



merit equity probity integrity

Annual Compliance Report 2004



Office of the Public Sector
Standards Commissioner



COMMISSIONER FOR PUBLIC SECTOR STANDARDS

MISSION

To achieve better practice within public authorities in people management, workforce diversity and ethical behaviour through education, capacity building and independent oversight.

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Commissioner for Public Sector Standards

THE SPEAKER
LEGISLATIVE ASSEMBLY

THE PRESIDENT
LEGISLATIVE COUNCIL

ANNUAL COMPLIANCE REPORT FOR 2004

I submit to Parliament my Annual Compliance Report for 2004 in accordance with section 22(1) of the *Public Interest Disclosure Act 2003 (the PID Act)* and section 21(1)(i) of the *Public Sector Management Act 1994*. This is the first report under the *PID Act* and the ninth Annual Compliance Report under the *Public Sector Management Act* and covers the following:

(a) Public Interest Disclosure Act 2003

This part of the report informs Parliament about::

- The performance of the Commissioner's obligations under the PID Act;
- Compliance or non-compliance with the PID Act; and
- Compliance or non-compliance with the PID Code of Conduct and Integrity by those receiving disclosures under the PID Act.

(b) Public Sector Management Act 1994

This part of the report informs Parliament about the extent of compliance or non-compliance with:

- The principles of merit, equity and integrity;
- The Public Sector Standards in Human Resource Management (HRM standards);
- The Western Australian Public Sector Code of Ethics; and
- Codes of conduct established by public sector bodies.

The report primarily covers the period from 1 July 2003 to 30 June 2004. Where appropriate, information from earlier years has been included for the purposes of reporting information not included in previous reports, providing updates on actions taken in response to previous recommendations, and providing comparisons over time and across the sector.

A handwritten signature in cursive script that reads 'Maxine Murray'.

Maxine Murray
COMMISSIONER FOR
PUBLIC SECTOR STANDARDS

18 November 2004

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Overview - The Year in Brief

Commissioner's Overview



Maxine Murray

**Commissioner for
Public Sector Standards**

This report is the first on my obligations under, and compliance by public authorities with the *Public Interest Disclosure Act 2003* (the PID Act) and PID Code of Conduct and Integrity (the PID Code). To accommodate this new reporting requirement, the report is in two parts covering my reports under the:

- *Public Interest Disclosure Act 2003; and*
- *Public Sector Management Act 1994.*

Public Interest Disclosure Annual Report


At the launch of the new legislation in June 2003 I noted that the PID Act brought with it considerable challenges as we moved into the implementation phase of the Act.

The legislation provides a further crucial and very public part of the ethical framework for better governance by public authorities. The rationale for the legislation is clear. It is about eliminating improper and unlawful conduct, substantial mismanagement of public resources and substantial risks to the environment, public health and safety.

Transparency International recently reported on their Australian National Integrity Systems Assessment. The study found that, based on the federal government's systems, Australia is a relatively low corruption nation. It did however, highlight the weak Commonwealth protection for whistleblowers. With the introduction of the PID Act, Western Australia has in place all the elements of an effective integrity system. My role in monitoring compliance with this legislation, and reporting to Parliament also creates improved transparency in the integrity system.

As part of its list of essential features for an effective ethics management system, Transparency International highlights the responsibility of public servants in knowing their rights and obligations when exposing wrongdoing. They state:

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow and a formal chain of responsibility. Public servants need to know what protection will be available for them in cases of exposing wrongdoing. A core value of public service is commitment to the law and to the Rule of Law. This is of higher value than any duty to superiors, colleagues or subordinates and likewise it overrides any claim to loyalty on the part of any political party in power. ... It should never be necessary, other than in the most exceptional of cases, for a public servant to feel compelled to go outside the system in order to draw attention to wrongdoing. This is an area too, in which the private sector is taking an increased interest. Although previously, senior managers would prefer not to know about problems, the more progressive managers of today



are eager to ensure that staff feel comfortable in raising their concerns, so that matters can be put to rights, or mistaken impressions corrected.

It is therefore important that official channels of complaint be trustworthy (so that staff can use them without feeling exposed to reprisals by more senior staff on whom they may be reporting) and effective (so that staff will use them confident in the belief that their complaints will be taken seriously, and not just ignored).¹

With this quote in mind, I wish to highlight a number of issues that have arisen during the legislation's first year of operation.

Knowledge of rights and obligations

At the launch of the Act, I stated that it was essential for Chief Executive Officers and Senior Executives to communicate at corporate executive level within their agencies of the need to prepare for this legislation. At that time, I listed the following areas of focus:

- Raise awareness about the legislation;
- Take an active role in inspiring confidence in the process;
- Reassure staff that the agency was serious about the new legislation;
- Consider as to how best to communicate to staff and the community how seriously they considered these matters; and
- Consider how the new legislation fits into existing management practices in terms of acting on issues that arise from complaints.

Earlier this year, I commissioned some comprehensive market research on the awareness of, and attitudes towards the PID Act to be used as a basis for developing a communications strategy. This market research showed that there is a low level of awareness of the PID Act, and the majority of those surveyed did not even know the name of the PID officer within their authority.

Willingness to use the PID Act provisions

Our research also highlighted that in many cases employees are using other internal systems (grievances etc) because they have knowledge and faith in these systems. However, I am concerned that if they subsequently suffer a detriment or are victimised, and they have not made a public interest disclosure, they will not have access to the victimisation protections of the legislation.

Prior to the introduction of the legislation a number of 'whistleblowers' felt compelled to go outside the system to have the matters they were raising addressed. Our market research indicated that media coverage of the negative experiences of these 'whistleblowers' has been a major source of information for many public authority employees. This is unfortunate as the matters were raised and dealt with prior to the introduction of the legislation. It is precisely because of the experience of past 'whistleblowers' that the legislation was introduced.

While the legal avenues available for acts of victimisation that occurred before the commencement of the PID Act are not retrospective, the Act does provide a clear regime to facilitate 'whistleblowers' coming forward and gives them statutory protection when their disclosures are made in accordance with the Act.

¹ Pope, Jeremy. TI Source Book 2000. Confronting Corruption: The elements of a National Integrity System. Transparency International, Germany 2000.

It is of utmost importance that Chief Executive Officers and management recognise that public interest disclosures are an effective management tool that will assist all public authorities in identifying problems and in managing necessary changes and efficiencies.

As part of my assistance role, I will be implementing a communications strategy in 2004-05 to address issues identified by market research. New information and education tools will be developed, with a view to raising awareness, and confidence in using the processes under the PID Act. As a first step, a PID Coordination Committee has been established comprising representatives from the named proper authorities, and local government. The role of this Committee is to discuss practical and legal issues arising out the implementation of the PID Act, to ensure a consistent approach.

The PID Act is to be reviewed after 1 July 2006. A number of practical and legal issues have already arisen concerning various provisions of the legislation. Some of the issues may need to be addressed through amendments prior to the review.

In this first compliance report, I note the effort of public authorities to establish systems and procedures to support the PID Act. In coming years, we will use surveys and agency reviews to assess employee awareness of the provisions of the PID Act, and to monitor compliance.

Public Sector Management Compliance Report

October 1 this year marked the tenth anniversary of the appointment of the first Commissioner for Public Sector Standards. I mention this milestone because I am concerned that some of the findings from reviews and other monitoring activities undertaken by my Office indicate that, despite issues being highlighted in earlier compliance reports and findings sent to individual agencies, the expected improvements in many cases, have not occurred. This is particularly the case in the areas of performance management and improvement in the gender balance in senior management positions as a result of the application of the principles of merit and equity.

Human Resource Management Practices


Performance Management

This year the Office has undertaken two major reviews, both of which identified the need for agencies to ensure they have effective practices to support and monitor compliance across the agency. I am particularly concerned about the findings from an in-depth review of compliance with the Performance Management Standard in four agencies. The report from the review was tabled in Parliament in October 2004. It concluded that, despite a general commitment to effective employee performance management, there was variable participation in three of the four agencies. Only one agency had consistently used a performance management system for a substantial proportion of their employees. In two of these agencies, up to 50% of the sample were not recorded as having been involved in performance management. I note that the first compliance report tabled in Parliament in October 1996 by the then Commissioner, stated:

“Some public sector bodies are not paying sufficient attention to the performance management standard. In a number of instances, either no performance management system existed or it applied to a limited number of employees”²

It is of concern that eight years after this issue was first highlighted, the expected improvements have not occurred in many cases. An effective employee performance

² Commissioner for Public Sector Standards Annual Compliance Report 1995/96



management system is vital in creating the high performance culture expected of the public sector.

Regulations

Another key concern is that, since I have taken up the position of Commissioner, a wide range of people have raised issues about the application of the breach of standards process. I share their concerns that the current Regulations do not facilitate easy access to the process for lodging a claim or providing redress where a breach is found. I am proposing changes to the Regulations to address these and other concerns.

Women in Management

Improvement in the gender balance in senior management positions is to be expected as a result of the application of the principles of merit and equity. However, I am concerned about some of the latest statistics in this area. While the representation of women in Management Tiers 1 and 3 in the public sector has increased marginally in 2004, the representation of women at Tier 2 (corporate executive level) is trending downwards from 33% in 2002 to 26% in 2004.

The Public Sector Management Act requires selection processes to be directed towards, and based upon a proper assessment of merit and equity. It is important that agencies ensure that bias and indirect discrimination do not affect merit assessment. I urge Chief Executive Officers to adopt methods to generate a more diverse field of applicants by introducing proactive search methods, providing greater diversity in selection panel composition, and considering part-time and job-share appointments in senior positions.

Ethical Conduct

Demands to demonstrate and monitor integrity are increasing, for both public bodies and the private sector. Transparency International recently published its 2004 ratings of the perceived levels of corruption, in both the public and private sectors, in more than 90 countries. Australia rated ninth, behind the Scandinavian countries, Singapore and New Zealand. A strong ethical culture is a vital tool in preventing corruption in the public sector.

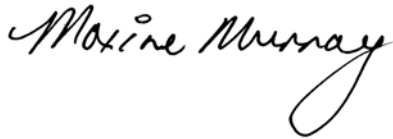
There are a number of positive indicators of the ethical climate within the public sector and of the role public sector leaders play in nurturing an adherence to organisational and public sector values and ethical principles and codes. However there is one significant issue which is of continuing concern. This relates to how individuals can raise issues about contraventions of the ethical codes without fear of retribution, or a negative response.

The fear of a negative reception has been confirmed through several reviews, the PID market research and the results of the climate survey administered by my Office. Only 50% of respondents to the survey believe that people who report wrongdoing are protected from victimisation or harassment, and 21% indicated that they were aware of an occurrence of unethical behaviour that they did not report. It is vital that all formal processes, including those available under the Public Interest Disclosure legislation, signal to people who are thinking about making genuine disclosures of wrongdoing that they are protected from victimisation. Dealing with issues proactively provide an early warning sign and may even prevent matters escalating further.

The Future

With the many demands made on public sector agencies there are benefits to ensuring that my Office, and other independent authorities, work in a collaborative way. Since the Corruption and Crime Commission was established in January this year, my Office has maintained close contact with the Commission. Both offices are considering co-operative arrangements in relation to our respective monitoring roles and in designing ethics education and corruption prevention programs. Ethics is central in designing effective integrity systems, minimising the occurrence of misconduct and in fighting corruption. There is a risk for us to overlap and create duplication for agencies covered by both pieces of legislation. By working closely with the Corruption and Crime Commission, we will minimise this risk.

Another key area in which it is important to work collaboratively is in the movement to the Shared Service Centres. My Office will continue to work with the Functional Review Implementation Team and senior staff in the Shared Service Centres and line agencies, to develop systems and processes that are aligned with the HRM Standards. By working together, the transition to a new approach in providing HR services while maintaining clear line agency accountability in relation to the Standards will be facilitated.



Maxine Murray
COMMISSIONER FOR
PUBLIC SECTOR STANDARDS

November 2004



Executive Summary

This report includes the Annual Report of the Commissioner for Public Sector Standards under Section 22 of the PID Act and the Compliance Report of the Commissioner under Section 21(1)(i) of the PSM Act. The report is in two parts:

- Part I – Public Interest Disclosure Annual Report; and
- Part II – Public Sector Management Act Compliance Report.

Part I - Public Interest Disclosure Annual Report 2004

Commissioner's Obligations

In accordance with the Commissioner's obligations:

- A PID Code of Conduct and Integrity was established;
- Guidelines on internal procedures relating to the functions of a proper authority under the PID Act were prepared;
- The Guidelines were provided to public sector agencies, local government authorities, and the public universities, and were made available on the OPSSC website;
- Compliance with the PID Act was monitored by examining reports submitted by public authorities to the Commissioner, considering specific allegations of non-compliance, and monitoring enquiries; and
- Assistance was provided to public authorities and public officers by responding to enquiries, developing a brochure for potential informants, giving presentations, establishing a PID Coordination Committee (comprised of named authorities under the Act) and commissioning a communications strategy.

Public Interest Disclosures

In 2003-04, twenty-six people made disclosures to proper authorities.

- The majority of matters concerned improper conduct, and a substantial unauthorised or irregular use of, or mismanagement of public resources.
- Of the ten investigations completed by 30 June 2004, four matters were found to have substance.
- In six different matters, identifying information about the informant and the subject of the disclosure was revealed in accordance with the confidentiality requirements of the PID Act. There were no claims of unlawful disclosure of identifying information.
- There were no claims of victimisation as a result of making a disclosure under the PID Act during the year.

Several issues have been identified with respect to the practical application of the PID Act, which may need to be addressed through legislative amendments prior to a full review of the PID Act, which is to occur after 1 July 2006.

Part II - Public Sector Management Compliance Report 2004

Compliance Monitoring Framework

The Commissioner has a responsibility to monitor and report on the extent of compliance or non-compliance by WA public sector bodies and employees with human resource management and ethical principles, standards and codes. Assessment of the extent of compliance is based on two sources of information, agency self-reporting and independent oversight by the Commissioner through employee surveys and information on specific matters about compliance dealt with by the Office. Three key elements are considered:

- Commitment and communication;
- Integration and monitoring to achieve compliance; and
- Action on non-compliance.

Human Resource Management

Commitment and Communication


- The majority of agencies reported using a broad range of strategies to communicate the Human Resource Management Standards (HRM Standards). Employee surveys conducted by the OPSSC indicate that the majority of employees (70% of respondents) are aware of the HRM standards.
- Agencies are not as active in communicating to employees about their rights to lodge a breach of standards claim. Only 49% of employee survey respondents understood the courses of action to take if they disagreed with a job selection decision. There is a need for agencies to inform employees of procedures to lodge a breach claim and to improve access to, and trust in, the breach claim process for all standards.

Integration and monitoring to achieve compliance

- There are continuing areas of concern about serious compliance issues, and an identified need for agencies to ensure they have effective integration of the Standards into agency practices as well as the capacity to monitor compliance across the agency. These were highlighted through two major reviews undertaken by the Office in 2003-04 supported by areas of concern identified in employee surveys. Key areas of concern relate to performance management, acting and grievances.
- **Performance Management** – A review of performance management across four agencies found a general commitment to effective employee performance management and that employee survey respondents generally consider the process is fair. However there was variable participation in formal performance management in three of the four agencies. Only one agency had consistently used a performance management system for a substantial proportion of their employees. In two of these agencies, of the sample taken, up to 50% were not recorded as having been involved in performance management.
- Agencies reported using a range of methods to assess their compliance with the Recruitment, Selection and Appointment Standard and other Standards. The main methods used were policies and checklists, staff feedback, independent checks of transactions and internal audits or reviews.

Merit and Equity Outcomes

Improvement in the gender balance of senior management positions is to be expected as a result of the application of the principles of merit and equity.



For the public sector the representation of women in Tier 1 and Tier 3 has increased slightly in 2004. However, it is of concern that women remain under represented at Tier 2 (corporate executive level) and their representation has declined in the last year. This does not appear to be due to marked changes in agency structures. Urgent action will be needed to achieve improvements.

Action on non-compliance

- There were 258 breach of standard claims received by agencies in 2003-2004 and three carried over from the previous year. Of these 115 (44%) were withdrawn or resolved in the agency, 12 are still pending and the remainder were referred to the OPSSC. Of the 134 breach claims referred only six were upheld. In agencies where a breach of Standard was found by the Commissioner, all agreed to provide appropriate relief for the claimant.
- The number of breach claims is low when compared to the number of human resource management transactions that occur. Employee survey results, a major review in one agency and contacts with the Office indicate a significant issue is that employees are not aware of courses of action open to them if they are aggrieved by a decision and that they are often reluctant to raise issues because they do not believe anything will happen as a result, and/or that there will be a negative impact on them.
- There is clearly a need for agencies to provide employees with better information about how to raise concerns if they think there has been a breach of any of the standards. It is also necessary to build greater trust in the breach process, so that employees become more willing to use it. Proposed revision of the Regulations will provide greater opportunities for employees to both access the breach process and obtain relief through a conciliation process. In addition agencies need to ensure that their internal systems provide effective responses to breach claims, including protection from victimisation or reprisals.

Ethical Conduct

Commitment and communication

- There is widespread development of codes of conduct with 94% of agencies having a code and many agencies using multiple ways to communicate and promote the code to their employees. The commitment to building trust and ethical behaviour is shown by the number of agencies (71%) having reviewed their code since 2000.
- There is a low level of awareness about the Public Sector Code of Ethics among employees and only 46% of survey respondents indicate they have read it, although a higher number (64%) are aware of their internal ethical policy guidelines. Considerable work needs to be done to better inform public sector employees about the Code of Ethics.
- Employees responding to surveys generally have positive perceptions about ethical leadership with 82% of survey respondents indicating that their agency supports and encourages ethical conduct. However only 48% of employees agreed that management monitors ethical conduct and less than half of agencies reported that management and leadership development includes a focus on ethical issues and decision making. A greater focus on this aspect of leadership development would enhance the integration of ethics into decision making.

