

Office of the Public Sector Standards Commissioner  
**Annual Compliance Report 2004-05**



# 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 2004-05

I submit to Parliament my Annual Compliance Report for 2005 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 second report under the *PID Act* and the tenth 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 2004 to 30 June 2005. 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.

I seek permission to publish the report following tabling in Parliament.



Maxine Murray  
COMMISSIONER FOR  
PUBLIC SECTOR STANDARDS

16 November 2005

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## Commissioner's Overview - The Year in Brief



This report covers my reporting requirements under the *Public Interest Disclosure Act 2003* (the PID Act) and the *Public Sector Management Act 1994* (the PSM Act). It is only the second report on my obligations under, and compliance by public authorities with the PID Act and the PID Code of Conduct and Integrity (the PID Code).

### Public Interest Disclosure Annual Report

In my first report last year, I highlighted a number of issues that had arisen during the legislation's first year of operation. Many of these issues have continued to demonstrate that agencies and individual "whistleblowers" need more support and assistance than originally thought.

#### Limited awareness of PID Act

Market research conducted last year showed that there was a low level of awareness of the PID Act and low confidence in using its processes. There were also concerns about not being adequately protected once a disclosure is made. This picture was further reinforced by the results of public authorities' employee perception surveys conducted by the Office in 2005. A total of 58% of employee respondents were unaware of the PID Act, 61% did not understand how to make a public interest disclosure and 70% did not know who the PID officer was in their agency.

Clearly, additional agency support is required to increase understanding of the legislation and the need for compliance. Agencies that do not have an investigating role to appropriately handle PID complaints also require assistance.

I am seeking additional funds to implement an ongoing comprehensive assistance strategy to raise awareness, build confidence in using the processes under the PID Act and to ensure compliance by public authorities. My Office also needs to investigate, develop, and monitor strategies to manage disclosures at the workplace to ensure that victimisation protections are being provided, as intended by the confidentiality provisions of the legislation.

#### Review and Changes to the PID Act

The PID Act is scheduled for review three years after its commencement, which is 1 July 2006. The review will consider whether the purposes of the PID Act have been achieved, the administration of the PID Act and other relevant matters. A number of legal and practical issues have already been identified, and I will be recommending to the Minister for Public Sector Management that the review occur as soon as possible.

Of particular concern is the scope of the confidentiality provisions. As they apply generally, there is some doubt as to whether a person can make a complaint about an alleged PID Act offence, and for that offence to be investigated, heard and determined without breaching the confidentiality provisions. Given the uncertainty that exists and the penalties that apply if a breach occurs, I have sought an amendment to section 16.

## **Boards and Committees**

The Commissioner's role to monitor and report on the extent of compliance under the PID Act applies to public authorities as defined in the PID Act. Like last year, I asked WA public sector agencies, local government authorities and public universities to report. 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. These bodies have been advised of the potential application of the PID Act, and those to which the PID Act applies will need to report to me in 2005-06.

## **Public Sector Management Act – Compliance Report**

### **Political Impartiality**

A state election took place this reporting year so it is not surprising that the broad issue of political impartiality of public servants emerged as a matter requiring some attention. While the rationale and principles of political impartiality are readily understood there is frequently a difficult and tricky balancing act for public service officers striving to be responsive to a duly elected Government while remaining impartial.

My specific interest in this matter is to encourage an awareness and understanding of the issues and provide guidelines for appropriate conduct in order to enhance every individual's capacity for judgement and uphold the credibility of an impartial public sector.

In order to achieve these outcomes I will be revising the Code of Ethics and providing guidelines to assist public servants to resolve the tensions experienced in the practical delivery of goods and services and in supporting Ministers.

### **Code of Ethics for Ministerial Officers**

While public servants are required to be impartial, ministerial officers are explicitly not so. Currently these officers are covered by the existing public sector Code of Ethics that leaves too much ambiguity. I intend to develop a specific code for ministerial officers that will recognise their role to provide a political dimension in their advice to Ministers. There is also a need to clearly spell out acceptable boundaries between the roles of ministerial officers and those of permanent public servants. Work has commenced on a consultation paper for a Code of Ethics for ministerial officers.

### **Integrity Coordinating Group**

My Office initiated the creation of the Integrity Coordinating Group (ICG) comprising the Commissioner for Public Sector Standards, the Auditor General, the Corruption and Crime Commissioner and the WA Ombudsman.

The purpose of the ICG is to foster greater policy coherence and operational coordination between the core integrity bodies with the aim of strengthening integrity across the sector. To this end, each year the ICG will identify a number of key integrity themes as suitable for collaboration and will work together to deliver tools that will assist public sector bodies in promoting integrity.

The ICG has commenced work on developing a common understanding of key integrity terms, a conflict of interest toolkit, and examining mechanisms for reporting improper conduct to ICG members to ensure that those who report understand the processes involved. Earlier this year, the ICG produced a brochure *Promoting and Strengthening Integrity in WA Public Bodies*.

## **Human Resource Management Practices**

The new *Public Sector Management (Breaches of Public Sector Standards) Regulations* came into effect in September 2005 and are designed to provide more efficient and flexible regulatory options for claimants and agencies. The new process includes provision for conciliation to occur and if that is not possible a review and determination by the Commissioner. The Commissioner also recommends relief if a breach is found. The Commissioner can not enforce relief but may report to Ministers or Parliament on breaches and failure to provide relief.

