The complainant will suffer as a consequence of the agency's decision beyond that of an ordinary member of the public or other like person in the community	A public interest group or community organisation seeking to challenge a government decision that is of emotional or intellectual concern to the organisation, but it does not affect it adversely or more than any other person in the community e.g. Right to Life organisations, environmental organisations
The complainant has some personal stake in the matter due to actual or possible damage to: <ul style="list-style-type: none"> • their personal/financial interests, e.g. proprietary rights, business or economic interests; or • their cultural/spiritual interests, e.g. if they are members of a particular cultural or ethnic group 	The complainant will not suffer an infringement of any private right or detriment to any commercial interest
A community group authorised to act on behalf of a person who is adversely affected by a decision to an extent greater than the public generally	The complainant has only an emotional or intellectual interest in the subject matter of the agency's actions

- For more information see the [Operations Manual](#).
- If the complainant is not personally affected the Ombudsman is precluded from investigating – advise complainant and close file.
[\(Click here for Assessment letters – Out of Jurisdiction – Standing\)](#)
- If the complainant has standing, consider question 3.

3. Does the subject matter of the complaint relate to a matter of administration?

'Administration' is generally taken to mean any action taken by the executive arm or function of government as opposed to the making of rules (legislative) or the binding interpretation and enforcement of rules by a court (judicial).

CAN INVESTIGATE	CANNOT INVESTIGATE
Most decisions or actions taken by agencies in the course of performing their functions	The Ombudsman has adopted a general policy of not investigating decisions or actions taken by an agency in the exercise of a judicial or quasi-judicial function, e.g. the formal hearing stage of a Tribunal or Committee process
An agency's advice or recommendations made to a Minister, e.g. the adequacy or accuracy of the information, whether all relevant and no irrelevant considerations were given to the Minister	Ministerial or Cabinet decisions
An agency's disciplinary procedures which deal with staff conduct	Allegations of misconduct, corruption or criminal matters
Matters of police administration, e.g. incorrect records, delays in processing applications	Police misconduct, such as excessive use of force, assault
The policies and procedures of an agency	Matters of government policy, except in the context of investigating a matter of administration
Whether an agency has followed a proper process in setting fees and applied them consistently	Provisions of legislation, except in the context of investigating a matter of administration
Commercial decisions of government agencies that relate to the carrying out of executive or management functions	Policies imposed on the agency by the responsible Minister
Matters involving professional judgment or technical expertise (however, the Ombudsman usually declines to investigate such matters - consult your manager for guidance)	Fees prescribed in regulations or determined by agencies using a process set out in legislation
Operational decisions (however, consult your manager for guidance)	

- For more information see the [Operations Manual](#).
- If the action or decision complained about does not relate to a matter of administration the Ombudsman is precluded from investigating – advise complainant and close file. ([Click here for Assessment letters – Out of Jurisdiction – Matter of administration](#))
- If the three threshold jurisdictional hurdles are overcome, you must consider two additional jurisdictional questions (4 and 5 below) as well as whether the Ombudsman should investigate.
- See guidelines [Should we exercise discretion to investigate a complaint that is otherwise out of jurisdiction?](#) and [Should we exercise discretion not to investigate a complaint that is otherwise in jurisdiction?](#)

4. Does the complainant have a right of appeal to a tribunal or a legal remedy?

Subject to subsection (5), the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say –

- (a) any action in respect of which the person aggrieved has or had a **right of appeal, reference, or review to or before a tribunal** constituted under any enactment or by virtue of the Crown's prerogative; and*
 - (b) any action in respect of which the person aggrieved has or had a **remedy** by way of proceedings **in any court of law.** [s14\(4\) PC Act](#)*
- The complaint must not relate to a matter where the complainant has a legal remedy or a right of appeal to a tribunal, e.g. complaints about damage to property or personal injury resulting from an agency's negligence.
 - If the complainant has a right of appeal or a remedy by way of proceedings in a court of law, the complaint is, prima facie, out of jurisdiction.
 - However, you must consider whether it is reasonable to expect the complainant to resort to that right or remedy in the circumstances before declining to investigate. [\(s14\(5\) PC Act\)](#)
 - The complainant is generally expected to provide reasons why it is not reasonable for them to resort, or to have resorted, to a right of appeal or a legal remedy.
 - See guideline [Should we exercise discretion to investigate a complaint that is otherwise out of jurisdiction?](#)
[\(Click here for Assessment letters – Out of Jurisdiction – Legal remedy\)](#)

5. Is the complaint made within 12 months from the day on which the complainant first had notice of the action/decision complained about?

*Except where the Commissioner, in the special circumstances of a case, otherwise determines, a complaint shall not be entertained under this Act unless it is **made not later than 12 months** from the day on which the person aggrieved first had notice of the matters alleged in the complaint. [s17\(5\) PC Act](#)*

- A complaint must be made within 12 months of the day on which the complainant first had notice of the matters alleged in the complaint.
- If a matter has been ongoing for several years, but the complainant received a final decision from the agency within the 12 month time frame, the complaint is considered to be in jurisdiction.
- If the agency's final decision or the matters alleged in the complaint are over 12 months old, the complaint is, prima facie, out of jurisdiction.
- However, you must consider whether special circumstances exist before declining to investigate. [\(s17\(5\) PC Act\)](#)
- The complainant is generally expected to provide a convincing explanation why their complaint should be investigated out of time.
- See guideline [Should we exercise discretion to investigate a complaint that is otherwise out of jurisdiction?](#)
[\(Click here for Assessment letters – Out of Jurisdiction – Out of time\)](#)