Integration and monitoring to achieve compliance

- **Justice (impartiality)** – Most employee survey respondents agree that there is no favouritism in decision making such as awarding contracts and favourable treatment for relatives of staff. However, issues raised through contacts with the Office relate mainly to this aspect of the justice principle. The key areas are impartiality issues, such as conflict of interest and protecting people's right to due process.
- **Justice (equity)** – Most employee survey respondents are positive about welcoming men and women and cultural diversity in the workplace. However there is still work to be done with some managers so that all employees feel respected regardless of gender or cultural background. There is also a risk that if employees report that people are not equally respected, the attitudes and behaviours giving rise to these perceptions may affect service delivery.
- **Respect for Persons** – Employee survey respondents generally feel respected by management (74%) and other employees (82%). Most respondents also consider that customers are given reasons for decisions with only 4% saying this rarely or never occurred. However 13% said that customers sometimes were given reasons for decisions and 23% did not know or did not answer. Agencies need to ensure they have clear policies about treating customers impartially and with respect and that all employees are aware of these.
- **Responsible Care** – There is strong support from employee survey respondents that the actions of their agency serve the public interest and take a responsible attitude to caring for public resources.
- Agencies report some elements of good practice in monitoring compliance with the ethical codes, particularly through internal audits and reviews and a recognition that compliance can be assessed through the results of reviews or audits by external regulatory bodies. However some agencies rely primarily on the monitoring of individual transgressions, a less proactive method.

Action on non-compliance

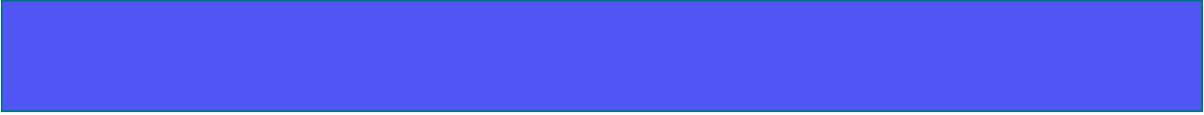
- Agencies report relatively few matters that are directly linked to non-compliance with the ethical codes. However this should be seen in the context that many matters raised in a range of jurisdictions have elements that relate to ethical practices even though they may not be raised specifically as a breach of the codes.
- Reviews and survey results continue to indicate serious problems with employee confidence that they will be protected from victimisation or harassment if they reported ethical issues and wrongdoing. Only 50% of respondents believed people who reported wrongdoing were protected from victimisation or harassment, and 21% indicated that they were aware of an occurrence of unethical behaviour that they did not report. Agencies should make employees aware of the action they can take to report unethical conduct, develop a work environment where employees feel safe to raise issues and provide assurance that victimisation will not be tolerated.



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Public Interest Disclosure Annual Report 2004



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Public Interest Disclosure Act 2003

Purpose of this Report

This report is the first annual report the Commissioner is required to submit to Parliament under section 22(1) of the Public Interest Disclosure Act 2003 (the PID Act). The Commissioner is required to report on:

- The performance of the Commissioner's obligations under the PID Act;
- Compliance or non-compliance with the PID Act; and
- Compliance or non-compliance with the PID Code of Conduct and Integrity.

The role of the Commissioner under the PID Act is to:

- Establish a code setting out the minimum standards of conduct and integrity to be complied with by proper authorities;
- Prepare guidelines on internal procedures relating to the functions of a proper authority under the PID Act;
- Ensure that all public authorities have copies of the PID Guidelines;
- Monitor compliance with the PID Act, and the PID Code; and
- Assist public authorities and public officers to comply with the PID Act, and the PID Code.

The Commissioner is also the proper authority for receiving disclosures of public interest which relate to a public officer (other than a Member of Parliament, a Minister of the Crown, a judicial officer, or an officer referred to in Schedule 1 to the Parliamentary Commissioner Act 1971).

Commissioner's Obligations

PID Code

The Commissioner established the PID Code of Conduct and Integrity with which any person, to whom an appropriate disclosure is made under the PID Act must comply. The PID Code uses the principles of justice, respect for persons and responsible care in the Western Australian Public Sector Code of Ethics as its ethical base.

The PID Code has been in operation since 1 July 2003. The Commissioner published the Code on the OPSSC website and distributed it to public authorities.

PID Guidelines

The Commissioner prepared guidelines relating to a proper authority's functions under the PID Act in June 2003. Copies of these Guidelines were distributed to public authorities, and published on the OPSSC website. The Guidelines comprise:

- Part I – rights and obligations under the PID Act;
- Part II - draft internal procedures relating to the obligations of public authorities under the PID Act, and relevant forms; and
- Part III – text of the PID Act.

The PID Act requires public authorities to prepare and publish internal procedures which must be consistent with the Commissioner's Guidelines. The Commissioner suggested that public authorities consider using the draft internal procedures in Part II of the Guidelines as a basis for their internal procedures, and to modify the forms to suit the particular circumstances of the public authority.

In the Guidelines, the Commissioner indicated that they would be reviewed over time, and that a consultation process would occur within 12 months. This will occur in 2004-05.

Assistance

Information

The Commissioner developed a brochure on making a disclosure under the PID Act, which is available on the OPSSC website. A PID lodgement form is also available on the website.

The Commissioner's office dealt with 250 enquiries about PID related matters during 2003-04. The following table shows the breakdown of these enquiries according to subject matter:

Nature of Enquiry	Number
Legislation	62
Guidelines	48
PID Officer	27
Website	14
PID package	12
Reporting	9
Referral	6
Access to information on CD Rom	4
Other	68
TOTAL	250

A PID Register was also developed for proper authorities that had received disclosures in 2003-04 to use for annual reporting purposes.

Coordination

A PID Coordination Committee comprising the named proper authorities in the PID Act, as well as representatives from local government, was established to discuss practical and legal issues arising out of the operation of the PID Act.

Presentations

Staff have given presentations about the PID Act in various forums. This function will increase in 2004-05 in accordance with the PID Communications Strategy.

Issues

As with any new legislation, the PID Act has experienced some teething problems, and some aspects of the PID Act are proving difficult to apply in practice. Some key issues are:

- “Public interest information” is defined in the PID Act to include information that tends to show that a public authority or public officer has been engaged in improper conduct. “Improper conduct” is not defined in the PID Act which makes it difficult for PID Officers to ascertain whether the disclosed information constitutes public interest information or not in the circumstances of a particular case.
- The confidentiality provisions also create difficulties in practice. For example, under section 23 of the PID Act, a principal executive officer is obliged to protect an informant from detrimental action. However, discussions between the PID Officer and the principal executive officer are subject to the confidentiality provisions. Unless the consent of the informant is obtained to enable a proper discussion to occur, a principal executive officer will find it difficult to fulfil his or her obligation.
- Where an informant under the PID Act simultaneously raises the same issues using another avenue available at a workplace, such as a grievance procedure, or with an external body but not as a disclosure under the PID Act, discussions between the PID Officer and other investigating officers are subject to the confidentiality requirements.

Some of the issues that have been raised may need to be addressed through amendments to the Act prior to the scheduled review in 2006.

Communications Strategy

To enhance the Commissioner’s assistance role, a communications strategy was commissioned which will be implemented in 2004-05. In developing this strategy, qualitative and quantitative market research was undertaken to assess the levels of awareness and understanding of the PID Act, and attitudes towards, and confidence in using the PID Act, among State public sector, local government and public university employees.

The results, although not representative of all employees in public authorities covered by the PID Act, highlighted a number of areas of concern, in particular, that:

- There is a low level of awareness of the PID Act across all sectors;
- While the PID Act is seen as important, there is a low level of confidence in using the PID Act because of the general lack of knowledge about the legislation and concerns about not being adequately protected once a disclosure is made;
- There appears to be a belief that existing workplace policies with respect to confidentiality and secrecy would prevent people from making disclosures under the PID Act; and
- Most respondents did not know if their organisation had a PID Officer, or the name of the PID Officer.

The communications strategy suggests a range of initiatives to address the issues identified by the market research. In 2004-05, the Office will be developing new communications tools, and implementing a targeted information and education campaign across the sectors to raise awareness of, and build confidence in using the PID Act.

It is also intended to include some questions relating to PID in the employee climate survey which is conducted in large public sector agencies on a regular basis.

Receiving Disclosures

The matters raised with the Commissioner during 2003-04 are included in the consolidated results discussed in the following section.



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PID Act Compliance Monitoring

Why Monitor Compliance?

The Commissioner's role to monitor compliance with the PID Act is required in order to achieve the key public policy objectives of building confidence in the processes under the Act, and in promoting integrity, openness and accountability in public authorities.

Independent monitoring and reporting by the Commissioner helps build and maintain trust by enabling Parliament, and the public, to examine the level of compliance by public authorities with the PID Act and PID Code.

Who is Monitored?

The Commissioner's role to monitor and report on the extent of compliance under the PID Act applies to the Western Australian public sector (116 agencies), local government (144 local government authorities) and public universities (4 universities).

What is Monitored?

The Commissioner has a responsibility to monitor the extent of compliance with the PID Act, and the PID Code of Conduct and Integrity. Under the PID Act, there are a number of obligations which apply to the principal executive officers of a public authority, and to proper authorities in dealing with appropriate disclosures.

The principal executive officers of public authorities are required to:

- Designate a specified position within the authority to receive disclosures of public interest information;
- Provide any employee who has made an appropriate disclosure with protection from detrimental action or the threat of detrimental action;
- Ensure the public authority complies with the PID Act, and PID Code;
- Prepare and publish internal procedures relating to the authority's obligations under the PID Act; and
- Provide information annually to the Commissioner on:
 - The number of public interest disclosures received; and
 - The results of any investigations conducted, and any action taken.

Proper authorities which include designated PID officers within public authorities and the named authorities (for example the Ombudsman and the Auditor General) are required to:

- Receive disclosures of public interest information;
- Comply with the PID Code of Conduct and Integrity;
- Investigate appropriate disclosures of public interest information, or cause such matters to be investigated, except in certain circumstances;
- Not reveal identifying information about the informant or the subject of the disclosure, unless in accordance with section 16 of the PID Act;

- Notify an informant within three months of the disclosure being made of what action has been or is proposed to be taken in relation to the disclosure;
- Where the view is formed that a person may be, may have been or may in the future be involved in improper conduct, take action to either prevent the matter from occurring in the future, refer the matter to a body having power to investigate a matter, or take disciplinary action or enable such disciplinary proceedings against the person responsible for the matter; and
- Provide a final report to an informant stating the outcome of the investigation and any action taken or proposed to be taken, and the reasons for doing so.

Certain exceptions apply to the Corruption and Crime Commission and the Ombudsman with respect to some of these obligations.

Monitoring Strategies

The strategies used by the Commissioner to monitor compliance with the PID Act in 2003-04 are show below:

Public Authority Self Reporting	<ul style="list-style-type: none"> • PID Register submitted by those authorities which received PIDs; • Whether a PID Officer has been designated; and • Whether internal procedures have been prepared and published relating to the authority's obligations under the PID Act.
Commissioner's Oversight	<ul style="list-style-type: none"> • Allegations of non-compliance; • Monitoring of enquiries; and • PID Registers.

In addition, compliance or non-compliance with the PID Act will be monitored as part of a rolling program to review the extent of compliance with the Standards and ethical codes.

Compliance with the PID Act


Designation of PID Officers

PID Officers have been designated in 98% of agencies that reported to the Commissioner in 2003-04. The Office is maintaining a database of designated PID officers.

Internal Procedures

Of the public authorities that reported to the Commissioner in 2003-04, 61% have internal procedures in place. The following table shows the extent of compliance in each of the sectors:

Sector	Number	Percentage with internal procedures in place
WA public sector	116	78.5%
Local Government	144	46%
Public universities	4	100%
Total	266	



It is important to note that these figures are indicative only. Four of the 266 public authorities asked to report in 2003-04 did not report at all, and of those that did, 15% did not indicate whether they had procedures in place. Public authorities that do not have procedures, or did not report, will be targeted in 2004-05 as part of the PID communications strategy.

The PID Act also applies to a large number of government bodies that have been established for a public purpose under a written law, or established by the Governor or a Minister on a permanent basis. The Commissioner did not require these bodies to report in 2003-04 but will be focusing on ensuring that these bodies comply with the requirements of section 23 of the PID Act in 2004-05.

Number of public interest disclosures received

In 2003-04, twenty-six people made a public interest disclosure to a proper authority. Proper authority is defined in the PID Act and includes public service departments, public sector agencies, local government and public universities.

For the purposes of this report, a distinction has been made between disclosures received by “named authorities”, and by “public authorities”. A “named authority” is a proper authority named specifically in section 5(3) of the PID Act and which received a disclosure from a person external to that authority. The authorities named in section 5(3) which our Office considers to be “named authorities” are the Corruption and Crime Commission, the Auditor General, the Ombudsman, the Police, and the Commissioner for Public Sector Standards. Not all of these named authorities received disclosures from external persons during 2003-04.

A “public authority” is a proper authority which is not named specifically in section 5(3) and which received a disclosure. A public authority includes public sector departments or agencies, local government authorities and public universities, as well as those named authorities which have received disclosures from internal employees about their own activities. Each public authority has a designated PID Officer to receive disclosures.

The named authorities received disclosures from 10 persons, and the public authorities received disclosures from 16 persons. Sixteen males and seven females made disclosures, with three disclosures made anonymously.

Relationship with Proper Authority

The public authorities received most of their disclosures from current employees. The named authorities received disclosures mainly from past employees of other authorities, closely followed by current employees employed in other authorities.

Employment Status of Informants

Employment Status	Named Authorities	Public Authorities
Member of Public	0	3
Past employee of agency subject to PID Claim	5	0
Current employee of agency subject to PID claim	4	10
Other	1	3
Total	16	10

Note: Other includes elected representatives, contractors and anonymous informants (where their employment status was not able to be determined).

Type of Disclosure

To be covered by the PID Act, a disclosure must concern a matter of public interest information. "Public interest information" is defined in the PID Act and includes a number of categories. A person may make a disclosure about one or more categories of public interest information.

Of the total number of disclosures received by public authorities and named authorities, fifteen concerned improper conduct and twelve concerned substantial unauthorised or irregular use of, or mismanagement of, public resources. The other five matters involved conduct in the other categories of public interest information, which are an offence against State Law, conduct involving a substantial and specific risk of injury to public health, public safety or harm to the environment and conduct relating to matters of administration that fall within the jurisdiction of the Ombudsman.

Investigation

Under section 8 of the PID Act, a proper authority must investigate a disclosure or cause the disclosure to be investigated. However, a proper authority may refuse to investigate or may discontinue an investigation in certain circumstances. The investigation status of the matters disclosed in 2003-04 is:

Investigation Status	Named Authority	Public Authority	Total
Ongoing investigations	5	1	6
Completed investigations	-	10	10
Discontinued investigations	1	2	3
No investigations conducted	2	3	5
Decision to investigate pending	2	-	2
TOTAL	10	16	26

Notification of Informant

Where an appropriate disclosure is made, a proper authority is to notify the informant within three months after the disclosure is made of the action taken or proposed to be taken in relation to the disclosure. In 18 matters, the informant was notified within the timeframe. In three matters, the informant was anonymous and was, therefore, not able to be notified. In the remaining five matters, either an investigation had not been conducted for various reasons, or the decision to investigate was still pending as at 30 June 2004.

Outcome of Investigations conducted

Of the ten disclosures, where an investigation was completed, four matters had substance and six matters lacked substance.

Final Report

Of the ten matters where an investigation was completed, seven informants received a final report on the outcome of the investigation and any action that the proper authority has taken or proposes to take as a result of the investigation. Two reports were still pending as at 30 June 2004. A report could not be provided in one matter as the disclosure was made anonymously.

Confidentiality

Section 16 of the PID Act prevents the disclosure of information that would identify the informant or the subject of the disclosure except in certain circumstances. In accordance with section 16, identifying information about the informant was revealed in nine matters. Identifying information about the subject of the disclosure was revealed in seven matters.

In 2003-04, there were no claims of unlawful disclosure of identifying information.

Claims of Detrimental Action and Victimisation

As at 30 June 2004, there were no complaints of an offence of detrimental action made under section 14 of the PID Act, or claims of victimisation made under section 15 of the PID Act.

Issues about Compliance

Several issues have come to the Commissioner's attention during 2003-04 with respect to compliance.

Advice about PID Act

Under the PID Act, a disclosure can only be made to a proper authority, that is a designated PID Officer within a public authority, or to one of the named proper authorities in the PID Act. Not everyone who raises concerns about improper conduct is necessarily aware of the existence of the PID Act. In fact, the market research results indicate that the majority of people would not be aware of the PID Act.

The PID Guidelines suggest that where a person is making an allegation of improper conduct, but does not refer to the PID Act, the person should be advised that they may want to make a disclosure under the PID Act, and referred to the PID Officer for guidance. It is vital that this advice is provided to enable potential informants to make an informed choice about whether to make a disclosure or not. More importantly, the PID Act provides informants with access to certain legal remedies if they are subjected to detrimental action or the threat of detrimental action at the workplace which would not otherwise be available.



Separate Investigation under PID Act

Before making a disclosure under the PID Act, informants may have already raised the same allegations in another context, and those matters may have been investigated. Under the PID Act, a proper authority may only refuse to investigate a disclosure of public interest information, or discontinue an investigation in the following circumstances:

- The matter is trivial;
- The disclosure is vexatious or frivolous;
- There is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter; or
- The matter is being or has been adequately or properly investigated by another person to whom an appropriate disclosure of public interest information has been made.

Unless one of these circumstances applies, an investigation under the PID Act must be conducted, even though an investigation may have occurred under other avenues.

Compliance with Public Interest Disclosure Code

No issues of non-compliance with the PID Code were raised with the Commissioner in 2003-04.



Public Sector Management Compliance Report 2004



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Compliance Monitoring Framework

Why Monitor Compliance?

This report provides an evaluation of compliance or non-compliance with the relevant provisions of the PSM Act. It forms part of the monitoring and reporting function of the Commissioner for Public Sector Standards.

Compliance is not an end in itself. It is required in order to achieve the key public policy objectives of building public trust and providing good governance, which can only be achieved through cultural change, the importance of which cannot be underestimated.

