

Ombudsman Western Australia
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2 December 2009

Senator Kate Lundy
Chair
Joint Standing Committee on the National Capital and External Territories
PO Box 6021
Parliament House
CANBERRA ACT 2600

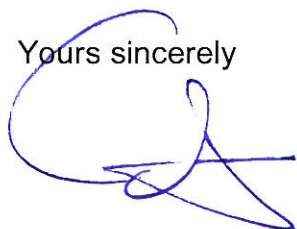
Dear Senator Lundy

Thank you for your letter of 9 November 2009 regarding the Joint Standing Committee on the National Capital and External Territories' inquiry into the changing economic environment in the Indian Ocean Territories.

I am pleased to enclose a response to the Committee's questions.

Should you require further information the Committee's officers can contact Ms Michelle Bovill, Principal Project and Precedents Officer, on (08) 9220 7525.

Yours sincerely



Chris Field
OMBUDSMAN

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RESPONSE TO THE QUESTIONS OF THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES LINKED TO ITS INQUIRY INTO THE CHANGING ECONOMIC ENVIRONMENT IN THE INDIAN OCEAN TERRITORIES

The Joint Standing Committee on the National Capital and External Territories is currently conducting an inquiry into the changing economic environment in the Indian Ocean Territories and has requested a response to the following questions, with reference to the assessment of complaints by my office:

1. How are complaints assessed?
2. If a complaint has not been resolved after a response has been provided by your office, is there an obligation for follow-up?
3. What administrative complaints mechanisms are available to handle complaints similar to the one outlined in the attached transcript?

I thank the Committee for the opportunity to respond to these questions.

1. How are complaints assessed?

The operation of the Ombudsman's office is governed by the *Parliamentary Commissioner Act 1971 (the Act)*. Complaints are assessed to determine, in accordance with the Act, if they should or should not be investigated.

Complaints are assessed to determine whether:

- The complaint is about a department or authority to which the Act applies;
- The complaint relates to a matter of administration;
- The complaint affects any person or body of persons in his or her or its personal capacity; and
- The complaint is made no later than 12 months from the day on which the person aggrieved first had notice of the matters alleged in the complaint (unless special circumstances exist).

The Ombudsman cannot investigate:

- A complaint about a decision made by Cabinet or by a Minister of the Crown;
- Any action in respect of which the person aggrieved has or had a right of appeal, reference, or review to or before a tribunal, or a remedy by way of proceedings in any court of law (unless, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to it); and
- A complaint about any action taken by a person acting as legal advisor or as counsel.

The process also involves an assessment of whether the Ombudsman should refuse to entertain a complaint if he is of the opinion that:

- The matter raised in the complaint is trivial;
- The complaint is frivolous or vexatious or is not made in good faith;
- The person aggrieved has not a sufficient personal interest in the matter raised in the complaint; or

- Having regard to all the circumstances of the case, the investigation of the matter raised in the complaint is unnecessary or unjustifiable.

Further the assessment process considers:

- The materiality and public interest of the complaint;
- The prospect of proving the allegations; and
- The likelihood that any recommendations made would have a practical benefit.

The Ombudsman would not normally investigate a complaint in the first instance where a complainant:

- is still trying to resolve a matter with the department concerned; or
- has not yet raised their concerns with the department as it is our usual practice to suggest that the matter be raised in the first instance with the agency concerned.

This approach is consistent with the approach taken by Parliamentary Ombudsman and industry-based Ombudsman throughout Australia. In our experience it often leads to the most timely and cost effective resolution of disputes. This approach also properly gives the agency the opportunity to consider the complaint before the matter is investigated by an external body. Complainants can write back to us if they are not satisfied with the agency's response or if they are not responded to within a reasonable time.

Complainants are notified in writing of our assessment decision. Where the decision is not to investigate, the complainant is given reasons for the decision and, where appropriate, given alternative avenues to pursue their complaint. Complainants are able to request a review of the assessment decision.

2. If a complaint has not been resolved after a response has been provided by your office, is there an obligation for follow-up?

In those cases where we refer the complainant back to the agency in the first instance, the complainant is advised that, if they are unable to resolve their complaint with the agency concerned, it is open to them to contact us again.

In addition, to provide us with confidence that complaints are being dealt with effectively, we periodically conduct surveys across state government agencies and local government to assess their management of complaints.

3. What administrative complaints mechanisms are available to handle complaints similar to the one outlined in the attached transcript?

In accordance with the Public Sector Commissioner's Circular 2009-27 (which superseded Premier's Circular 2004/04), all Western Australian government agencies are required to have a complaints management system that conforms to the principles of the Australian Standard on Complaints Handling (AS ISO 10002). If complaints are unable to be resolved at an agency level, then complainants have recourse to the Ombudsman. Complainants may also have a right of review to a court or a tribunal such as the State Administrative Tribunal.