An increasing trend in breach claims being lodged in relation to the Grievance Resolution Standard was initially noted in 2004-05 as were problems in how Acting is handled, following several agency reviews. Reviews into these two areas will be conducted in early 2006.

In 2003/04 my Office conducted a review into the Department of Health (Royal Street Divisions) and I made a number of recommendations about the extent of compliance with the Public Sector Standards, the ethical codes and the ethical principles, which I reported in my previous compliance report.

As part of my role to monitor compliance under section 21 of the PSM Act, compliance review recommendations are followed up to ensure that they have been considered and addressed by the agency. While it is evident that aspects of the recommendations are being implemented, it is disturbing that some, in particular performance management, remain largely unaddressed by the Department of Health, thus exposing the agency to significant risks.

## **Outcomes Based Measures**

The Ethics Measurement project, which commenced in 2004 under the auspices of the Chief Executive Officer Measuring Compliance Sub-Group aims to develop measurement and survey instruments which build upon existing monitoring strategies currently used by the Office. This year a survey tool using ethics scenarios was piloted.

When finalised, the new ethical measures will provide the Office and all public sector agencies with an additional set of compliance monitoring and diagnostic tools, to ensure that ethical principles and codes are complied with, thereby making them an integral and valued part of their business.

## **Ten Year Review Reports**

Next year will be the tenth year of compliance reporting by the Commissioner for Public Sector Standards. To mark this anniversary I intend to provide to Parliament a series of reports about the role and functions of the Commissioner in the contemporary public sector and political environment.

While the role of the Commissioner has not substantively changed in this decade except for the additional responsibilities from the PID Act, much has changed in the Western Australian public sector. Legislatively there have been several reviews and amendments to the PSM Act. Codes of conduct have been established both sector-wide and within individual public sector agencies and there have been changes in management approaches. Importantly, the public perception of issues regarding the work of the public sector has also changed - in that the unique relationship between a professional public sector and the government of the day has given rise to many situations where the integrity of the public sector has been questioned (in Western Australia and in most Australian jurisdictions, including the Commonwealth).



I therefore intend in 2006 to provide Parliament with a series of Ten Year Review reports. The first report will reflect on the Commissioner's role as it was initially recommended by the 1992 Royal Commission into Commercial Activities of Government and other Matters and outlined in the *Public Sector Management Act 1994*. Other reports will cover the principles of merit, equity and probity, ethics and the integrity principle, Chief Executive Officer recruitment and political impartiality.

A handwritten signature in black ink, reading "Maxine Murray". The signature is written in a cursive, flowing style with a large, elegant loop at the end of the last name.

Maxine Murray  
COMMISSIONER FOR  
PUBLIC SECTOR STANDARDS

16 November 2005

## 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 under the PID Act:

- A PID Code of Conduct and Integrity was established, and has been in operation since 1 July 2003;
- Guidelines on internal procedures relating to the functions of a proper authority under the PID Act were prepared, and have been in operation since 1 July 2003;
- Hard copies of the Guidelines were provided to public sector agencies, local government authorities, and the public universities in 2003, and are available on the OPSSC website;
- Compliance with the PID Act and Code 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 communication tools, giving presentations and establishing a PID Coordination Committee (comprised of named authorities under the Act).

#### ***Public Interest Disclosures***

In 2004-05, 23 people made disclosures to proper authorities.

- The majority of matters concerned improper conduct;
- Of the eight investigations completed by 30 June 2005, three matters were found to have substance;
- In four matters, identifying information about the discloser was revealed in accordance with the confidentiality requirements of the PID Act;

There were 2 claims of victimisation as a result of making a disclosure under the PID Act made to the Commissioner for Equal Opportunity.

Additional funding has been requested for 2005-06 to design and implement an awareness strategy for public authorities.

The PID Act is required to be reviewed three years after its commencement, that is 1 July 2006. The Commissioner will recommend to the Minister that this occur as soon as possible after that date, given a number of identified legal and practical issues associated with the Act's operation.

## **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 in 2004-05 indicate that the majority of employees (81% 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 43% 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**

- 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, through the breach claim process 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 all three management Tiers has increased in 2005. However, it is of concern that women remain significantly underrepresented at all three levels compared to their male counterparts.

#### **Action on non-compliance**

- There were 199 breach of standard claims received by agencies in 2004-05 and 132 of these were referred to the OPSSC. Five breach of Standard claims were upheld.
- 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.

## ***Ethical Conduct***

### **Commitment and communication**

- The commitment to building trust and ethical behaviour is shown by a majority of agencies having reviewed their code since 2000.
- However, there is a low level of awareness about the Public Sector Code of Ethics among employees and only 56% of survey respondents indicate they have read it, although a higher number (73%) are aware of their internal ethical policy guidelines.
- Employees responding to surveys generally have positive perceptions about ethical leadership with 62% of survey respondents indicating that management leads by example in ethical conduct. However, fewer employees (52%) of employees agreed that management monitors ethical conduct. 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)** – Fourteen percent of survey respondents believe that contracts in their agencies, either sometimes, often or always results from favouritism. This was a decrease of 4% compared to the reporting period 1999-04. Thirty percent of survey respondents believe that favourable or preferential treatment is given to relatives of staff sometimes, often or always. Issues raised through contacts with the Office also relate mainly to this aspect of the justice principle. The key areas are impartiality issues, such as conflict of interest and protecting people's rights 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.
- **Respect for Persons** – Employee survey respondents generally feel respected by management (72%) and other employees (80%). Most respondents also consider that customers are given reasons for decisions with only 5% saying this rarely or never occurred. However, 16% said that customers sometimes were given reasons for decisions.
- **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.