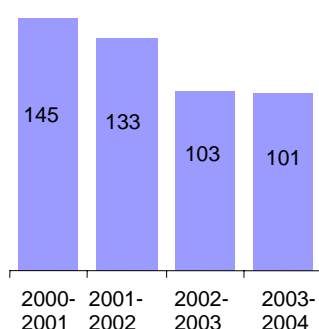
The primary responsibility for achieving compliance with the PSM Act lies with public sector bodies, their management and employees.

Independent monitoring and reporting by the Commissioner for Public Sector Standards helps build and maintain public trust by allowing Parliament and the public to place more reliance on agency claims of compliance than would otherwise be possible. To be effective, this independent oversight needs to assess the achievement of intended policy outcomes.

Who is Monitored?

The Commissioner's monitoring and reporting role under the PSM Act applies to all public sector bodies. Public sector bodies include Western Australian ministerial offices, public sector agencies and organisations (agencies) established for a public purpose by law (including public boards and committees) and that are not specifically excluded by Schedule 1 of the PSM Act.

As at 30 June 2004 there were 101 public sector agencies monitored by the OPSSC. In addition there were 536 public boards and committees. Most of the activity monitored by the Commissioner relates to public sector agencies, their management and employees. The trend in agency numbers in recent years is shown below:



Note: The decline in the 2002/03 and 2003/04 years is due to amalgamations arising from Machinery of Government changes.

What is Monitored?

The Commissioner has a responsibility, under Section 21 of the PSM Act, to monitor and report on the extent of compliance or non-compliance by Western Australian public sector bodies and employees with:

- The general principles of human resource management covered by Sections 8(1)(a), (b)



and (c) (the HRM principles);

- The general principles of official conduct covered by Section 9 (the ethical principles);
- The Public Sector Standards in Human Resource Management (the HRM Standards); and
- The Western Australian Public Sector Code of Ethics and codes of conduct developed by public sector bodies (the ethical codes).

A summary of these principles, standards and codes is provided below. Further details are at Appendices 2 and 3.

HRM Principles and Standards

The key outcome of compliance with the HRM principles and standards is a public workforce made up of the most suitable available employees, who are effective and who trust that human resource management decisions affecting them will be based upon merit, equity and probity.

In summary, the HRM principles are that selection is based on a proper assessment of merit and equity; human resource management powers are not based on nepotism or patronage, and employees are to be treated fairly and consistently. Nine public sector standards in human resource management have been established. These cover Recruitment, Selection and Appointment, Transfer, Secondment, Performance Management, Redeployment, Termination, Discipline, Temporary Deployment (Acting) and Grievance Resolution.

Ethical Principles and Ethical Codes

The key outcome of compliance with the ethical principles and codes is trusted public institutions that serve the public interest with fairness, show respect for the people they deal with and manage public resources properly on a daily basis.

The general principles of official conduct are that public sector bodies and employees comply with the PSM Act, other relevant legislation, the HRM standards and the ethical codes; act with integrity in the performance of their official duties; and apply courtesy, sensitivity and consideration in their dealings with the public and employees.

These principles form the basis of the Code of Ethics that covers:

- **Justice** – being impartial and using power fairly for the common good;
- **Respect for Persons** – treating people honestly, courteously and fairly so that they maintain their dignity and their rights are upheld; and
- **Responsible Care** – protecting and managing with care the human, natural and financial resources of the State.

Focus of the Compliance Report

This report evaluates compliance in two areas:

- **Human Resource Management** covering HRM principles and standards; and
- **Ethical Conduct** covering ethical principles and codes.

We have developed a compliance framework to guide our approach to the role of the Commissioner. This framework is a modification of a Regulatory Enforcement Pyramid developed and adapted by a number of researchers and agencies involved in regulatory practice.

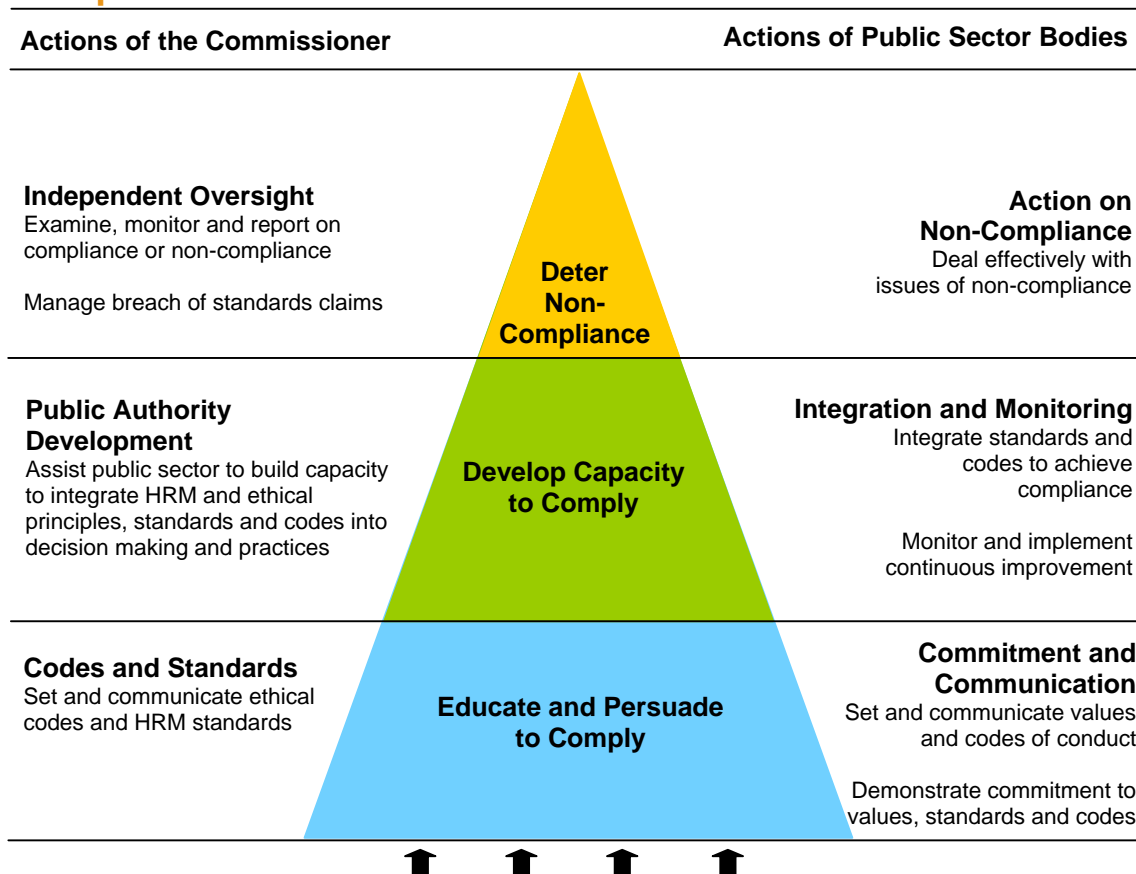
The report focuses on action by public sector bodies under the three key elements in the compliance framework:

- Educate and persuade to comply – Commitment and Communication;
- Develop capacity to comply – Integration and monitoring to achieve compliance; and
- Deter non-compliance – Action on Non-Compliance.

It is based on two sources of information:

- information reported to the Commissioner by public sector agencies (agency self-reporting);
- information from the Commissioner's independent monitoring activities (Commissioner's oversight).

Compliance Framework



Monitoring Strategies

Public sector agencies are required to report to the Commissioner annually on compliance. The Commissioner used a number of strategies to provide an independent evaluation of the extent of compliance and non-compliance. Information obtained through this independent oversight, used in conjunction with information from agency reports, allows a better assessment than would be possible using a single source of information. The monitoring strategies used this year are summarised below. Further details of the strategies and the criteria for selecting agencies and issues for review are provided in Appendix 4.

Agency Self-reporting	<ul style="list-style-type: none">• Methods of assessing compliance and their achievement of compliance with the HRM principles and standards;• Methods of assessing compliance and their achievement of compliance with the ethical principles and codes;• Whether they have a code of conduct and how the ethical codes are communicated to employees;• The number of claims of breach of HRM standards handled within the agency and the outcome of those claims; and• The number of allegations of non-compliance with the ethical codes.
Commissioner's Oversight	<ul style="list-style-type: none">• Regular agency reviews on a cycle of approximately five years. This includes aggregated information available from public sector employees who responded to climate surveys;• Specific agency reviews involving in-depth examinations of specific issues;• Thematic reviews of a particular issue over a range of agencies;• Breach of Standard claims;• Outcome-based Measures of Compliance; and• Complaints and allegations of non-compliance.

Limitations of Monitoring Strategies

The monitoring processes used by the Commissioner are a combination of broad-based measures and in-depth examinations of selected samples. The use of a range of tools provides a better assessment than would be possible using a single methodology. There are, nevertheless, limitations with any measurement or review process and there can be no guarantee of the validity or reliability of the information obtained from agencies. This means it is likely that not all compliance and non-compliance issues will be identified. In addition, judgment is integral to the work undertaken in agency-specific and thematic reviews and most information obtained is indicative and persuasive, rather than proof of the extent of compliance or non-compliance.

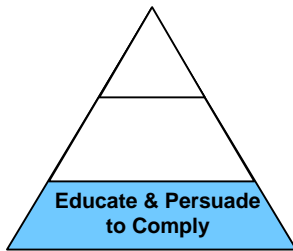
Working with Agencies

The Commissioner's role in monitoring and reporting is to provide an independent oversight of the extent of compliance and non-compliance with the Human Resource Management principles and standards and the ethical principles and codes. The cooperation and commitment of public sector agencies and employees is important if the monitoring role is to be effective. A cooperative approach also enables the monitoring process to be undertaken in a way that will assist agencies to achieve improved compliance.

Human Resource Management

HRM Commitment and Communication

This section discusses the actions taken to educate and persuade employees to comply with the HRM principles and standards – the first element in the compliance framework.



Commitment and Communication

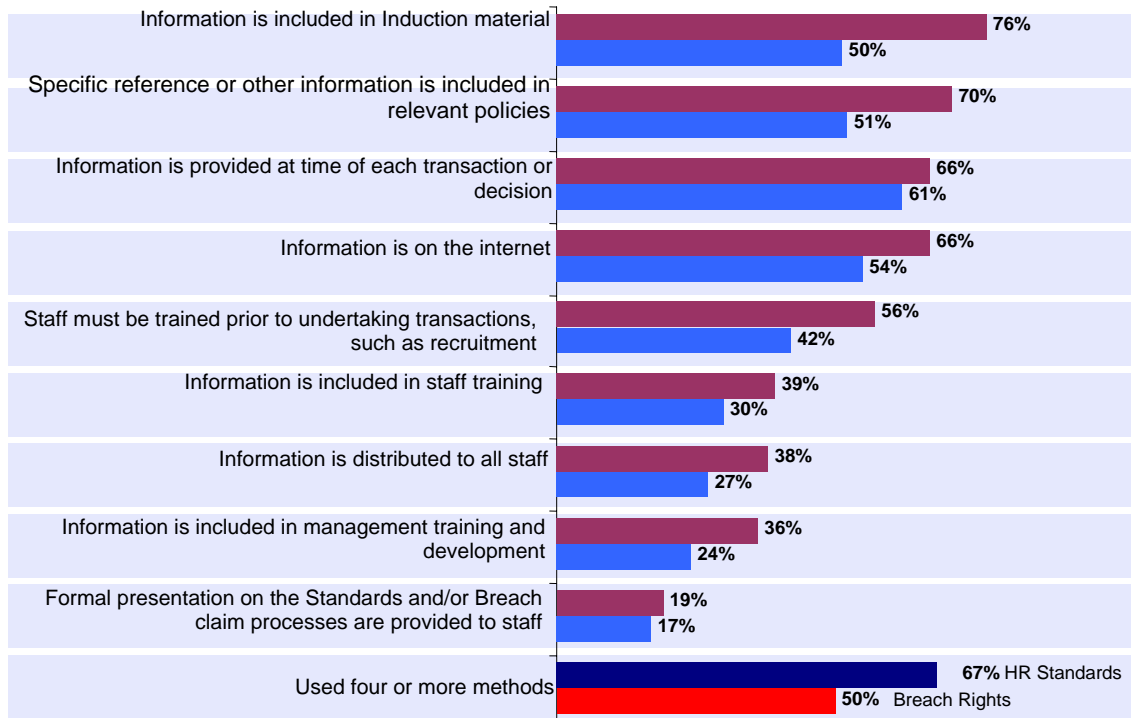
Set and communicate practices to meet HRM principles and standards
 Demonstrate commitment to HRM principles and standards

Agency Self-reporting

In their yearly report, agencies were asked this year to indicate what methods they used to ensure employee awareness of the Human Resource Management Standards and how to lodge a breach of Standard claim.


Standards and Breach Rights

(Total number of Agencies = 101)



HR Standards

Breach rights



Agencies most commonly included information about the Human Resource Management Standards and breach rights in induction material or in relevant policies, although a significant proportion provided information at the time of the transaction. Providing information in written form is useful but places reliance on employees knowing how to access this material. It is positive to note that information on the Standards is being included in staff and management training.

Sixty seven percent (67%) of agencies use four or more methods to communicate information about the Standards. This is encouraging as utilising diverse methods of communication is likely to have greater impact on raising employee awareness of the Standards.

Awareness of the HRM standards

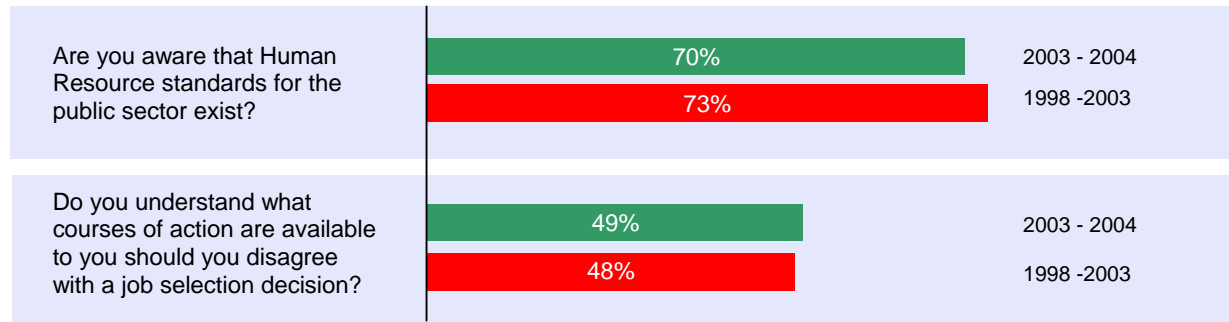
The majority of agencies are using a broad range of communication strategies. There is a lower proportion of agencies providing information to employees on how to lodge a breach of standards claim, with 25% having no or only one method of communication (and this occurs mostly at the time of transaction).

All agencies need to ensure that employees are aware of the requirements of the standards and their rights to lodge a claim.

Commissioner's Oversight

In the climate survey, there were two questions relating to employee awareness of the HRM standards and the courses of action available to staff if they felt aggrieved by a decision.

Percentage of Respondents Answering Yes³



Awareness of the HRM standards

These results indicate that while most employees were aware of the HRM standards (70%), there is still a large minority (30%) that were not. This indicates a need for more active communication of the Standards. Agencies need to improve their communication with employees in this area so that all staff are informed.

Awareness of Avenues to Raise Concerns

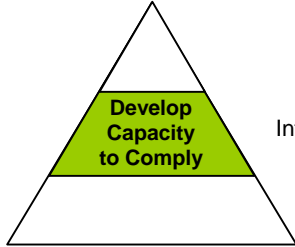
The survey and other information provided to the Office indicate that employee knowledge of how to raise concerns about non-compliance continues to be low. Less than half of respondents (49%) were aware of courses of action to take if they disagree with a selection decision.

This view is confirmed by information from employee contacts with the Office and from employees making breach of Standard claims and enquiries. In some instances, knowledge of the HRM Standards and the breach process appears to be limited to those working in the HR field. The lower awareness levels of courses of action available is consistent with a general lack of communication about breach rights. There is clearly a need for agencies to provide all employees with better information about how to raise concerns if they consider there has been a breach of any of the Standards. Breach claims relating to standards other than Recruitment, Selection and Appointment transactions are more likely to be outside the legislated timeframe for lodgement than those in relation to the RSA Standard which has a mandatory notification requirement.

³ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

HRM Integration and Monitoring

This section outlines the actions taken to develop the capacity to comply with HRM standards and principles – the second element in the compliance framework.



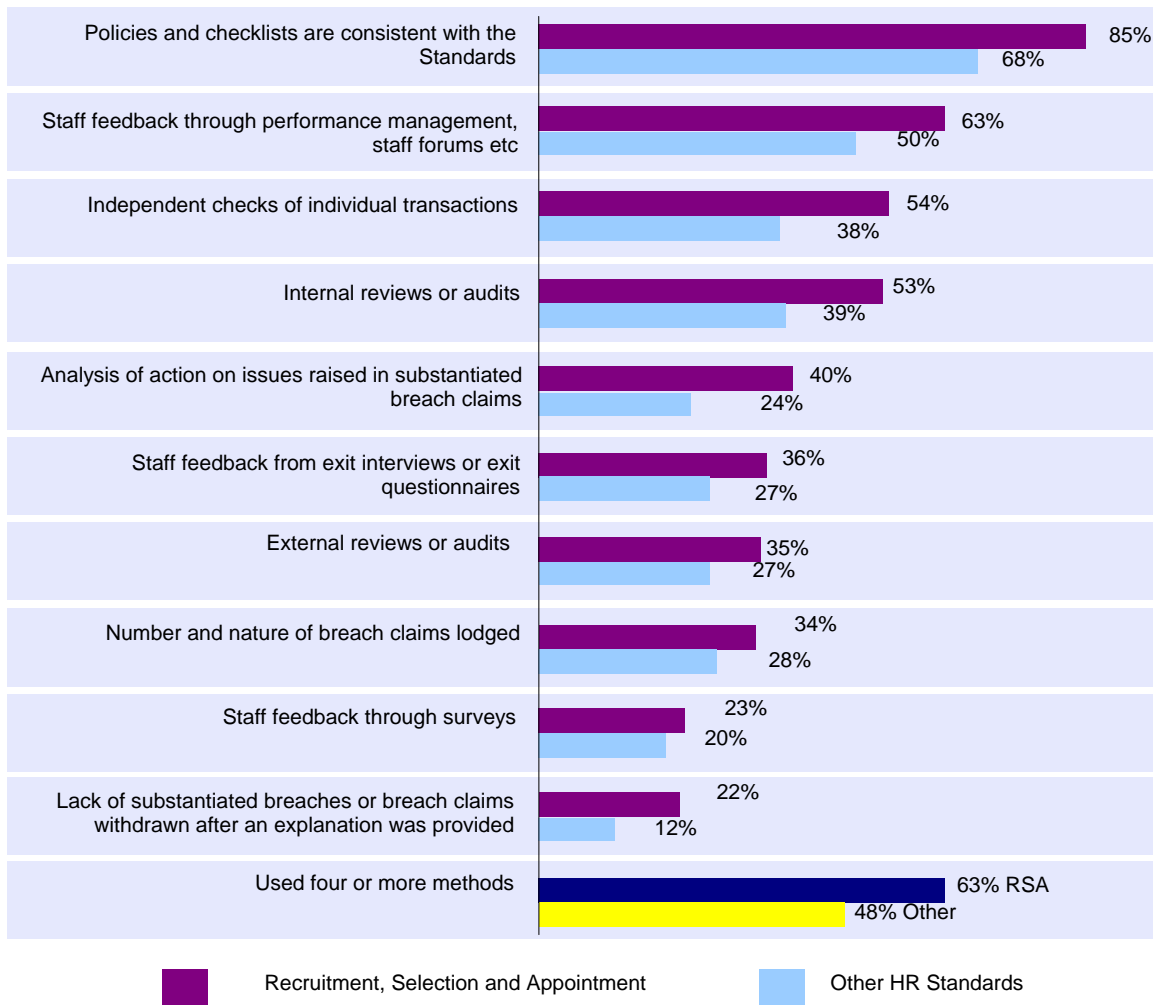
Integration and Monitoring


Integrate HRM principles and standards to achieve compliance
Monitor and implement continuous improvement

Agency Self-reporting

In their yearly report, agencies were asked this year to indicate what methods they used to assess compliance with the HRM Standards. Responses were requested in relation to the Recruitment, Selection and Appointment Standard specifically as well as the remaining Standards.

RSA and Other HR Standards





It is very positive that agencies reported using a range of methods to assess their compliance. It is particularly encouraging to note that no agencies rely simply on an absence of breach claims to assert compliance.

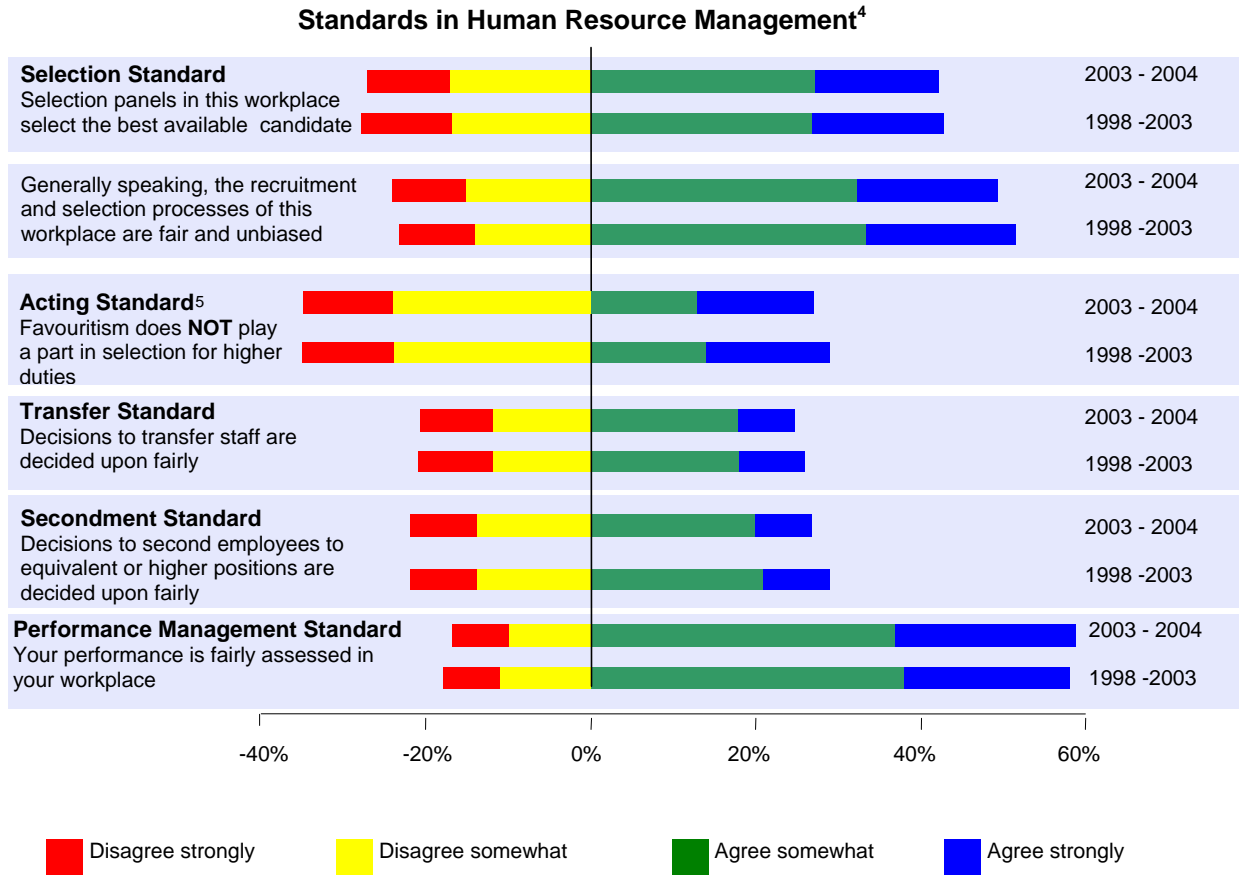
It is also positive that 74% of agencies are using four or more methods to assess their compliance against the Recruitment, Selection and Appointment Standard, although a smaller percentage (48%) use four or more methods to assess compliance with the Standards other than Recruitment, Selection and Appointment.

Comparing data with that from previous compliance reports, it is encouraging that agencies have moved away from simply asserting compliance through an absence of breach claims and are focussing on a more strategic range of systems and processes to assess their compliance. It is pleasing to see around two thirds of agencies are using independent checks of transactions and/or internal reviews or audits against the Standards. These independent reviews are likely to enhance compliance.

Commissioner's Oversight

Fair Application of HRM standards

In the climate survey there are several questions relating to merit and fair application of the different HRM standards. Survey responses are from a period of up to five years. The results from the surveys are shown below.



Note: People who neither agree nor disagree or who did not answer are not shown

A perception of fairness is an indication that decisions show equity and probity. These perceptions indicate that, while agencies may report that they comply with the HRM standards, their employees have a different view in some areas.

⁴ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

⁵ In the survey, the question used was “*Favouritism plays a part in the selection for higher duties*” and disagreement is the desired response. For the purposes of this report, the question has been reversed to enable consistent interpretation of positive statements.

Recruitment, Selection and Appointment – Responses in 2003-04 are similar to the previous years. There were 42% of respondents who agreed that selection panels chose the best available candidate for the position and 49% agreed that recruitment and selection processes were fair and unbiased.

Performance Management – In the area of performance management, it appears many employees do consider the process is fair. However, a review of performance management conducted this year shows many employees do not participate in formal performance management processes (see more details later in this report).

Acting - Acting arrangements continue to be of concern with 35% of respondents agreeing that favouritism plays a part in the selection for higher duties. Information from other sources including a major review conducted in one agency found that there were a number of long term acting arrangements where there had been no expression of interest or merit based assessment. Open and transparent processes using merit based assessments for long-term acting opportunities may prevent such perceptions arising.

Merit and Equity Outcomes

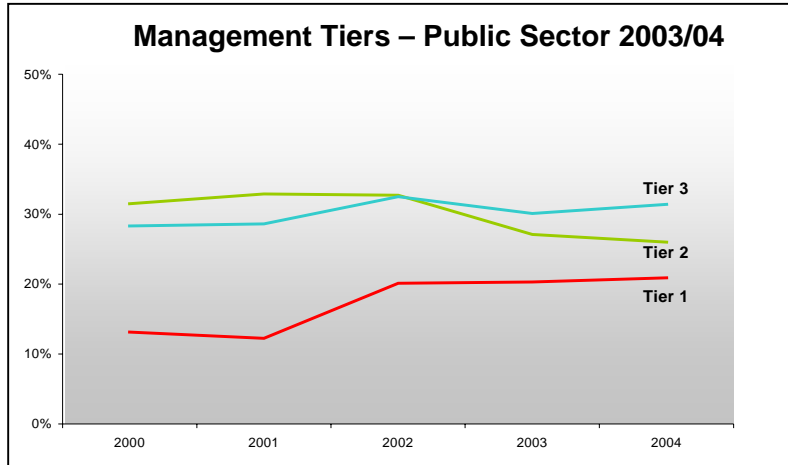
The operation of merit and equity within human resource management practices in the public sector can be assessed, to some extent, by the degree to which the profile of the workforce of public authorities matches the demographic profile of the Western Australian community at all levels of employment. Under-representation of some groups in the workforce, or a concentration of some groups in the lower classification levels of the workforce may indicate that factors other than merit are influencing selection processes or are impacting on performance management, access to acting and other development opportunities.

For the purposes of reporting, equity can be measured by the representation (%) of different groups and by their distribution across the hierarchy of the workforce, measured by the Equity Index⁶.

Public Sector	Representation		Distribution	
	% 2003	% 2004	Equity Index 2003	Equity Index 2004
Women	58% (FTEs)	59% (FTEs)	58	59
Culturally Diverse	6.9%	7.1%	132	116
Indigenous Australians	2.4%	2.4%	30	33
People with Disabilities	1.4%	1.4%	81	84

⁶ The Equity Index measures the distribution of all employees across different levels in a public authority and compares it to the distribution of the group under consideration. The ideal Equity Index is 100, indicating that the group has the same distribution as the workforce as a whole. If there is compression at the lower levels the Index is less than 100.

The representation of women in management roles, is also an indication of the effective indication of merit and equity principles in recruitment and selection practices. The following chart shows the trends in the percentage of women in Tier 1 (CEOs), Tier 2 (Senior Executive) and Tier 3 (Senior Managers reporting to Senior Executives).

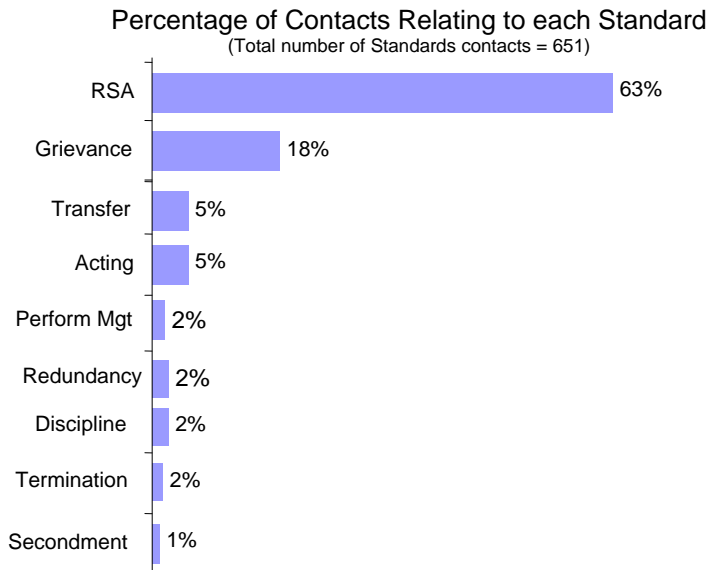


Recent recruitment to CEO positions has shown promising improvements with women making up 3 out of 7 appointments in 2003/04 and 5 out of 11 in 2002/03.

For the public sector the representation of women in Tier 1 and Tier 3 has increased slightly in 2004. However, it is of concern that women remain under represented at Tier 2 (corporate executive level) and their representation has declined in the last year. This does not appear to be due to marked changes in agency structures. Urgent action will be needed to achieve improvements.

General Enquiries with the OPSSC

Public employees, Members of Parliament and the public make contact with the OPSSC to raise issues and concerns. During 2003/2004 there were 1059 human resource management issues raised in this way (with some people raising more than one issue). Of these, 651 related to the HRM standards and 207 to the regulations for handling breach of standards claims. The proportion of contacts for each standard and the main issues raised are shown below.



The nature of the enquiries is shown in the following table

Standard	Main Issues Raised
Recruitment, Selection and Appointment	<ul style="list-style-type: none"> • Job advertising • The approach to recruitment • Assessment of applicants • The final selection decision
Transfers	<ul style="list-style-type: none"> • Authority to transfer • Taking into account employee interests • Employment conditions
Acting	<ul style="list-style-type: none"> • The acting period • Comparative assessment • Taking into account employee interests
Grievances	<ul style="list-style-type: none"> • Lodging a grievance • Method used to handle a grievance • Application of the process

The nature of the contacts with the OPSSC confirms information from other sources, such as breach claims (see later in this section). This shows that recruitment, selection and appointment continues to be the major focus of enquiries to the Office, with the proportion of enquiries increasing from last year. Grievances are also of significant concern. It is critical that agencies have effective and timely processes in place that provide for natural justice and clear decisions.

Issues raised about transfers and acting confirm survey findings on employee perceptions about lack of fairness in these practices.

Compliance Reviews

During the year, the Office completed the following compliance reviews:

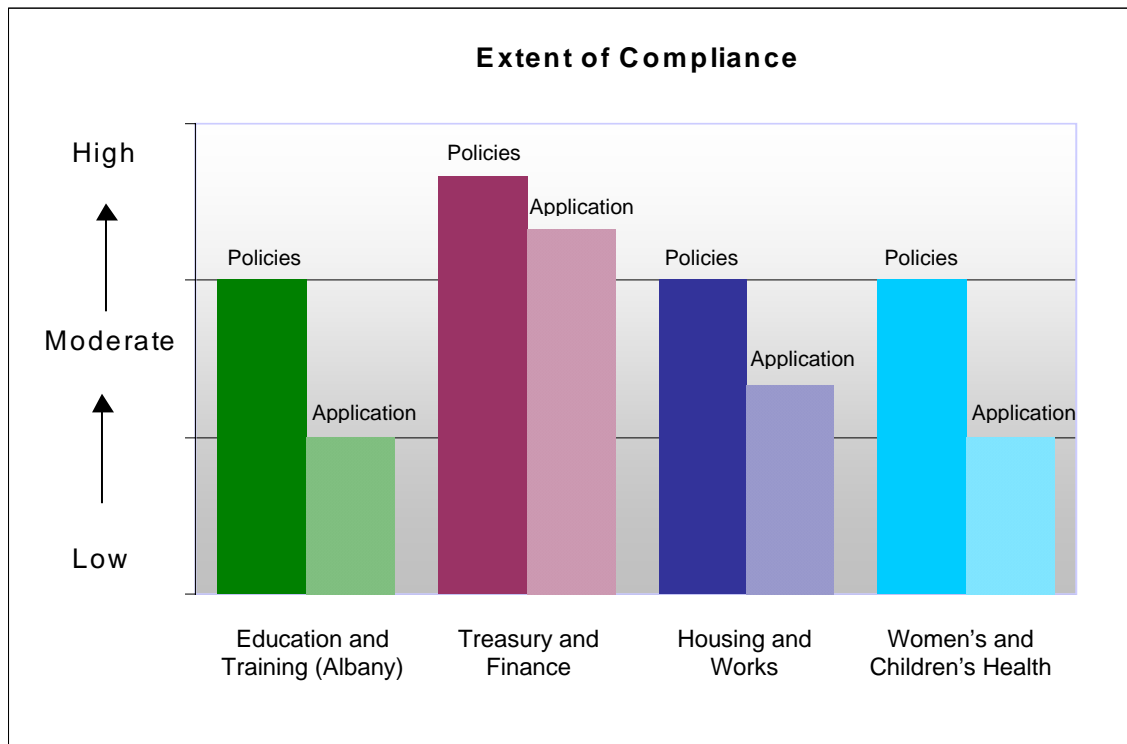
Thematic Review - Performance Management Standard

The objectives of the review were:

- To review the practice of performance management and its role in the public sector;
- To assess the extent of compliance with the Performance Management Standard; and
- To assess the appropriateness and relevance of the Performance Management Standard.

The report from the review was tabled in Parliament in October 2004 and concluded there was a general commitment to effective employee performance management at an agency level. However, it also found that the public sector faces significant challenges with respect to gaining employee trust in, and acceptance of performance management; and ensuring performance management activities are practical.

Compliance of agencies' policies & procedures compared with their practical application



Education and Training (Albany)	Department of Education and Training – (Albany Education District)
Treasury and Finance	Department of Treasury and Finance – (Business units from the former Department of Treasury only)
Housing and Works	Department of Housing and Works
Women's and Children's Health	Department of Health (Women's and Children's Health Service)

Some of the key findings of the review were:

- variable participation in performance management in three of the four agencies surveyed. In two of the four agencies included in the review, up to 50% of the sample were not recorded as having been involved in performance management during that time;
- significant opposition to the concept of employee performance management by some occupational groups in the larger, more complex agencies, contributing to either restricted participation or a total lack of participation from employees in those groups; and
- a lack of understanding and scepticism amongst employees of the purpose and benefits of performance management.

Recommendations from the review included that agencies need to:

- (a) clearly define and communicate the responsibilities of senior management and line managers for ensuring all employees participate in performance management; and
- (b) ensure there are effective information and reporting processes in place to monitor the extent to which regular performance management that complies with the Standard has occurred and all key steps are completed.


Agency Review - (Department of Health - Royal Street Divisions)

During the year, the Office completed a major review of the extent of compliance with the HRM Standards, the ethical codes and the ethical principles by the Royal Street Divisions of the Department of Health (Royal Street), in particular the Office of Aboriginal Health.