### **Action on non-compliance**

- Reviews and survey results continue to indicate serious problems with employee confidence that they will be protected from victimisation or harassment if they report ethical issues and wrongdoing. In 2004-05, 44% of respondents believed people who reported wrongdoing were protected from victimisation or harassment. This is a drop of 5% compared to the previous period reported (1999-04) and if this trend continues the Commissioner will need to investigate and report to Parliament on what factors are contributing to the decline in confidence.

## **Public Interest Disclosure Annual Report 2005**

## Public Interest Disclosure Act 2003

### Purpose of this Report

Under section 22(1) of the Public Interest Disclosure Act 2003 (the PID Act), the Commissioner is to report annually to Parliament 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 that 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, which has been in operation since the commencement of the PID Act on 1 July 2003. Any person to whom an appropriate disclosure is made under the PID Act must comply with the Code. 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 Commissioner has published the Code on the OPSSC website and distributed it to public sector organisations, local government authorities and public universities.

#### ***PID Guidelines***

The Commissioner prepared and published guidelines relating to a proper authority's functions under the PID Act to coincide with the commencement of the PID Act on 1 July 2003. 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 that 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.

The Guidelines are available on the OPSSC website, and copies were distributed to public sector organisations, local government authorities, and universities. In the Guidelines, the Commissioner indicated that they would be reviewed over time, and that a consultation process would occur within 12 months. Although this was scheduled to occur in 2004-05, it has been postponed to coincide with the review of the PID Act, which is required to occur after 1 July 2006. Some minor changes have been made to the Guidelines, and a re-print will occur in 2005-06.

## **Assistance**

### **Information**

In 2003-04, the Commissioner developed a brochure on making a disclosure under the PID Act, which is available on the OPSSC website, and is provided to potential disclosers on request. The Commissioner is finalising other communication tools, including a poster, new brochure for potential disclosers, frequently asked questions and a PowerPoint presentation for PID officers to use. A PID lodgement form is also available on the website and staff have given presentations about the PID Act in various forums.

A major concern continues to be the lack of awareness of the PID Act by employees. As noted in last year's report, market research undertaken for the Commissioner showed that most employees across all sectors had a low level of awareness of the PID Act and only a very small number knew whether their organisation had a PID Officer. While the PID Act was seen as important, there was 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 was made.

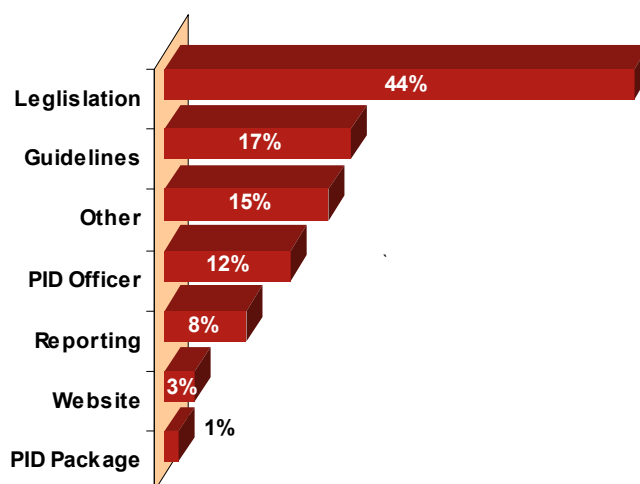
Although some public authorities have tried to raise awareness through briefings, internal publications, and induction programs, the message does not appear to be getting through. As foreshadowed in last year's report, questions about the PID Act have been included in the employee climate survey that the Commissioner conducts in public sector agencies on a regular basis. The first results for 2005-06 show that in the four agencies surveyed, 58% of employees were not aware of the PID Act, 61% were not aware of how to make a public interest disclosure, and 70% did not know who the PID officer is within their agency (refer to Appendix 5). Encouragingly, 48% of respondents said they would use the PID Act to make a disclosure if they were aware of improper conduct in their workplace, and nearly a third of all respondents thought their identity would remain confidential, they would not be subjected to victimisation or harassment, and their career prospects would not be adversely affected if they made a disclosure.

The new communications tools which are being developed as part of an overall communications strategy will assist in raising awareness levels. The profile of the PID Act will also be lifted in several products being developed by the Integrity Coordinating Group, which comprises the Commissioner, the Auditor General, the State Ombudsman and the Corruption and Crime Commissioner, to assist agencies. However, ultimate responsibility to raise awareness of the PID Act rests with Directors General and Chief Executive Officers.

The Commissioner has requested additional funding which if granted will be used to implement an assistance strategy, including a dedicated assist line, to raise awareness, build confidence in using the processes under the PID Act and to ensure compliance by public authorities.

## Enquiries

The Commissioner's office dealt with a number of enquiries concerning 144 PID related matters during 2004-05. The following table shows the breakdown of these enquiries according to subject matter:



The PID Register developed by the Commissioner in 2003-04 for proper authorities to record the disclosures they have received, and to report disclosures to the Commissioner was modified this year.

## Coordination

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

## Issues

As noted in last year's report, the confidentiality provisions are proving particularly difficult to apply in practice. During the year, the Commissioner received advice that the confidentiality provisions in section 16 could apply to the making and investigation of an alleged PID Act offence, and that they could also potentially apply to the hearing and determination of an alleged PID Act offence by a Court or an act of victimisation by the Commissioner for Equal Opportunity.

The Commissioner also received advice that where a public interest matter is substantiated and the proper authority needs to refer the matter to an appropriate investigative body for further action in accordance with section 9(1)(b), the confidentiality provisions could also potentially apply.

Given the uncertainties that do exist, and the penalties that apply if section 16 is breached, the Commissioner has sought an amendment to section 16.

Section 27 of the PID Act requires the Minister for Public Sector Management to carry out a review of the operation of the PID Act three years after its commencement, that is, 1 July 2006. The review will consider:

- the attainment of the purposes of the Act;
- the administration of the Act; and
- other relevant matters.



Given the number of legal and practical issues that have been identified, the Commissioner will be recommending to the Minister that this review occur as soon as possible after 1 July 2006.

### ***Receiving Disclosures***

The matters raised with the Commissioner during 2004-05 are included in the consolidated results discussed in the following section.

## **PID Act Compliance Monitoring**

### **Why Monitor Compliance?**

The Commissioner's role to monitor compliance with the PID Act and Code is required 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 public authorities as defined in the PID Act. Like last year, the Commissioner asked WA public sector agencies, local government authorities and public universities to report. 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. In 2004-05, 301 public boards and committees bodies have been advised of the potential application of the PID Act, and those to which the PID Act applies will need to report to the Commissioner in 2005-06.

### **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 that apply to the principal executive officers of a public authority, and to proper authorities in dealing with appropriate disclosures.

The principal executive officer of a public authority is 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.

Disclosures must be made to a proper authority. Proper authorities who receive disclosures 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 disclosers or the subject of the disclosure, unless in accordance with section 16 of the PID Act;
- Notify a discloser 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 a discloser 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 following strategies were used by the Commissioner to monitor compliance with the PID Act in 2004-05:

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

In the future, compliance or non-compliance with the PID Act will also 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 95% of authorities that reported to the Commissioner in 2004-05. The Office maintains a database of designated PID officers.

### ***Internal Procedures***

Of the public authorities that reported to the Commissioner in 2004-05, 71% have internal procedures in place, which is an increase of 10% from last year. The following table shows the extent of compliance in each of the sectors:

Sector	2003-04	2004-05
WA public sector	78.5%	82%
Local Government	46%	61%
Public universities	100%	100%

It is important to note that these figures are indicative only as not all public authorities asked to report responded, and of those that did, not all indicated that they had procedures in place.

### ***Making a public interest disclosure***

A public interest disclosure has to be made to a proper authority. A proper authority may be the PID Officer whose position has been designated by the Principal Executive Officer of a public authority under section 23(1)(a) to receive disclosures about matters falling within the sphere of responsibility of that authority in accordance with section 5(3)(h). “Public authority” is defined in the PID Act, and includes State public sector agencies, local government authorities, and public universities.

A proper authority may also be a particular authority specified in section 5(3) the PID Act to receive disclosures of a particular nature. These proper authorities are:

Where the information relates to:	Proper authority
An act or omission that constitutes an offence under a written law	A police officer, or the Corruption and Crime Commission
A substantial unauthorised or irregular use of, or substantial mismanagement of public resources	Auditor General
A matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971	The State Ombudsman
A police officer	Commissioner of Police or the Corruption and Crime Commission
A judicial officer	The Chief Justice
A member of either House of Parliament	The Presiding Officer of the House of Parliament to which the member belongs
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	The Commissioner for Public Sector Standards or the State Ombudsman

For the purposes of this report, a distinction has been made between disclosures received by a PID Officer in a public authority under section 5(3)(h) (referred to as “public authorities”) and disclosures made to an authority named specifically in section 5(3) to receive particular types of disclosures (referred to as “named authorities”). The Chief Justice and the Presiding Officer are not required to report to the Commissioner. Therefore, the “named authorities” comprise the Corruption and Crime Commission, the Auditor General, the State Ombudsman, WA Police, and the Commissioner for Public Sector Standards.

These “named authorities” can also receive disclosures about matters falling within their sphere of responsibility in section 5(3)(h), and have appointed internal PID officers under section 23(1) to receive disclosures of this nature. For the purposes of this report,

disclosures to the “named authorities” about these types of matters have been included in the “public authorities” data.

### ***Number of Public Interest Disclosures Received***

In 2004-05, 23 people made a public interest disclosure to a proper authority. The named authorities received disclosures from 8 persons, and the public authorities received disclosures from 15 persons.

Type of Authority	2003-04	2004-05
Public authorities	16	15
Named authorities	10	8

### ***Gender of Disclosers***

Like last year, more males made public interest disclosures than females. The number of disclosures made anonymously decreased.

Gender	2003-04	2004-05
Male	16	16
Female	7	6
Anonymous	3	1

### ***Relationship with Proper Authority***

The public authorities received most of their disclosures from people in the “other” category. “Other” could include anonymous disclosers, prisoners, elected representatives, and contractors. The named authorities received disclosures mainly from members of the public, and current employees of the authority subject to the PID disclosure.

Status	2003-04		2004-05	
	Public Authorities	Named Authorities	Public Authorities	Named Authorities
Member of Public	0	0	1	3
Past employee of agency subject to PID claim	5	5		1
Current employee of agency subject to PID claim	4	4		3
Other	1	1	14	1
Total	16	10	15	8

Note: Other could include anonymous informants, prisoners, elected representatives and contractors.