It is important to note that this review examined internal processes and not the level of health service provided to the Western Australian community, and covered mainly public servants in the Royal Street Divisions and not health professionals in hospitals and other health services.

The review found that processes relating to a number of HRM Standards were sound, well documented and generally demonstrated a reasonable to high level of compliance. However, there were some areas where there had been concerns, which in some cases had been addressed and, in others, needed action by the Department of Health.

- A need for urgent improvement in performance management was identified. Generally there are few employees in Royal Street with formal performance management in place. Many of the intractable grievances and complaints may have been averted or at least dealt with in a timely manner if appropriate performance management processes had been in place. While this would not deal with all issues arising, the risks of not implementing performance management systems are evident from this examination.
- For the grievance resolution Standard it was apparent that, while there had been a low level of compliance during the early part of the period under review, there had been an improvement in the extent of compliance following internal reviews instigated by the Department of Health. It should be noted that in making this assessment, the application of the process, and not the merits or otherwise of the matters raised by the complainant, was considered. A key issue relating to grievances was the number of



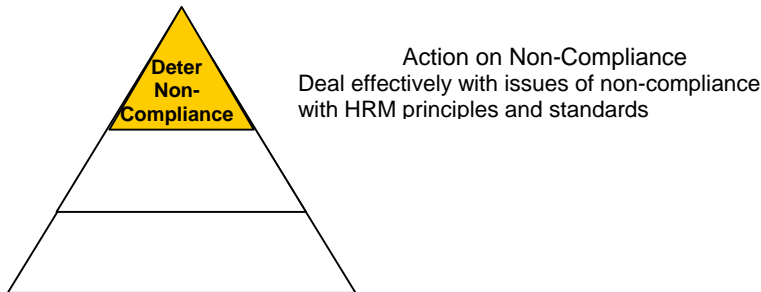
people who fear victimisation as a result of lodging a grievance. Perceptions about victimisation are important as they may prevent people raising issues resulting in inappropriate conduct not being reported and addressed in a timely manner; and

- An urgent need to address compliance with the acting Standard was identified. It is important to recognise that the compliance issue did not concern the extent of, or length of acting opportunities. During times of change and restructuring, long term acting is a common occurrence. Rather the issue concerned whether acting arrangements were based on merit and equity, particularly where the acting is for several months or more. For many of the long term acting arrangements in Royal Street, no expressions of interest were called and there was no merit based selection. Open and transparent processes such as calling for expressions of interest and using merit based assessments for long term acting opportunities may have assisted in preventing such perceptions from arising;

The review also found that employees were often not aware of their rights to make a breach claim, or of the appropriate process to raise concerns with respect to a number of HRM Standards. There is a need to develop and implement a comprehensive communication plan to inform employees of procedures to lodge a grievance, a public interest disclosure, and a breach of standard claim. It is also important that employees are informed of their rights at the time of the relevant HR transaction.

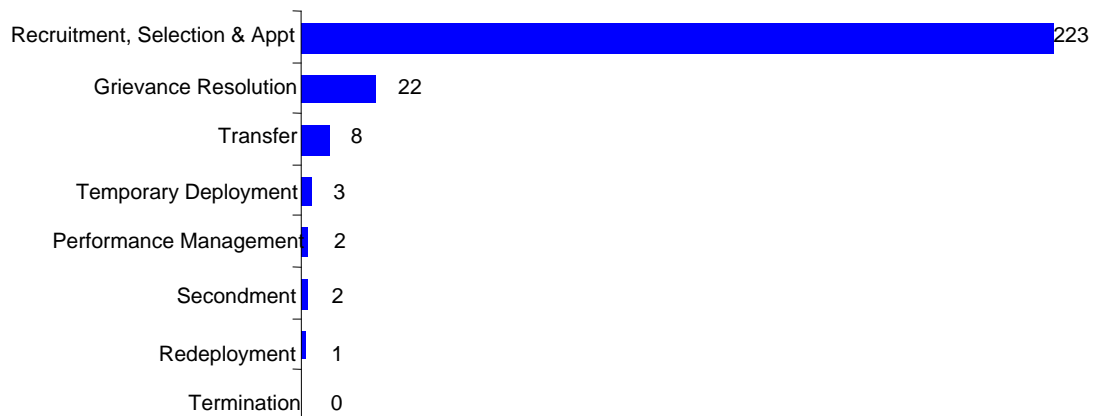
Taking Action on HRM Non-Compliance

This section highlights the actions taken to deter non-compliance with the HRM standards and principles – the third element in the compliance framework.



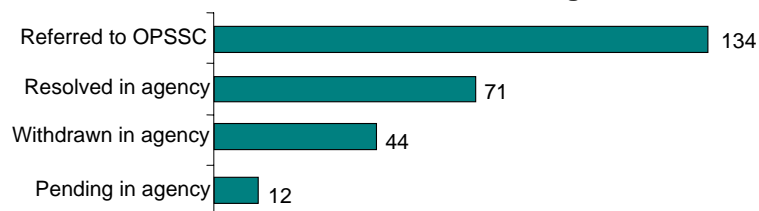
Agency Self-reporting


Information was obtained from agencies on the number of breach of standard claims made in the agencies and the outcome of those claims. In total, 261 claims were handled in 2003-2004, of which three were carried over from the previous year and 61% of agencies (61 out of 101) reported that there were no breach of standards claims in their agency. Compared to 2002/03, there were fewer claims lodged with agencies (318 in 2002/03) and slightly fewer agencies had no claims (65% in 2003/03). The following chart indicates the number of claims made against each standard.



Where agencies did receive claims, 116 (52%) were withdrawn or resolved within the agency and 44% were referred to the OPSSC. The following chart shows the outcomes of the claims handled by agencies.

Outcome of Breach of Standards Claims Handled in Agencies





Many agencies (61%) did not receive breach of standards claims and, where they did, the claims were often finalised within the agency.

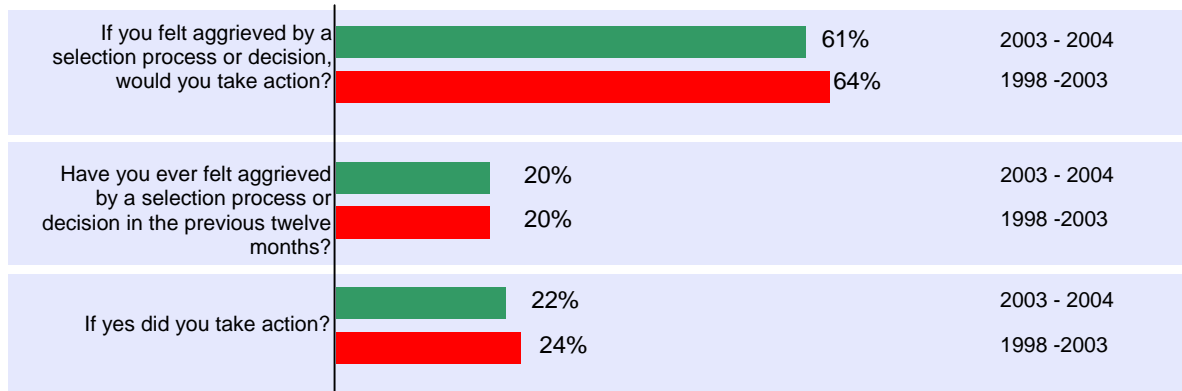
The number of breach claims lodged in agencies, particularly for Standards other than Recruitment, Selection and Appointment, is very low, particularly when compared against the number of human resource transactions that occur within the public sector during any given year. The employee survey results and other information received by this Office indicate a significant concern is that employees are not aware of what courses of action are open to them where there is a breach of standards.

Commissioner's Oversight

Employee Willingness to take Action if Aggrieved

The climate survey includes questions that relate to the willingness of employees to take action if they are aggrieved about a job selection decision.

Percentage of Respondents Answering Yes⁷



The information shown above indicates there is a reluctance to take action if people are aggrieved by a selection decision. While 61% of respondents indicated they would take action if aggrieved, of the 20% that did feel aggrieved in the last twelve months about one in five of those people actually took action.

Comparison with the previous five year period shows a small decline in willingness to take action.

This information indicates there is not a high level of employee trust in selection processes and decisions. Contacts with the Office indicate employees are often reluctant to raise issues because they do not believe anything will happen as a result, and/or that there will be a negative impact on them.

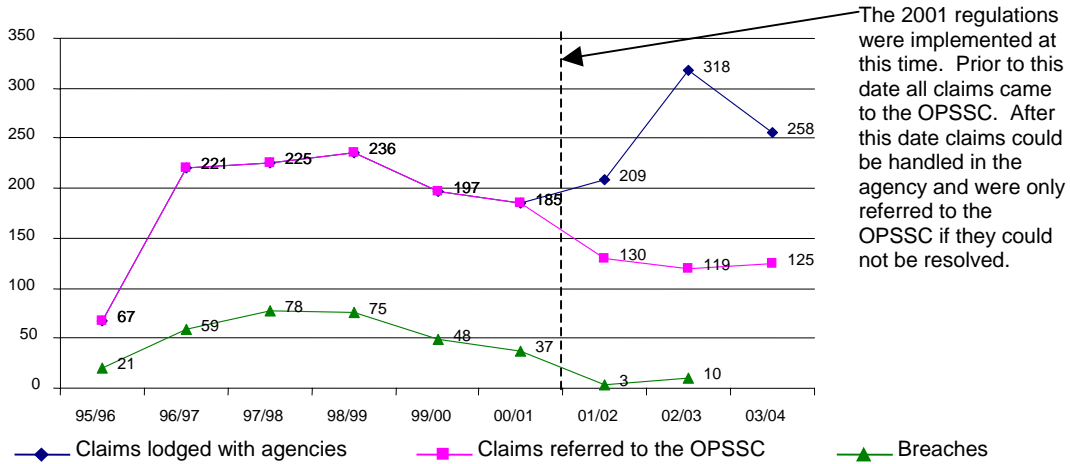
There is clearly a need for agencies to provide employees with better information about how to raise concerns if they think there has been a breach of any of the Standards. It is also necessary to build greater confidence in the breach process, so that employees become more willing to use it. Proposed revision to the Regulations will provide greater opportunities for employees to both access the Breach of Standard process and to obtain relief through a conciliation process. In addition agencies need to ensure that their internal systems ensure effective responses to breach claims, including protection from victimisation or reprisals.

⁷ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Breach of Standard Claims

During 2003-2004, there were 134 breach of standard claims referred to OPSSC for examination. This is an increase of 12% from 2002-03 when there were 119 claims received.

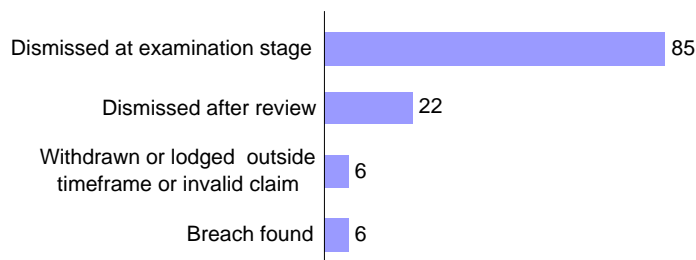
Number of Breach of Standard Claims and Breaches Established 1995-2004



The majority of breach claims lodged with the Office (134) related to the Recruitment, Selection and Appointment Standard. This trend is consistent with previous years. The remaining claims were evenly spread over the Acting (2), Grievance(2), Performance Management (2), Secondment(1) and Transfer Standards(1).

Of the claims referred to OPSSC, 119 were finalised as shown below:

Outcomes of Breach Claims referred to OPSSC finalised in 2003/04



<p>Recruitment Selection and Appointment</p>	<ul style="list-style-type: none"> • Consistent lack of action to remove potential conflicts of interests, which gave rise to perceptions of nepotism and patronage. • Reassessment of candidates from competitive to unsuitable based on the comments made in referee reports and by other comments made by members of the selection panel, including where potential conflicts of interest also existed. • The use of interview questions that were not reflective of the job related requirements of the position.
<p>Transfer Standard</p>	<ul style="list-style-type: none"> • A lack of documentation available to support the process and decision to transfer an employee and the consideration of the employee's interests. • The comparability of employment conditions could not be determined as the position the Department transferred the employee to was not formally classified at the time of the review.

More detailed case studies of substantiated breaches are included in the section on Compliance by Portfolio and Agency.

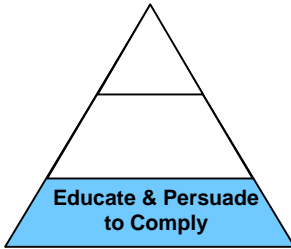
The relatively large percentage of claims against the Recruitment, Selection and Appointment Standard appears consistent with the number of changes to the structure and staffing of departments and the subsequent advertising of positions. The substantiated breaches, as a percentage of this activity have declined since the previous year.

The application of selection processes, the quality of information available to support selection decisions and the provision of feedback to applicants are still areas of concern where agencies can improve their level of compliance. The existence of long-term acting arrangements, structural changes and unnecessary administrative oversights continue to impact on the numbers of claims lodged.

Ethical Conduct

Ethics Commitment and Communication

This section discusses the actions taken to educate and persuade employees to comply with the ethical principles and codes – the first step in the compliance framework.



Commitment and Communication

Set and communicate values and codes of conduct
Demonstrate commitment to values and ethical codes

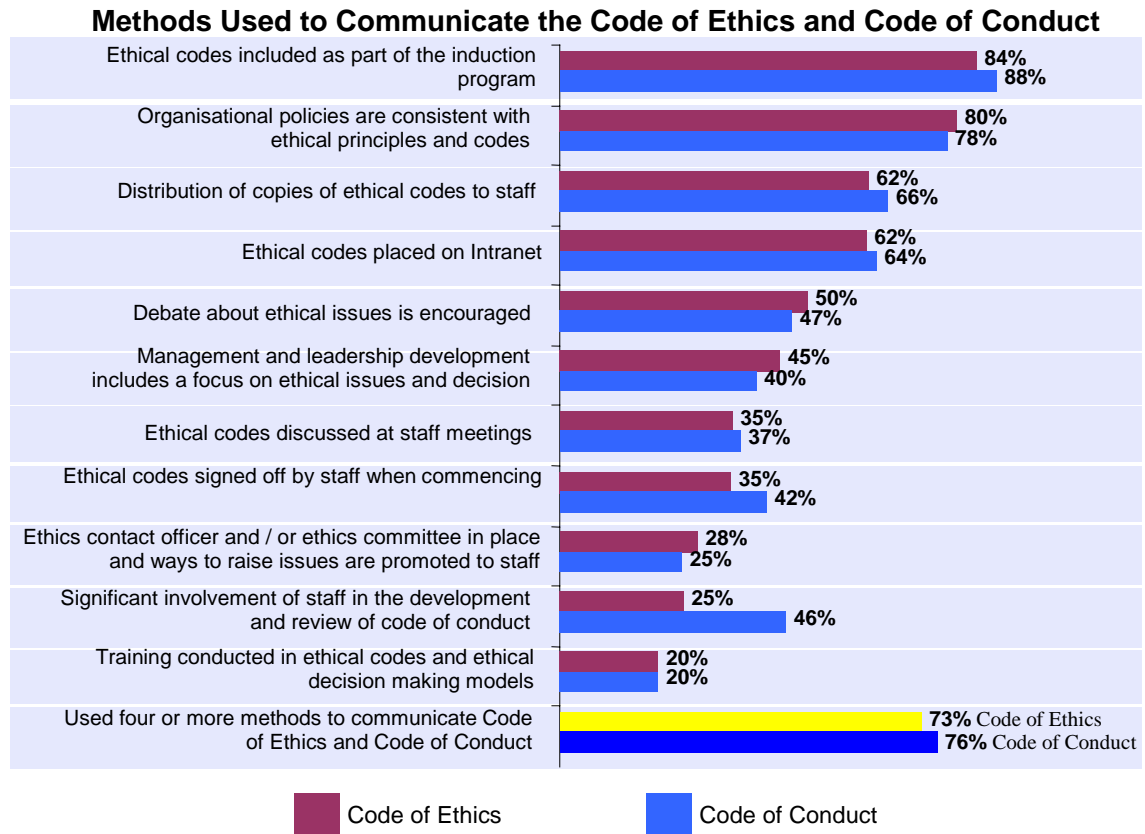
Agency Self-Reporting

Developing Codes of Conduct

Agencies were asked to provide information regarding their code of conduct and the methods used to communicate it to employees. Almost all (94%) reported that they have a code of conduct to complement the Code of Ethics. Information provided to the Office indicates that at least 71% of agencies have reviewed their codes of conduct since 2000. This supports the renewed emphasis on ethics created by the review of the public sector Code of Ethics. The ongoing review of codes by agencies suggests there is ongoing commitment to building and sustaining ethical behaviour in the agency.

Communicating and Promoting the Ethical Codes

In their yearly report, agencies were asked this year to indicate how they communicated the Code of Ethics and the agency Code of Conduct to employees.



It is very encouraging that agencies are using multiple methods to communicate and promote the ethical codes to employees with around three quarters of agencies using four or more methods.

There is a slightly greater emphasis on promoting agency codes of conduct than there is on promoting the Code of Ethics. This is to be expected, as the codes of conduct provide practical, agency-specific guidelines, for applying the principles outlined in the Code of Ethics.

However, it is important that employees are aware of the requirement that they comply with both codes. One area of concern is that less than half of agencies reported that leadership development includes a focus on ethical issues. It is also of concern that only around a quarter of agencies have an ethics officer or committee where employees can raise concerns.

My Office will be seeking to establish a Senior Integrity Officer Network in 2004/05 to facilitate exchange of ideas and assistance in relation to public sector integrity issues.