### ***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 to mean:

*Information that tends to show that, in relation to is performance of a public function (either before or after the commencement of this Act), a public authority, a public officer, or a public sector contractor is, has been, or proposes to be, involved in –*

- (a) *improper conduct;*
- (b) *an act or omission that constitutes an offence under written law;*
- (c) *a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources;*
- (d) *an act done or omission that involves a substantial and specific risk of –*
  - i. injury to public health;*
  - ii. prejudice to public safety; or*
  - iii. harm to the environment;**or*
- (e) *a matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971.*

A person may make a disclosure about one or more categories of public interest information.

This year, most matters concerned “improper conduct”.

Type of Matters	2003-04	2004-05
Improper Conduct	15	14
Offence under State law	1	1
Substantial misuse/mismanagement of public resources	12	2
Risk of injury to public health; public safety; harm to environment	1	1
Administrative matter which can be investigated by Ombudsman	3	5

### ***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 provided in section 8(2) of the PID Act.

Investigation Undertaken	Public Authorities	Named Authorities	Total
Yes	3	5	8
No	10	3	13
Not yet commenced	1		1
No decision made	1		1

Where a proper authority did not investigate a matter, the reasons given were

Reasons for Not Investigating	Public Authorities	Named Authorities
Trivial [section 8(2)(a)]	2	1
Vexatious/frivolous [section 8(2)(b)]		
No evidence because of lapse of time [section 8(2)(c)]		
Matter investigated as PID by another proper authority [section 8(2)(e)]		
Other	8	2

The reporting of this year's data has highlighted an issue with respect to how proper authorities deal with and report disclosures. Some authorities have reported to the Commissioner that they received a disclosure, but did not investigate the matter as it did not fall within the definition of 'public interest information', or they did not have power to investigate. These matters have been recorded in the above table in the "Other" category. The Commissioner is aware that some proper authorities do not report matters not falling within the definition of 'public interest information' on the basis that these matters are not appropriate disclosures under the PID Act. A consistent approach is required to ensure that the data reported in the Compliance Report accurately reflects the number of disclosures received by authorities.

Of the matters that were received and investigated in 2004-05, the following table shows the status and outcome of these investigations:

Investigation Status	Public Authorities	Named Authorities
Ongoing		1
Completed and has substance	1	2
Completed and lacks substance	2	1
Discontinued		
TOTAL	3	4

### ***Notification of Discloser***

Where an appropriate disclosure is made, a proper authority is to notify the discloser within three months after the disclosure is made of the action taken or proposed to be taken in relation to the disclosure. Apart from one matter where the disclosure was made anonymously, the disclosers were notified within the timeframe.

### ***Final Report***

Where a discloser made a disclosure in 2004-05 and the investigation was completed, all disclosers received a final report.

### ***Confidentiality***

Under section 16 of the PID Act, it is an offence to disclose information that identifies or would tend to identify anyone as a person who has made an appropriate disclosure of public interest information, or in respect of whom a disclosure of public interest information has been made, except in certain circumstances. A breach of section 16 attracts a penalty of \$24,000 or 2 years imprisonment.

Identifying information can be disclosed about a discloser in the following circumstances:

- the discloser consents to the disclosure of the information;
- it is necessary to do so having regard to the rules of natural justice;
- it is necessary to do so to enable the matter to be investigated effectively;
- the identifying disclosure is made in accordance with section 152 or 153 of the Corruption and Crime Commission Act 2003.

Where it is necessary to reveal identifying information about a discloser for the purposes of having regard to the rules of natural justice, or to enable the matter to be investigated effectively, the person making the identifying disclosure is to take all reasonable steps to advise the discloser that it is to be made and the reason for doing so.

In 2004-05, identifying information about the discloser was revealed in four matters. In two of these matters, the consent of the discloser was obtained, and in the other two matters, it was revealed for the purposes of investigating the matter effectively.

Identifying information about the subject of the disclosure can be revealed in the following circumstances:

- the subject consents to the disclosure of information;
- it is necessary to do so to enable the matter to be investigated effectively;
- it is necessary to do so in the course of taking action under section 9(1)(a)-(c), which requires a proper authority to take action if the matter is substantiated;
- there are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property; or
- the disclosure is made in accordance with section 152 or 153 of the Corruption and Crime Commission Act 2003.

### ***Claims of Detrimental Action and Victimisation***

As at 30 June 2005, there were two claims of victimisation made under section 15 of the PID Act to the Commissioner of Equal Opportunity.

### ***Issues about Compliance with the PID Act and Code***

One person raised several issues of non-compliance with the Commissioner in 2004-05 concerning the actions of a proper authority. One of the issues raised concerned the proper authority's request that the discloser complete a PID lodgement form. The completion of a PID lodgement form is not a legislative requirement. It is an administrative mechanism that enables proper authorities to identify a disclosure as a public interest disclosure as distinct from an ordinary complaint so that the necessary protections can be applied to the information. However, whether a matter is an appropriate disclosure under the PID Act does not depend on whether the discloser has completed a PID lodgement form, but whether certain criteria in the PID Act are met.





## **Public Sector Management Compliance Report 2005**

## PSM Act Compliance Monitoring Framework

### Why Monitor Compliance?

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 greater reliance on agencies' claims of compliance. To be effective, this independent oversight needs to assess the achievement of intended policy outcomes. This report examines compliance and non-compliance against the relevant provisions of the PSM Act and forms part of the Commissioner for Public Sector Standards' monitoring and reporting function.

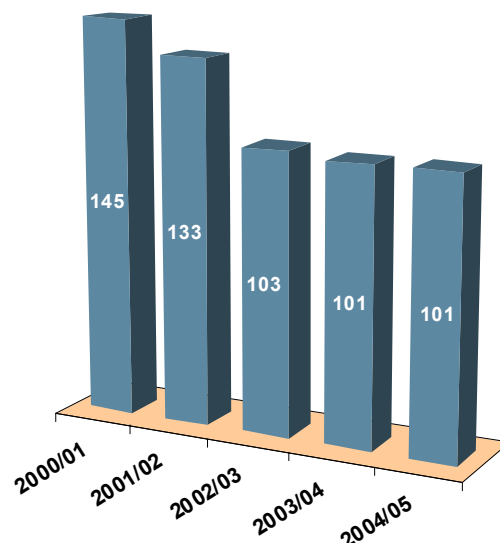
The importance of compliance should not be overestimated. Whilst compliance is essential to achieve the key public policy objectives of building public trust and providing good governance, it can only be achieved through positive cultural change. The primary responsibility for achieving compliance with the PSM Act lies with public sector bodies, their management and employees.

### Who is Monitored?

The Commissioner's monitoring and reporting role under the PSM Act applies to all public sector bodies. These public sector bodies include:

- WA ministerial offices;
- public sector agencies; and
- those 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 2005, there were 101 public sector agencies. 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 from 2001-02 to 2002-03 is due to amalgamations arising from Machinery of Government changes.

### What is Monitored?

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

- general principles of official conduct covered by Section 9 (the ethical principles) and the general principles of human resource management covered by Sections 8(1)(a), (b) and (c) (the HRM principles);
- Western Australian Public Sector Code of Ethics and codes of conduct developed by public sector bodies (the ethical codes); and
- Public Sector Standards in Human Resource Management (the HRM Standards).

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 sector workforce comprising the most suitable and available employees, who are effective and who trust that the human resource management decisions affecting them are based upon merit, equity and probity.

The HRM principles are designed to ensure that: selection is based on a proper assessment of merit and equity; human resource management decisions are not based on nepotism or patronage; and employees are treated fairly and consistently.

The following nine public sector Standards (not in any particular order) in human resource management have been established: 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 properly manage public resources on a daily basis.

The general principles of official conduct are designed to ensure 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 are then used to form the basis of the Code of Ethics.

The Code of Ethics 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

The focus of this report is to evaluate compliance across the following two broad areas:

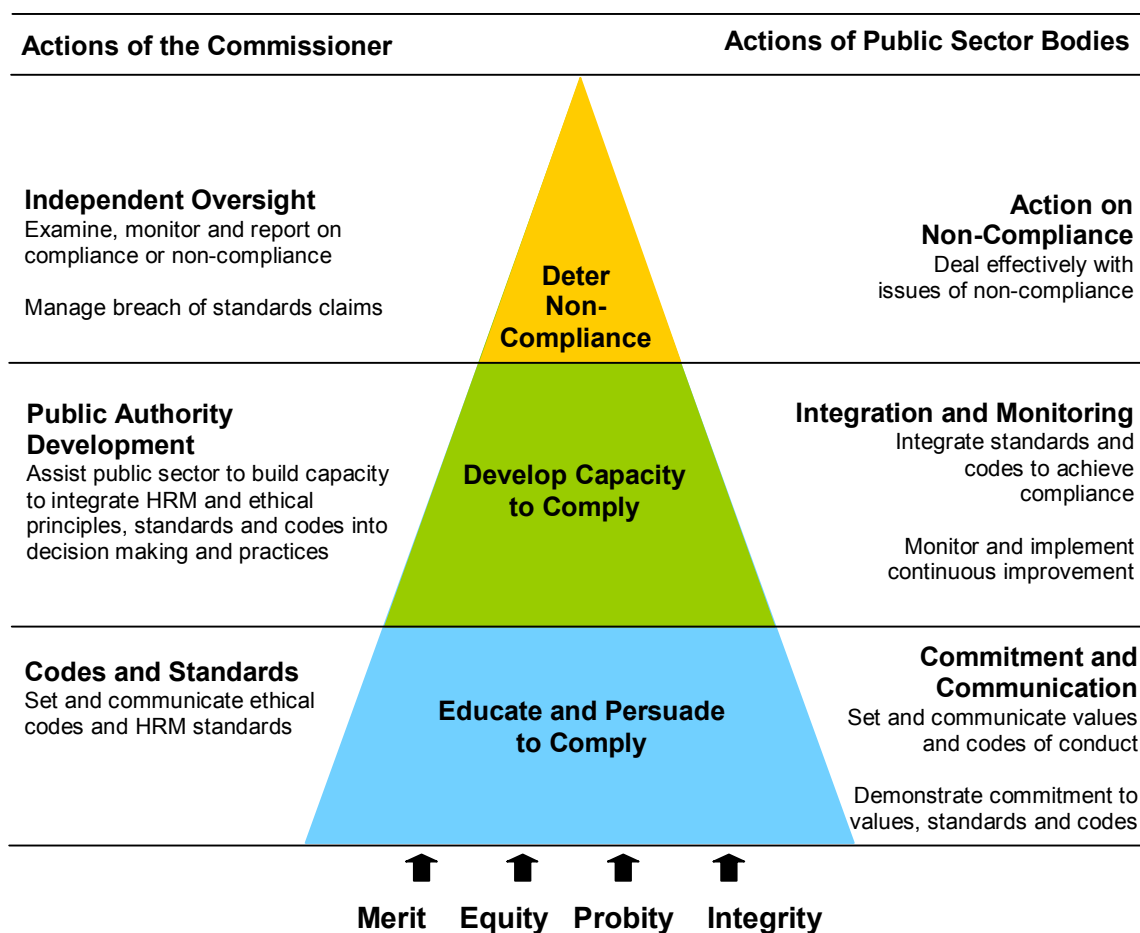
- **Human Resource Management** – covering HRM principles and Standards; and
- **Ethical Conduct** – covering ethical principles and codes.