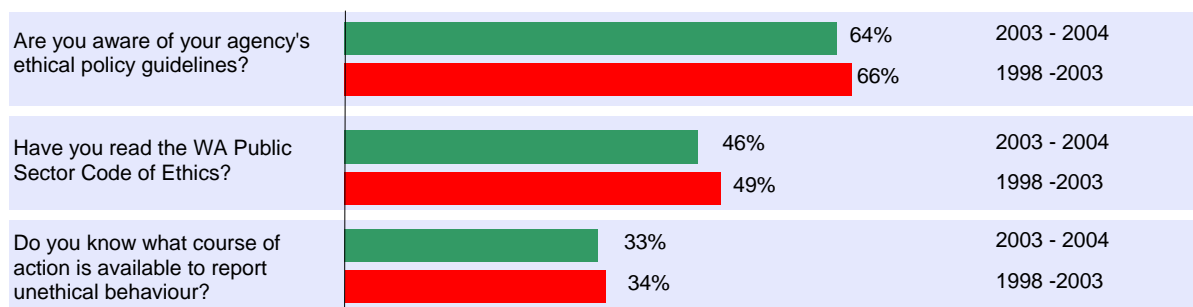
Commissioner's Oversight

Awareness of the Ethical Codes

While agency self-reporting provides an insight into the development of their code of conduct and methods of communication, the results of the climate surveys conducted by the OPSSC provide an independent oversight of the extent of the achievement of this element of compliance.

The following chart shows the level of awareness by public sector employees of the ethical codes and courses of action available to report unethical behaviour.

Percentage of Respondents Answering Yes⁸



It is of concern that only 46% of the respondents answered “yes” when asked *Have you read the WA Public Sector Code of Ethics?* and that this percentage is declining compared to previous years. Even though agencies are making efforts in a range of forums to communicate their codes, it appears there is a need to continuously and proactively communicate the Code of Ethics and its relevance to the public sector as well as promoting agency codes of conduct.

Awareness of an agency’s ethical policy and guidelines is better, with 64% of respondents answering “yes”. This highlights the importance of agencies embedding the Code of Ethics into their internal codes and policies. Nevertheless, the fact that 36% of respondents indicated that they are not aware of their own agency guidelines presents an area of considerable risk for agencies.

In order to promote understanding of their codes of conduct agencies may need to consider ongoing communication with employees, rather than relying heavily on the induction process. Communication methods that are interactive, rather than relying on employees finding and reading the code of conduct, are likely to be more effective in preventing the general decline in awareness.

⁸ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Ethical Leadership

Public sector activities that have a demonstrable ethical base are an important part of building and maintaining public trust and enabling employees to better serve the public interest. While everyone has a role to play, and can make a difference in building and sustaining an ethical culture, managers have greater scope and capacity to effect the cultural and systemic changes necessary to foster and maintain a strong ethical culture. They play a key role in making explicit the organisation's values and modelling the behaviours implicit in the codes.

The extent of the achievement of this leadership role is shown by the responses to climate survey questions relating to leadership in communicating and promoting integrity in official conduct.



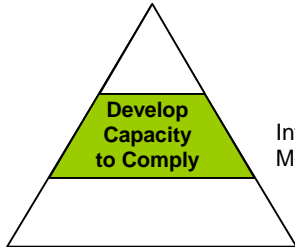
Note: People who neither agree nor disagree or who did not answer are not shown

There is a strong and improving level of agreement that management supports and encourages ethical conduct (77%). While there is agreement that management monitors ethical conduct, and leads by example, the results are not as strong (48% and 62% respectively) so there is room for improvement in these areas.

⁹ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Ethics Integration and Monitoring

This section outlines the actions taken to develop the capacity to comply with the ethical principles and codes - the second element in the compliance framework.

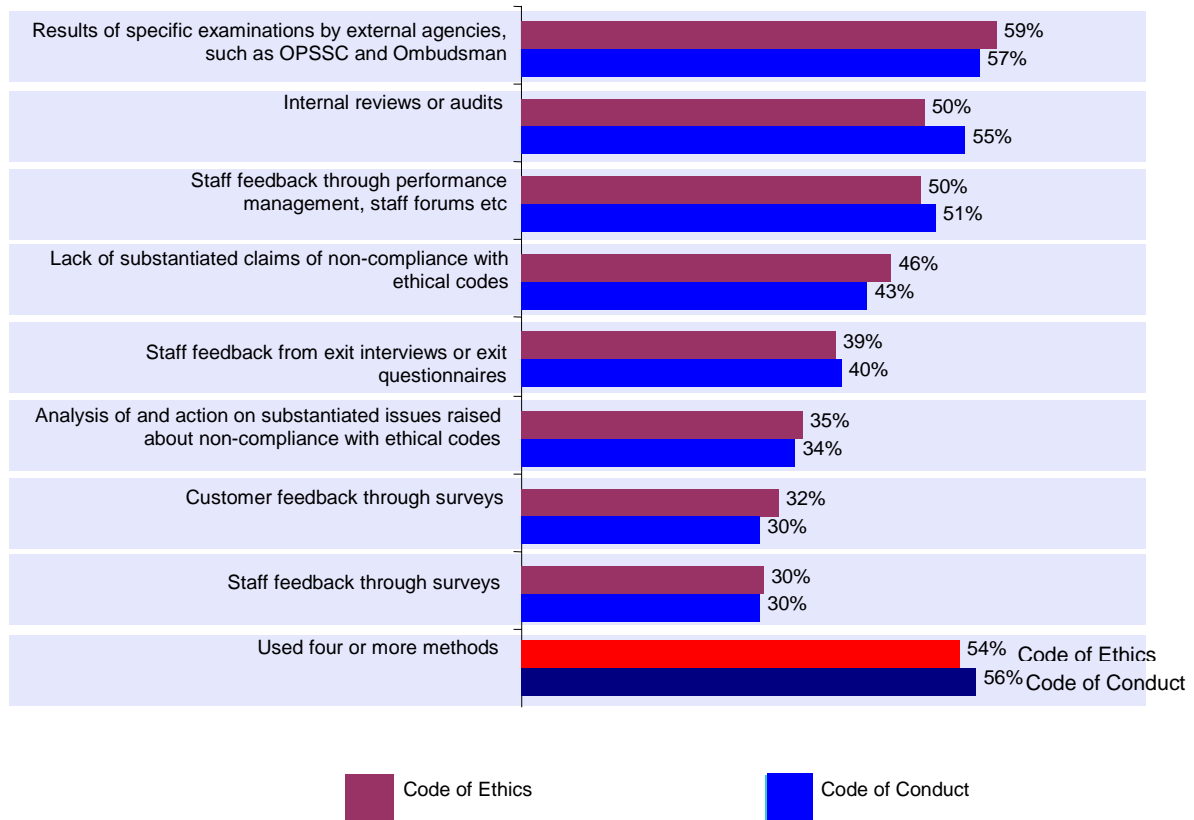



Integration and Monitoring
 Integrate ethical principles and codes to achieve compliance
 Monitor and implement continuous improvement

Agency Self-reporting

In their yearly report, agencies were asked this year to indicate what methods they used to assess compliance with ethical codes, including the Code of Ethics and the agency code of conduct.

Methods Used to Assess Compliance





In monitoring compliance, there are some aspects of good practice. Over 50% of agencies are using four or more methods to assess their compliance. These common methods of assessing compliance with both codes include external financial audits, staff feedback and internal reviews or audits.

It is of significant concern however, that a number of agencies report taking no formal steps to assess compliance with the code of ethics, or their codes of conduct (16% and 15% respectively). A significant portion use lack of substantiated claims of non-compliance. Given that surveys indicate that most employees do not know the course of action to raise concerns (67%), this is not sufficient in itself to give confidence that there is a high level of compliance.

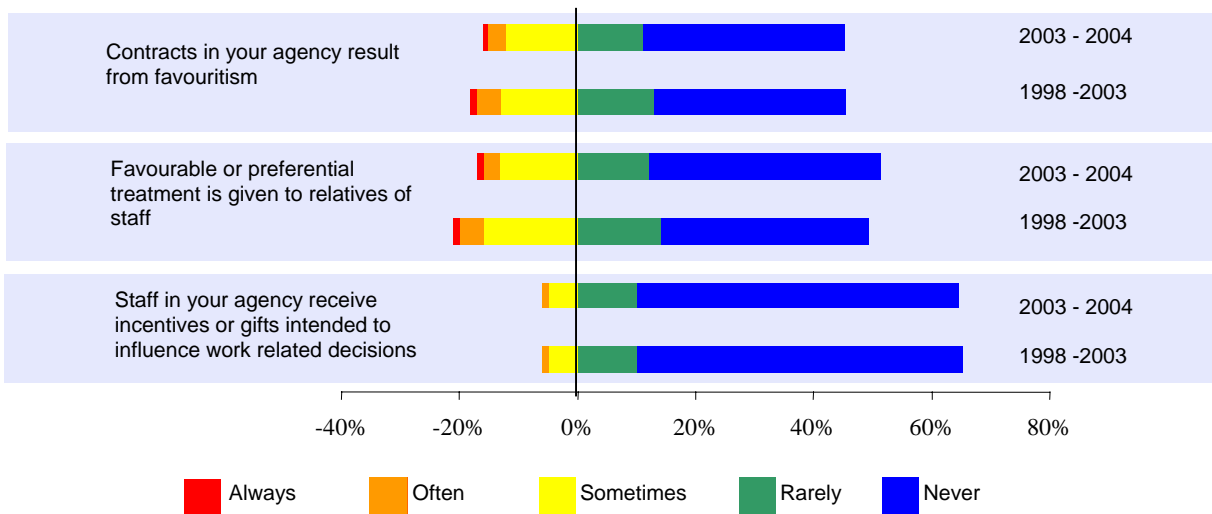
Commissioner’s Oversight

The OPSSC climate survey provides some insight into aspects of integrity in ethical decision-making and conduct within agencies. Questions relate to the three key principles in the Code of Ethics.

Justice (Impartiality)

The extent of impartiality and using power fairly can be assessed through questions on favouritism in decision-making.

Justice – Being Impartial and Using Power Fairly¹⁰



Note: People who neither agree nor disagree or who did not answer are not shown

Forty five percent of respondents indicated that they believed contracts in the agency rarely or never resulted from favouritism. Few respondents indicated that favourable or preferential treatment is often or always given to relatives of staff (4%). These results are similar to previous years results.

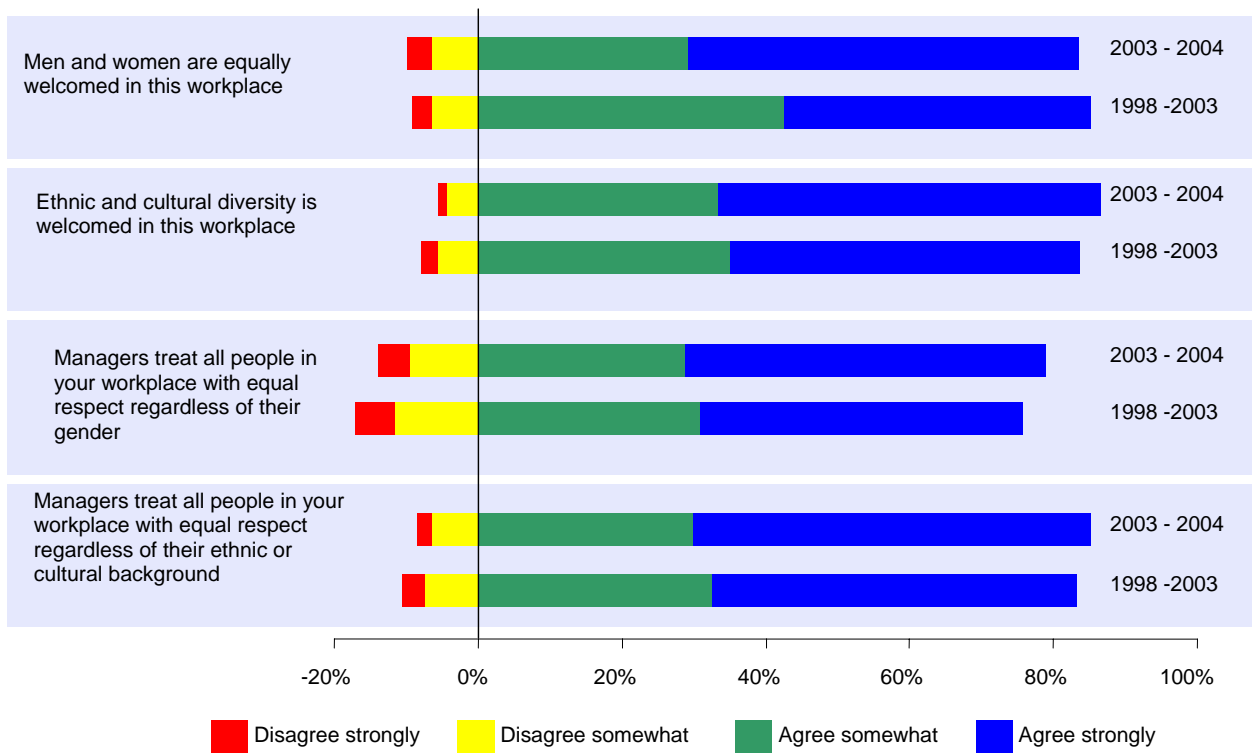
Six percent (6%) of those surveyed responded that staff in their agency sometimes, often or always receive incentives or gifts intended to influence work related decisions. These numbers are low indicating a high level of compliance in these areas.

¹⁰ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Justice (Equity)

Some insight is provided into the extent to which people are not abused or discriminated against using responses relating to men and women and people of different cultural backgrounds being equally welcomed and respected.

Justice - Not Abusing, Discriminating Against or Exploiting People¹¹



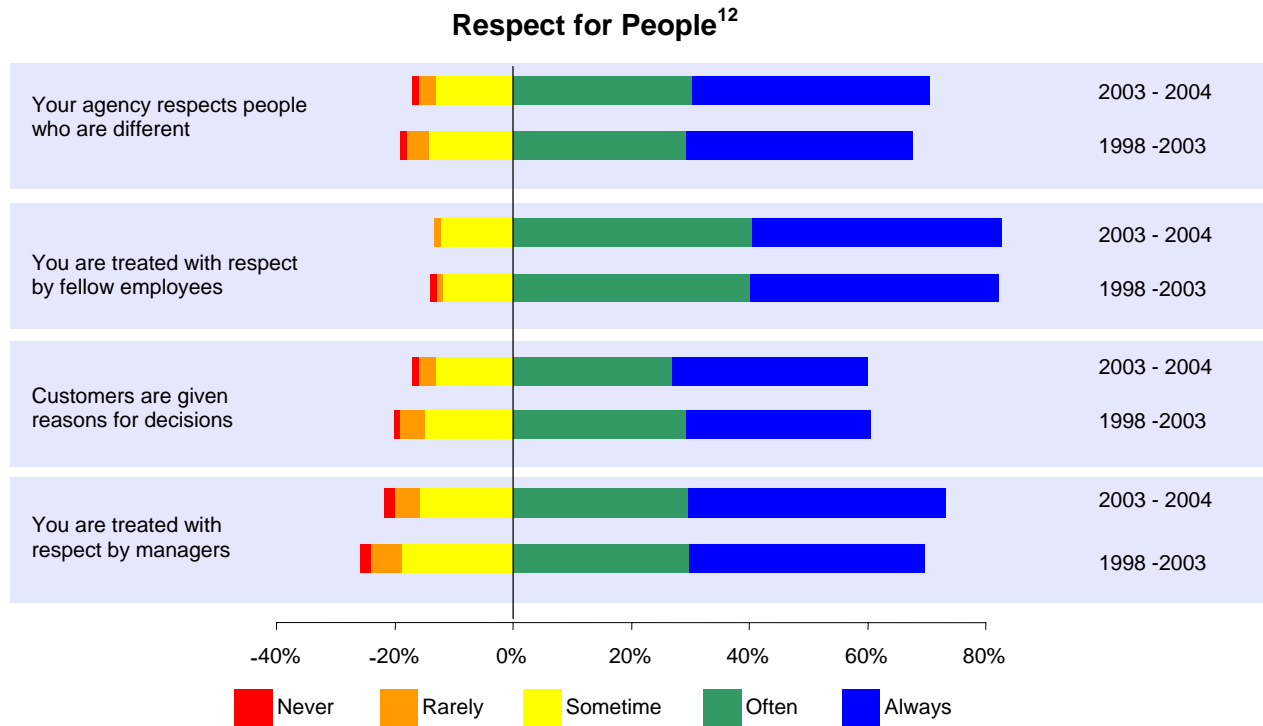
Note: People who neither agree nor disagree or who did not answer are not shown

These results indicate that generally gender and cultural diversity are welcomed in the workplace and that managers treat all workers with equal respect, regardless of gender or cultural background. There has been an improvement in perceptions relating to cultural background but some decline for gender. While these questions relate only to the treatment of employees, it is likely that these attitudes (both positive and negative) will be reflected in the ways customers from different backgrounds are treated.

¹¹ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities

Respect for Persons

Some insight is gained into the application of the Respect for Persons principle using responses relating to how employees and customers are treated and the degree to which people who are different are respected.



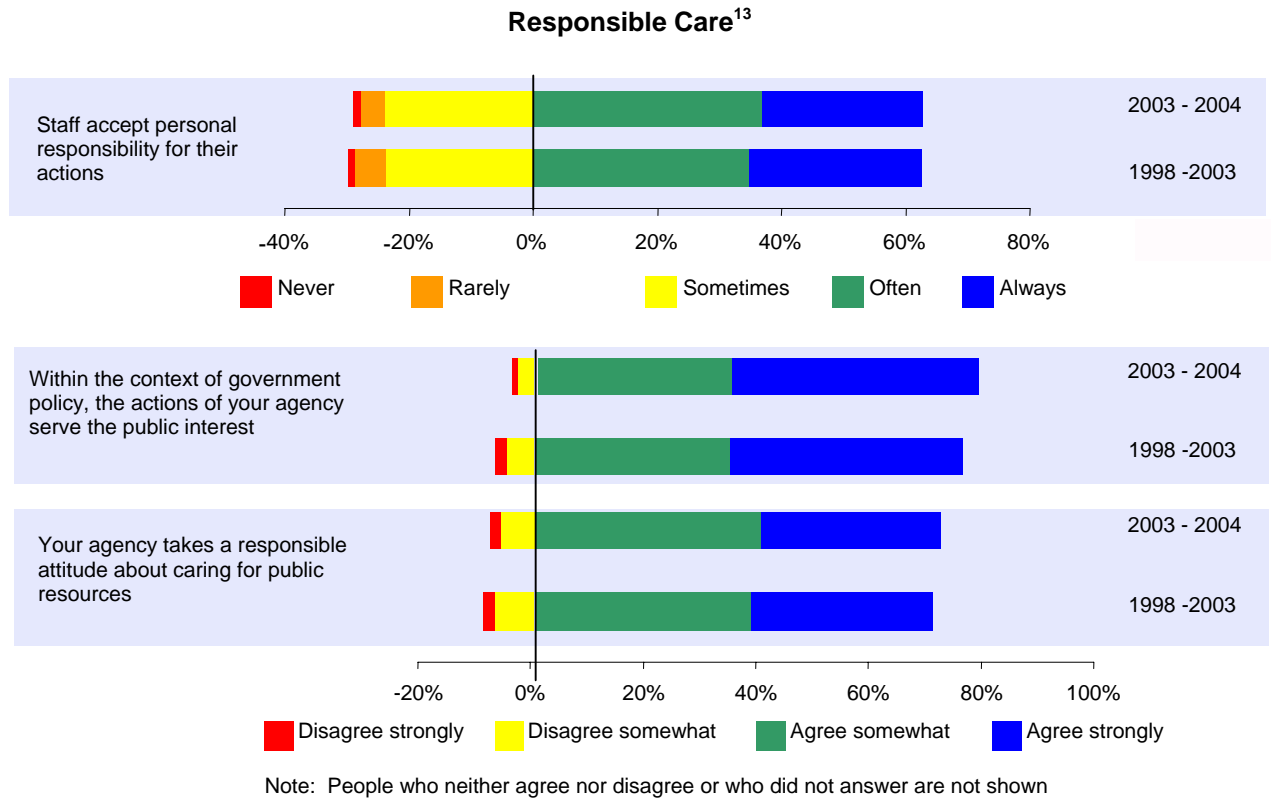
Note: People who neither agree nor disagree or who did not answer are not shown

Employee survey respondents generally feel respected by management (74%) and other employees (82%). Most respondents also consider that customers are given reasons for decisions with only 4% saying this rarely or never occurred. However 13% said that customers sometimes were given reasons for decisions and 23% did not know or did not answer. Agencies need to ensure they have clear policies about treating customers impartially and with respect and that all employees are aware of these.

¹² Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Responsible Care

Some insight is gained into the application of the Responsible Care principle using responses related to serving the public interest.



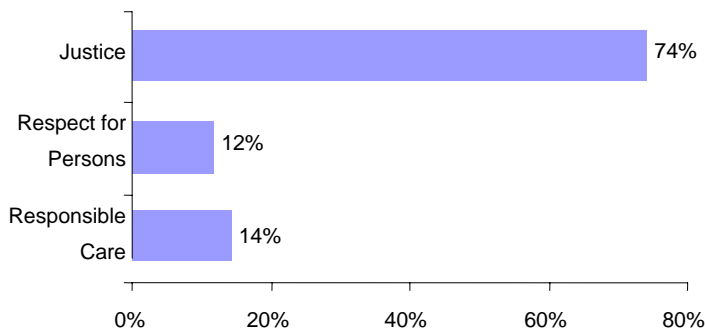
There is strong and improving support (77%) for the statements that the actions of the agency serve the public interest, and that agencies take a responsible attitude towards caring for public resources (72%) and that staff accept personal responsibility for their actions (63%).

¹³ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Contacts with the OPSSC

Public sector employees, Members of Parliament and the public make contact with the OPSSC for assistance and to raise issues and concerns. During 2003/2004 there were 245 issues relating to the ethical codes raised in this way (with some people raising more than one issue). Of these contacts, 120 related to particular principles of the Code of Ethics and 13 to the codes of conduct in agencies. The proportion of contacts for each element of the Code of Ethics and the main issues raised are shown below.

Percentage of Contacts Relating to each Principle of the Code of Ethics
(Total number of Code of Ethics contacts = 120)

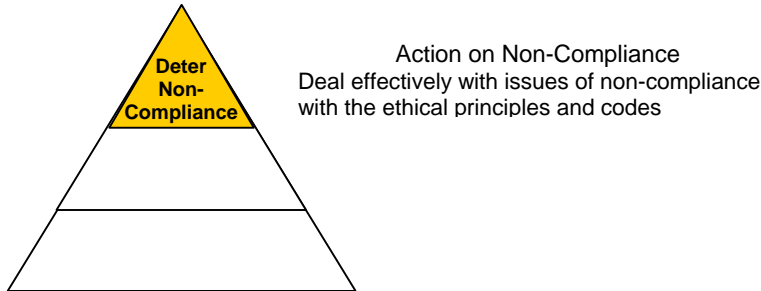


Principle	Main Issues Raised
Justice	<ul style="list-style-type: none"> Act without fear or favour and be open and accountable Protect people's right to due process. Declare any interest that may conflict with the performance of public duty Act impartially and in the public interest Refrain from using any circumstance or information connected to official duties for personal gain or profit
Respect for Persons	<ul style="list-style-type: none"> Treat others with courtesy, consideration and sensitivity.
Responsible Care	<ul style="list-style-type: none"> Be open and accountable for decisions and actions, and consult those affected where possible Be conscientious and scrupulous in the performance of public duty.

There are fewer contacts with the OPSSC about the ethical codes than there are about human resource management issues. The low number of contacts should be seen in the context of the low level of awareness about the Code of Ethics and about how to raise concerns relating to ethical issues.

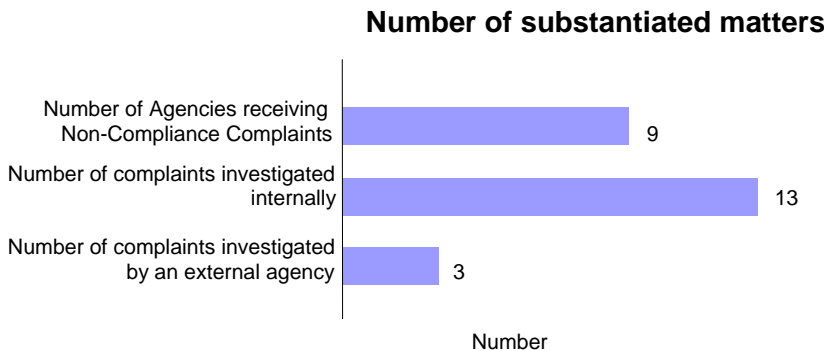
Taking Action on Ethics Non-Compliance

This section highlights the actions taken to deter non-compliance with the ethical principles and codes – the third element in the compliance framework.



Agency Self-reporting

Information was sought from agencies about breaches of the ethical codes investigated either in the agency, or by an external body. The following chart indicates the numbers of substantiated matters.

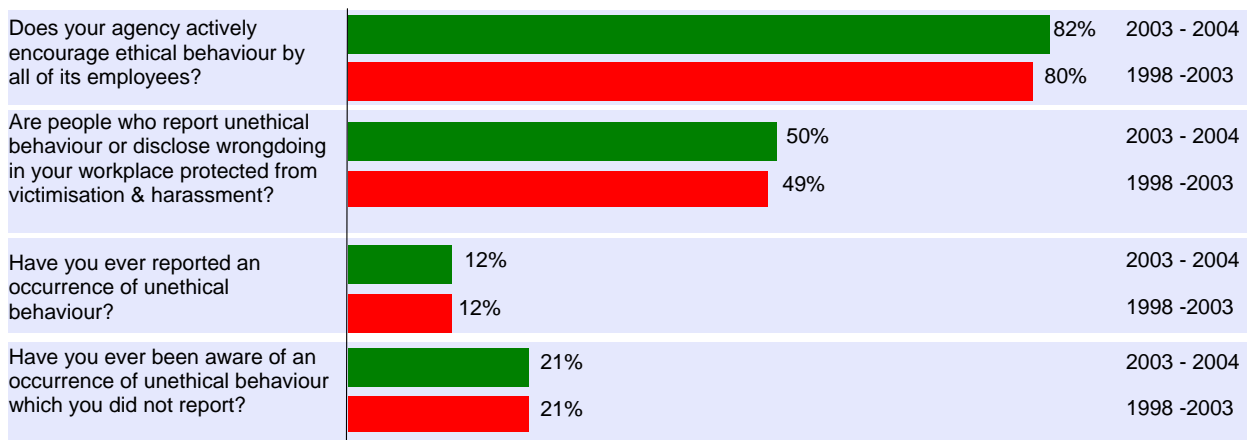


Agencies report relatively few matters that are directly linked to non-compliance with the ethical codes, but these figures should be treated with caution. Matters raised in a range of jurisdictions have elements that relate to ethical practices even though they may not be raised specifically as a breach of the codes. These may include matters referred to the Corruption and Crime Commission, Ombudsman, the Equal Opportunity Commission or Worksafe. Information from contacts with the OPSSC indicates that it is mainly disciplinary matters relating to employee breaches of the ethical codes that tend to be reported by agencies.

Reporting Non-Compliance

The climate survey asks several questions about employee willingness to take action to report wrongdoing. As described under the section on setting and communicating standards, there appears to be little awareness about the courses of action available to report unethical behaviour, with only 33% of respondents indicating they knew what action to take. The questions in the following chart relate to how employees feel about reporting ethical wrongdoing.

Percentage of Respondents Answering Yes¹⁴



Most respondents (82%) considered their agency actively encouraged ethical behaviour by all its employees. The results of other questions continue to raise serious concerns about employee willingness to use processes for raising ethical issues. Only 50% of respondents believed people who reported wrongdoing were protected from victimisation or harassment, and 21% indicated that they were aware of an occurrence of unethical behaviour that they did not report. Agencies need to build trust and instill confidence in the process for raising ethical issues and to improve the confidence of employees so that they do not fear adverse consequences if they raise an issue.

¹⁴ Aggregated information is available for the period July 2003 to June 2004 (6662 respondents) compared to the previous five year period from July 1998 to June 2003 (20 162 respondents). The sample for 2003 – 2004 includes agencies from a broad cross section of the sector including education and health districts and a range of other government departments and statutory authorities.

Compliance with PSM Act by Portfolio and Agency

Indicators of the extent of compliance and non-compliance for each agency, grouped by their ministerial portfolio, are shown in the following tables. They include information on whether the agency has a code of conduct and whether there have been any substantiated breaches of the HRM standards.

Information on codes of conduct and public interest disclosures is obtained from the yearly reports by agencies. Information on breaches of the HRM standards is obtained from matters handled by the OPSSC.

Premier, Minister for Public Sector Management; Federal Affairs, Science, Citizenship and Multicultural Interests

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department of the Premier and Cabinet	1999	0
Office of the Public Sector Standards Commissioner	2002	0
Parliamentary Commissioner for Administrative Investigations (Ombudsman)	2001	0

* Based on matters referred to and substantiated by the Commissioner

Deputy Premier, Treasurer; Minister for Energy

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department of Treasury and Finance	2004	0
Office of Energy	2004	0
Office of the Auditor General	1996	0
Economic Regulator	2004	0

* Based on matters referred to and substantiated by the Commissioner

Minister for Agriculture; Forestry and Fisheries; the Midwest, Wheatbelt and Great Southern

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department of Agriculture	2002	0
Department of Fisheries	2003	0
Forest Products Commission	2001	0
Great Southern Development Commission	2002	0
Mid West Development Commission	1999	0
Perth Market Authority	2000	0
Potato Marketing Corporation of Western Australia (Western Potatoes)	2002	0
Veterinary Surgeons Board	2004	0
Wheatbelt Development Commission	2000	0
Western Australian Egg Marketing Board	1998	0
Western Australian Meat Industry Authority	2000	0

* Based on matters referred to and substantiated by the Commissioner

Minister for Consumer and Employment Protection; Indigenous Affairs; Minister Assisting the Minister for Public Sector Management

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Builders and Painters Registration Board of WA	1998	0
Department of Consumer and Employment Protection	2003	0
Department of Indigenous Affairs	2001	0
Department of the Registrar Western Australian Industrial Relations Commission	1997	0
Worker's Compensation and Rehabilitation Commission (WorkCover Western Australia)	2002	0

* Based on matters referred to and substantiated by the Commissioner

Attorney General; Minister for Health; Electoral Affairs

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Animal Resources Authority	1998	0
Commissioner for Equal Opportunity	1997	0
Corruption and Crime Commission	2004	0
Department of Health	1998	1 breach of RSA standard* (see below)
Department of Justice	2004	0
Law Reform Commission	2001	0
Legal Aid Commission of Western Australia	2003	0
Nurses Board of Western Australia	2003	0
Office of Health Review	2002	0
Office of the Director of Public Prosecutions	2002	0
Pharmaceutical Council of WA	1998	0
Western Australian Alcohol and Drug Authority (Drug and Alcohol Office)	2003	0
Western Australian Centre for Pathology and Medical Research (Pathcentre)	2004	0
Western Australian Electoral Commission	2002	0
Western Australian Health Promotion Foundation (Healthway)	1999	0

* Based on matters referred to and substantiated by the Commissioner

** RSA standard = Recruitment, Selection and Appointment standard

Department of Health

Recruitment, Selection and Appointment Standard (RSA Standard)

Royal Perth Hospital (RPH) advertised for an unspecified number of full time and sessional consultant Anaesthetist positions. An internal applicant who was currently performing the role lodged a Breach of Standard claim against the RSA Standard citing concerns of bias, the assessment of factors not contained within the selection criteria and lack of natural justice in the use of information contained in referee reports.

The review by the OPSSC found the selection panel's application of referee reports was contrary to RPH's Recruitment and Selection procedures, which require persons be given the opportunity to reply to referee comments considered to be adverse and to have the option of seeking reports from other referees. The non-adherence to this provision meant there was not a proper assessment based on the selection criteria and the claimant was denied procedural fairness. The Commissioner determined there was a breach of the RSA Standard on the basis that the selection process did not constitute a proper assessment and the decision-making process was not transparent and capable of review.

Despite the Hospital being advised of the breach in March, it still had not provided a remedy to the claimant as at 30 June 2004. After a follow up by the Commissioner, the Hospital provided relief to the claimant through an apology and offer of an appointment to a consultant Anaesthetist position in November 2004. However, the person had already won a similar position in another hospital. Inordinate delays of this nature have the potential to frustrate the provision of appropriate relief to claimants and do not support better practice in people management.

Minister for the Environment

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Botanic Gardens and Parks Authority	Draft code	2 breaches of RSA standard** (see below)
Bunbury Water Board	1998	0
Busselton Water Board	1998	0
Conservation Commission of Western Australia	2001	0
Department of Conservation & Land Management	2002	0
Department of Environment	2003	1 breach of Transfer standard (see below)
Zoological Parks Authority	2004	0

*Based on matters referred to and substantiated by the Commissioner

** RSA standard = Recruitment, Selection and Appointment standard

Botanic Gardens and Parks Authority Recruitment, Selection and Appointment Standard (RSA Standard)

The Botanic Gardens and Parks Authority (the Authority) advertised a 12-month contract position. Two applicants lodged breach of standard claims against the Recruitment, Selection and Appointment Standard.

The review by the OPSSC found that, during the selection process, the chairperson of the selection panel declared a potential conflict of interest due to a personal relationship with an applicant. The chairperson was also a referee for the applicant who subsequently was recommended for appointment to the advertised position. Whilst the chairperson, upon receiving advice from human resources, appropriately disclosed a potential conflict and provided a referee report prior to the assessment process commencing, the Authority did not take action to remove the potential conflict and prevent any associated perceptions of patronage. At the minimum, this should have involved the removal of the chairperson from the assessment process for the known applicant. The lack of action by the Authority to manage the above situation affected the integrity of the selection process.

The Commissioner determined there was a breach of the RSA Standard. The relief provided was to convene a new selection panel with different interview questions to enable a selection decision, based on a reassessment of the applicants from the interview stage of the process.

Department of Environment - Transfer Standard

The Department of Environment (DOE) informed an employee that he would not be returning to his substantive position at the conclusion of a secondment and was to be transferred to an alternative position. The employee lodged a claim of a breach of the Transfer Standard.

The Office review found:

- There was no documentation available to show the process the DOE followed to transfer the employee or that the employee's interests were identified by DOE when making the decision to transfer; and
- The comparability of employment conditions could not be determined, as the position to which the DOE planned to transfer the employee had not been formally classified at the time of the review.

The Commissioner determined there was a breach of the Transfer Standard on the basis that the transfer process was not capable of review. The relief provided was to recommence the transfer process in accordance with the requirements of the Transfer Standard and to provide a written apology to the claimant.

Minister for Police and Emergency Services; Justice; Community Safety

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Fire and Emergency Services Authority of WA	2004	0
Western Australian Legal Practice Board	2002	0
Office of the Inspector of Custodial Services	2003	0
Western Australia Police Service	2003	0

* Based on matters referred to and substantiated by the Commissioner

Minister for Planning and Infrastructure

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Commissioner of Main Roads	2000	1 breach of RSA standard* (see below)
Department for Planning and Infrastructure	Draft code	0
East Perth Redevelopment Authority	2001	0
Eastern Goldfields Transport Board	No code	0
Midland Redevelopment Authority	2000	0
Public Transport Authority	2004	0
Western Australian Land Authority (LandCorp)	1998	0

* Based on matters referred to and substantiated by the Commissioner

** RSA standard = Recruitment, Selection and Appointment Standard

Main Roads Western Australia Recruitment, Selection and Appointment Standard (RSA Standard)

Main Roads Western Australia (Main Roads) advertised a Manager position. An internal applicant lodged a breach of the RSA Standard raising concerns about the assessment process and documentation. An internal consultant contracted by Main Roads to assess the claim identified some issues relating to the transparency of the process and recommended this be rectified. No action was taken and subsequent discussions between Main Roads and the claimant did not resolve the claim.

The OPSSC review found that the selection panel used a competency matrix, which outlined the minimum competencies required to meet the selection criteria satisfactorily and additional competencies required to exceed the requirements. It was determined that the interview questions and the detailed nature of the assessment guidelines were not sufficiently related to the requirements of the job.