To assist the Commissioner to fulfil the compliance monitoring function, a compliance framework has been developed. 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 three key elements of the compliance framework are:

- **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.

## Compliance Framework



## Monitoring Strategies

The Commissioner uses a number of strategies to provide an independent evaluation of the extent of compliance and non-compliance. Reliance upon a combination of broad-based measures and in-depth examinations of selected samples ensures that the assessment of compliance is as effective as possible. 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.

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

### ***Limitations of Monitoring Strategies***

As with any monitoring, measurement, and/or review process, some limitations will always exist. One of the major limitations is the fact that no guarantee can be given about the validity or reliability of information received from agencies. As judgement and perceptions are integral to the work undertaken in agency-specific and thematic reviews, most information is indicative and persuasive, rather than proof of the extent of compliance or non-compliance.

Therefore, in order to minimise these limitations, the Commissioner does not rely on just one method of monitoring. Instead, a combination of broad-based measures and in-depth examinations of selected samples is used to ensure that information is gathered from as wide a field as possible.

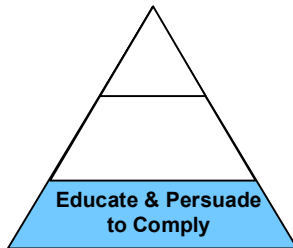
### ***Working with Agencies***

Needless to say, cooperation and commitment of public sector agencies and employees is important if the Commissioner's monitoring role is to be effective. It is for this reason that the Commissioner works cooperatively and collaboratively with agencies to ensure that the monitoring process is undertaken in such a way that agencies are more committed to complying with their responsibilities under the PSM Act.

## 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.

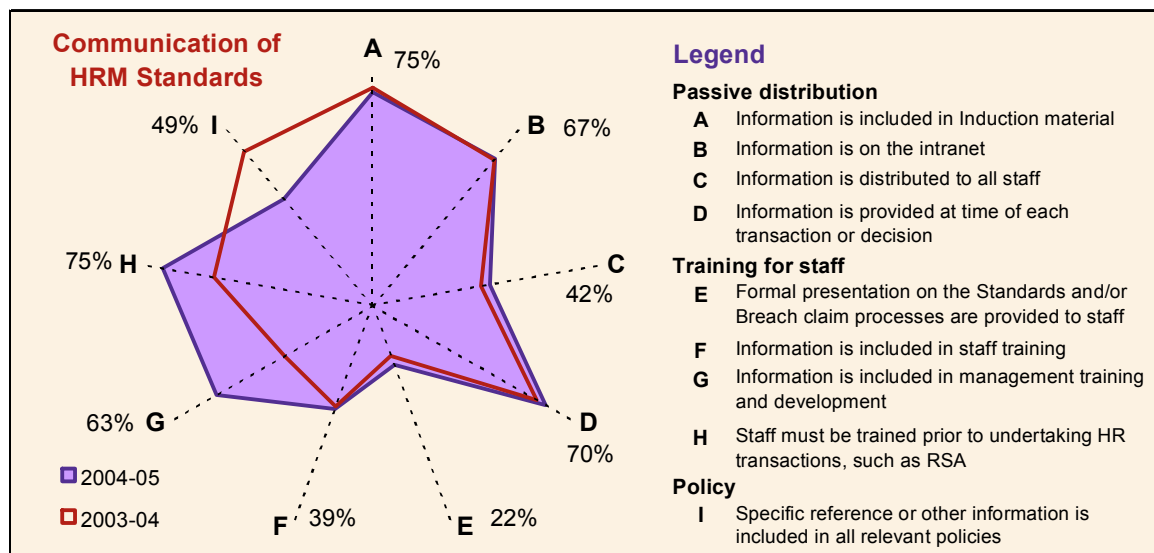


#### Commitment and Communication

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

#### Agency Self-reporting

In their annual report to the OPSSC, agencies (N = 101) were asked to indicate the methods used to ensure employee awareness of the Human Resource Management Standards and how to lodge a breach of Standard claim.