The Commissioner determined that the selection process did not constitute a proper assessment of the work related requirements of the position and was not open or transparent. As a result, the decision making process was not capable of review. In addition to the breach of Standard, Main Roads also breached the Regulations by considerably exceeding the prescribed timeframe required to refer the claim to OPSSC. The relief provided was to review and make appropriate changes to the competency matrix, recommence the selection process from the point of close of applications, convene a new panel, reassess all of the applicants and reconsider the selection decision.

Minister for State Development

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department of Industry and Resources	2003	0
Minerals and Energy Research Institute	1999	0

* Based on matters referred to and substantiated by the Commissioner

Minister for Education and Training

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Building and Construction Industry Training Fund	2003	0
Central TAFE	2003	0
Central West College of TAFE	2004	0
Challenger TAFE	2000	0
Country High School Hostels Authority	2004	0
Curriculum Council	2004	0
CY O'Connor College of TAFE	2002	0
Department of Education and Training	2004	1 breach of RSA standard* (see below)
Department of Education Services	1999	0
Great Southern TAFE	2003	0
Kimberley College of TAFE	2003	0
Pilbara TAFE	2004	0
South West Regional College of TAFE	2002	0
Swan TAFE	2003	0
West Coast College of TAFE	2004	0

* Based on matters referred to and substantiated by the Commissioner

** RSA standard = Recruitment, Selection and Appointment standard

**Department of Education and Training
Recruitment, Selection and Appointment Standard (RSA Standard)**

The Department of Education and Training (DET) advertised a Level 2 (temporary part-time) position. One applicant lodged a breach of standard claim citing conflicts of interest and a failure of the person with an alleged conflict to provide referee reports before the selection process.

The review by OPSSC found the panel member concerned did not declare a potential conflict of interest arising from a relationship with the recommended applicant. Accordingly, the potential conflict of interest was not assessed and no action was taken to remove it. This was compounded due to the panel not following Departmental procedures that required submitting written referee reports prior to the selection process where panel members were referees. This meant the impartiality of the process was diminished.

The Commissioner determined that the selection process was not open and the decision making process was not transparent. The relief provided was to form a new selection panel and recommence the process from the point of the close of applications. The applicants candidacy was reassessed and the selection decision reconsidered.

Minister for Community Development, Women’s Interests, Seniors and Youth; Disability Services; Culture and the Arts

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department for Community Development	2004	0
Department of Culture and the Arts	2001	0
Disability Services Commission	1998	0

* Based on matters referred to and substantiated by the Commissioner

Minister for Tourism; Small Business; Sport and Recreation; Peel and the South West

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department of Sport and Recreation	2001	0
Hairdressers Registration Board	Draft Code	0
Peel Development Commission	1998	0
Rottneest Island Authority	2000	0
Small Business Development Corporation	2003	0
South West Development Commission	2002	0
Western Australian Sports Centre Trust (Challenge Stadium)	2004	0
Western Australian Tourism Commission	1997	0

* Based on matters referred to and substantiated by the Commissioner

Minister for Housing and Works; Racing and Gaming; Government Enterprises; Land Information

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Architects Board of WA	No code	0
Burswood Park Board	1999	0
Department of Housing and Works	2002	0
Department of Land Information	2004	0
Department of Racing, Gaming and Liquor	1999	0
Government Employees Superannuation Board	1998	0
Insurance Commission of Western Australia	2003	0
Lotteries Commission of WA	2001	0
State Supply Commission	2003	0

* Based on matters referred to and substantiated by the Commissioner

**Minister for Local Government and Regional Development;
Heritage; the Kimberley, Pilbara and Gascoyne; Goldfields-
Esperance**

	Code of Conduct (Year of last review)	Number of breach of HRM standard claims*
Department of Local Government & Regional Development	2001	0
Gascoyne Development Commission	2003	0
Goldfields Esperance Development Commission	1996	0
Heritage Council of WA	2003	0
Kimberley Development Commission	2002	0
Metropolitan Cemeteries Board	2001	0
National Trust of Australia (WA)	2001	0
Pilbara Development Commission	Code developed after June 30 2004	0

* Based on matters referred to and substantiated by the Commissioner



Appendices

Appendix 1 – Public Interest Disclosure Act (PID Act)

The PID Act commenced on 1 July 2003, and applies to the Western Australian public sector, local government, and public universities.

The PID Act covers disclosures of public interest information, which is information relating to the performance of a public function by a public authority, public officer or public sector contractor, and which tends to show that the public body is, has been, or proposes to be involved in:

- Improper conduct;
- An offence against State law;
- A substantial unauthorised or irregular use of, or substantial mismanagement of, public resources;
- Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment; or
- Conduct relating to a matter of administration affecting someone in their personal capacity that falls within the jurisdiction of the Ombudsman.

Anyone can make a disclosure of public interest information, including members of the public. The person making the disclosure must believe on reasonable grounds that the information is or may be true. A person commits an offence under the PID Act if they know, or are reckless about whether, the information is false or misleading in a material particular.

Disclosures can only be made to a proper authority, either internally to a designated PID Officer within the public authority concerned, or externally to one of the named external proper authorities, such as the Corruption and Crime Commission, the Auditor General and the Ombudsman. The PID Act does not protect disclosures to persons other than to a proper authority.


A person who makes an appropriate disclosure under the PID Act is provided with certain immunities for doing so, including immunity from legal action, disciplinary action and termination. A person forfeits this protection if he or she discloses information contained in a disclosure otherwise than in accordance with the PID Act, or fails to assist a person investigating without reasonable excuse.

The PID Act prohibits the disclosure of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information or the person named in the disclosure, unless in certain circumstances.

Disclosures of public interest information must be investigated if the disclosure relates to the public authority, its officers, or contractors, or a matter or person that the authority has a function or power to investigate. A proper authority may refuse to investigate, or discontinue an investigation in certain circumstances, and the proper authority must provide the informant reasons for doing so.

The PID Act requires a proper authority to take action if it forms the view that a person may be, may have been or may in the future be involved in improper conduct to which the Act applies. The action, which a proper authority must take, is to:

- Prevent the matter to which the disclosure relates from continuing or occurring in future;
- Refer the matter to the Commissioner of Police or another person, body or organisation having power to investigate the matter; or

- 
- Take disciplinary action or commence or enable disciplinary proceedings to be commenced against a person responsible for the matter.

In taking such action, the proper authority is limited its functions and powers, and must also be guided by what is necessary and reasonable in the circumstances.

Within three months after the disclosure is made, the proper authority must notify the informant of the action taken or proposed to be taken in relation to the disclosure. Once an investigation is complete, the proper authority must provide a final report to the informant stating the outcome of the investigation and the reason for taking action following the investigation.

The investigation, obligations with respect to taking action, and reporting obligations do not apply the Ombudsman or the Corruption and Crime Commission where they have functions in relation to the disclosure under their own legislation.

The PID Act makes an offence of reprisal, which occurs if a person takes or threatens to take detrimental action against another because anyone has made, or intends to make, a disclosure under the PID Act. Penalties also apply where a person who attempts to commit this offence, or incites another to do so.

The PID Act also provides remedies to informants for acts of victimisation. A person who is subjected to detrimental action may either take civil proceedings for damages or make a complaint under the Equal Opportunity Act 1984.

The PID Act requires the principal executive officer of public authority to ensure that his or her public authority complies with the PID Act, and the PID Code of Conduct and Integrity. There are a number of other obligations on principal executive officers under the PID Act, including protecting an employee who has made a disclosure from detrimental action or the threat of such action, preparing internal procedures, and reporting annually to the Commissioner for Public Sector Standards.

Appendix 2 – Public Sector Management Act (PSM Act)

Enabling Legislation

The enabling legislation for Part II of this report is the *Public Sector Management Act 1994* (PSM Act). The Office was established under the PSM Act; the functions and powers of the Commissioner are outlined in Sections 21-25, 45, 48 and 97.

General Principles of Human Resource Management

Section 8 of the PSM Act covers the powers of the Commissioner relating to the general principles of human resource management that are relevant to this report. The relevant parts are:

- 8 (1) (a) *all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;*
- 8 (1) (b) *no power with regard to human resource management is to be exercised on the basis of nepotism or patronage; and*
- 8 (1) (c) *employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts.*

General Principles of Official Conduct

Section 9 of the PSM Act covers the powers of the Commissioner relating to the general principles of official conduct that are relevant to this report. The relevant parts are as follows.

The principles of conduct that are to be observed by all public sector bodies and employees are that they:

- (a) *are to comply with the provisions of:*
 - (i) *this Act and any other Act governing their conduct;*
 - (ii) *public sector standards and codes of ethics; and*
 - (iii) *any code of conduct applicable to the public sector body or employee concerned;*
- (b) *are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and*
- (c) *are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.*

Appendix 3 – HRM Standards and Ethical Codes

Public Sector Standards in Human Resource Management

Nine public sector standards have been developed and communicated to agencies by the OPSSC to achieve the following outcomes. The details of the minimum standards required to achieve these outcomes are available on www.wa.gov.au/opssc/.

- **Recruitment Selection and Appointment Standard**
The most suitable and available people are selected and appointed.
- **Transfer Standard**
Transfer decisions are equitable and take into account the participating organisation's work related requirements and employee interests.
- **Secondment Standard**
Secondment decisions are equitable and take into account the participating organisation's work related requirements and employee interests.
- **Performance Management Standard**
The performance of employees is fairly assessed to achieve the work related requirements of the public sector body while paying proper regard to employee interests.
- **Redeployment Standard**
Redeployment decisions are equitable and take into account the participating organisation's work related requirements and employee interests.
- **Termination Standard**
Termination decisions are fair and entitlements are provided.
- **Discipline Standard**
The discipline process observes procedural fairness.
- **Temporary Deployment (Acting) Standard**
Temporary deployment (Acting) decisions are equitable and take into account the participating organisation's work related requirements and employee interests.
- **Grievance Resolution Standard**
The process used by an employing authority to resolve or redress grievances is fair.

Ethical Codes

The public sector Code of Ethics was first established in 1996 and a revised version came into effect from February 2002. Public sector bodies can develop their own agency-based code(s) of conduct to give further practical information about how to give effect to the principles outlined in the Code of Ethics. Public sector bodies must comply with codes.

The three key principles of the Code of Ethics are:

- **Justice** – being impartial and using power fairly for the common good. It means not abusing, discriminating against or exploiting people.
- **Respect for Persons** – being honest and treating people courteously, so that they maintain their dignity and their rights are upheld. It means not harassing, intimidating or abusing people.
- **Responsible Care** – protecting and managing with care the human, natural and financial resources of the State. It means decisions and actions do not harm the short and long term well being of people and resources.

Appendix 4 – Methods of Monitoring Compliance with the PSM Act

The following strategies are used by the Commissioner to provide an independent evaluation of the extent of compliance or non-compliance with the HRM Standards, the ethical codes and the ethical principles.

Thematic and agency reviews and specific investigations relating to key issues are important sources of information for monitoring compliance. There are limits, however, to the resources available for conducting reviews and investigations. The OPSSC selects issues and agencies for review based on analysis of information from a range of sources and after exercising judgment about those matters most critical to the achievement of improved compliance.

Outcome Based Measures

Sector-wide measures of human resource management and ethical outcomes are derived from aggregated information obtained through agency yearly reports and other sources. For example, demographic profiles of diversity groups are used to provide measures of equity outcomes.

Regular Agency Reviews

Reviews of large public sector agencies are conducted on a regular basis with each agency reviewed over a cycle of approximately four years. These reviews use climate surveys to obtain information on employee perceptions about human resource management, ethics and equity; information obtained through routine yearly reports from agencies; specific information related to the agency obtained through breach claims; and other matters raised with the OPSSC.

Climate surveys on public sector employee perceptions are conducted in public authorities on a rotating five yearly cycle. The climate survey has been designed and is conducted by the OPSSC. Employees are asked a range of questions on their perceptions of their agency's human resource management, ethics and equity climate. All employees in an agency are sent a survey form. The response rates for each survey are usually around 35 to 40%.

Feedback on the results of the Climate Survey, together with analysis of the agency's demographic data, any agency-specific human resource management and ethics issues and the agency's EEO management plan are provided to the senior executive of each agency. The purpose of these reviews is to:

- Assist agencies to achieve better practice in ethics, human resource management and equity; and
- Enable the Commissioner to maintain a database to monitor the extent of compliance across the sector as a whole and assess improvements over time.

Criteria for Selecting Agencies for Regular Reviews

The initial consideration used for selecting agencies for climate surveys and presentations is their scheduled time for review every four years. Timing for reviews may be brought forward or delayed based on the following factors.

- Matters of strategic significance across the sector, or as a result of State or national emerging themes;

- Breaches of standard claims and matters referred to the OPSSC by public employees, members of the public or Members of Parliament;
- Other external findings about an agency, such as outcomes of a Royal Commission, Tribunal cases (eg the Equal Opportunity Tribunal), reports by other independent oversight agencies and reports to Parliament;
- Requirements to survey and review an appropriate spread of agencies for regular thematic reviews relating to the HRM standards or ethical codes;
- Measures of representation and distribution of diversity groups at all levels of employment;
- Previous climate survey responses and follow-up as a result of previous agency or thematic reviews; and
- Agency requests for an earlier survey and review.

Agencies selected for review are contacted to negotiate the specific dates based on agency activities and other related reviews being conducted by the OPSSC.

Specific Agency Reviews

Specific reviews and investigations may be conducted in an agency in response to complaints and allegations of non-compliance, concerns or issues raised, or to identify better practice. These involve an in-depth examination of a particular issue or issues associated with the HRM principles and standards, or the ethical principles and codes. A range of tools may be used depending on the issue and the circumstances. These include policy reviews, audits of transactions, focus groups and surveys.

Criteria for Selecting Agencies for Specific Reviews

Decisions to conduct a specific review are based on issues or concerns that have become apparent through information obtained by the OPSSC from a range of sources. They may be the result of a single serious matter related to possible non-compliance or may result from repeated contacts on similar issues. They may also arise as a result of information about better practice initiatives being undertaken in the agency that may be relevant to the rest of the sector. The terms of reference and the tools used to review the agency are determined on a case-by-case basis.

Thematic Reviews

The OPSSC conducts thematic reviews relating to specific HRM principles and standards and ethical principles and codes. These thematic reviews provide an in-depth examination of an issue across a range of public sector agencies.

Criteria for Selecting Agencies for Thematic Reviews

The subjects of thematic reviews are selected based on the following:

- An analysis of information derived from the OPSSC consultation database;
- Consideration of information, complaints and allegations of non-compliance received about a particular standard or ethical code;
- Comments received by the Commissioner from various chief executive officers about a particular standard or ethical code;
- The importance of the subject matter in human resource practices, or ethical conduct in the public sector and its influence on the effectiveness and efficiency of public sector

agencies; and

- The importance of the subject matter to individual employees in public sector agencies.

Breach of Standard Claims

The *Public Sector Management (Examination and Review Procedures) Regulations 2001* provide an avenue for employees and other people to lodge claims when they believe a breach of standards has occurred and to obtain relief where the standard has been breached. The OPSSC manages the procedures for handling breach of standard claims. Analysis of these claims provides insight into key issues relating to the HRM standards.

Complaints and Allegations of Non-Compliance

Public employees, Members of Parliament and members of the public contact the OPSSC with issues and concerns on a regular basis. These matters are recorded and analysed to determine recurring themes or issues of particular importance.

The Office does not have a complaint resolution role in relation to specific allegations of contraventions of the ethical principles and ethical codes. The Office has a wider role to monitor compliance and report to Ministers and Parliament on compliance or non-compliance by public sector agencies and employees with ethical principles, HRM standards, and ethical codes. However, where the Commissioner thinks it appropriate as part of the overall compliance monitoring function, the OPSSC will undertake an agency or thematic review and will use information provided through complaints and allegations of non-compliance.

Appendix 5 – Glossary of Terms

Breach of standard	A determination by the Commissioner that one or more of the requirements of a Public Sector standard has/have not been complied with.
CEO	Chief Executive Officer.
Climate survey	A questionnaire measuring employee perceptions of human resource management, ethical conduct, equity and diversity within an agency.
Compliance Framework	The key elements of the compliance framework are to educate and persuade public sector bodies to comply; to develop their capacity to comply; and to deter non-compliance.
Compliance monitoring	Monitoring the extent of compliance with the HRM standards and ethical codes at either an agency or sector level.
Code of Conduct	A formal written policy documenting the behaviour expected of all employees of a public sector body. Each public sector body is expected, under the <i>Public Sector Management Act</i> , to develop a code of conduct consistent with the <i>Public Sector Code of Ethics</i> .
Code of Ethics	The <i>Western Australian Public Sector Code of Ethics</i> which outlines the minimum standards of conduct and integrity for public sector bodies and employees.
Ethical Codes	The <i>Western Australian Public Sector Code of Ethics</i> together with the individual codes of conduct of public sector bodies.
HRM Principles	The HRM principles are that selection is based on a proper assessment of merit and equity; human resource management powers are not based on nepotism or patronage and employees are to be treated fairly and consistently.
HRM Standards	The <i>Public Sector Standards in Human Resource Management</i> . There are nine standards: <ul style="list-style-type: none"> • Recruitment, Selection and Appointment; • Transfer; • Secondment; • Performance Management; • Redeployment; • Termination; • Discipline; • Temporary Deployment (Acting); and • Grievance Resolution.
Indigenous Australians	Persons of Australian Aboriginal and Torres Strait Islander origin.

OPSSC	Office of the Public Sector Standards Commissioner.
People from culturally diverse backgrounds	People born in countries other than those categorised by the Australian Bureau of Statistics as Main English Speaking (MES) countries.
People with Disabilities	People with an ongoing disability that requires adaptation in the workplace.
PSM Act	Public Sector Management Act 1994.
Public Interest Disclosure	A disclosure made under the <i>Public Interest Disclosure Act 2003</i> .
Public Sector Standards	See <i>HRM Standards</i> .
Thematic Review	A review relating to specific HRM principles and standards and ethical principles and codes that provides an in-depth examination of an issue across a range of public sector agencies.

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