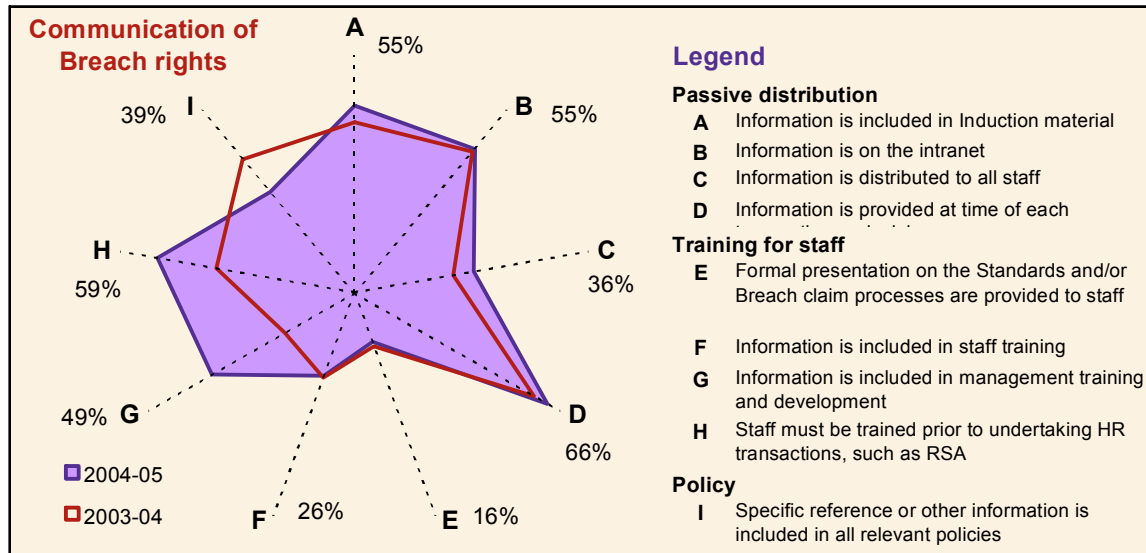


The above chart illustrates that agencies have consistently used the distribution of information through induction, intranet, and at each transaction, and have included information at formal presentations and staff training over the course of 2004-05 as a means of ensuring employee awareness of the HR Standards.

It can be seen that the percentage of agencies including information in their management training has increased to 63% in 2004-05 from 36% in 2003-04. Similarly, the percentage of agencies training staff prior to undertaking HR transactions has also increased in 2004-05 to 75% from 56% in 2003-04. In both these cases, the increased percentage of agencies using these methods illustrates an increasing willingness of agencies to invest time and resources to actively train staff and management.

It appears that the percentage of agencies that used policies has decreased from 2004-05 (49%) when compared to 2003-04 (70%). The reasons for this apparent decline are unclear. It is important that agencies include references to the HRM Standards in their

policies to ensure that their practices support compliance with the Standards and rights to lodge a breach of Standard claim if appropriate.



In terms of how agencies have communicated information about breach rights, the above chart illustrates that distribution of information and the inclusion of presentations and staff training is similar to last year. As with the Standards, there has been an increase in the use of management and staff training prior to undertaking HR transactions. Agencies were less likely to report using communication about the breach claim rights than they were about the Standards. For example, only 55% mentioned including breach claim rights in their induction, compared to 75% including information about the Standards.

Agencies continue to use distribution of information to raise awareness about the Standards and breach claim rights, but are now using staff/management training and training prior to undertaking HR transactions to a greater degree. Reliance on the combination of general distribution methods, followed by consolidating the information in staff training, is part of a sound communication strategy.

In general, the increased use by agencies of management and staff training to communicate information is a sound strategy. The better trained and aware staff and management are in terms of breach rights, the more likely they will be to achieve compliance with the Standards and provide employees with appropriate avenues to raise concerns and obtain redress (where applicable).

The use of policy to promote breach rights seems to have decreased. Given recent changes to the regulations, it will be important for agencies to update policies as a priority during 2005-06.

### ***Independent Oversight***

In the surveys of employee perceptions, two questions related to employee awareness of the HRM Standards and the courses of action available to staff if they felt aggrieved by a decision. Figures for the results from climate surveys conducted in 2004-05 are available in Appendix 5.

### **Awareness of the HRM Standards**

Employee survey results indicate that while most employees were aware of the HRM Standards in 2004-05 (81%), there is still a relatively large minority (19%) that were not. When compared to the long term average of 74%, the increase is encouraging and

indicates that agencies have improved their communication of the Standards. However, almost one out of every five respondents to the survey was not aware of the relevant HRM Standard. This is significant and indicates that agencies need to continue to improve their communication and awareness strategies.

### **Awareness of Avenues to Raise Concerns**

Employee survey results for this question indicate that most respondents do not know what action to take if they disagree with a selection decision (43% in 2004-05). This indicates that approximately three out of every five employees are not aware of the courses of action they can take and shows a low level of awareness about employee rights to lodge a breach claim about recruitment.

The low awareness levels about action available if employees disagreed with the selection decision is consistent with information on lack of communication about breach rights in some agencies. This view is confirmed by information from employee contacts with the Office and from employees making breach of Standard claims and enquiries. The need clearly exists for agencies to continue to provide better information to employees about breaches of any of the Standards.

It is envisaged that with the inception of the new Breach Regulations on 1 September 2005, employees would have a greater awareness of their breach rights. Whether this increased awareness would necessarily translate into a greater willingness to exercise those breach rights, cannot be conclusively determined. However, the OPSSC has conducted an extensive implementation process to ensure that agencies are aware of the new regulations, with a multi-pronged strategy focusing on Chief Executive Officers, Senior HR practitioners and individual employees to ensure that all are made aware of their breach rights and responsibilities. Agencies will also be asked to ensure that their policies are updated to reflect the new regulations and that their intranets have direct links to the OPSSC website to ensure that employees have immediate access to relevant information.



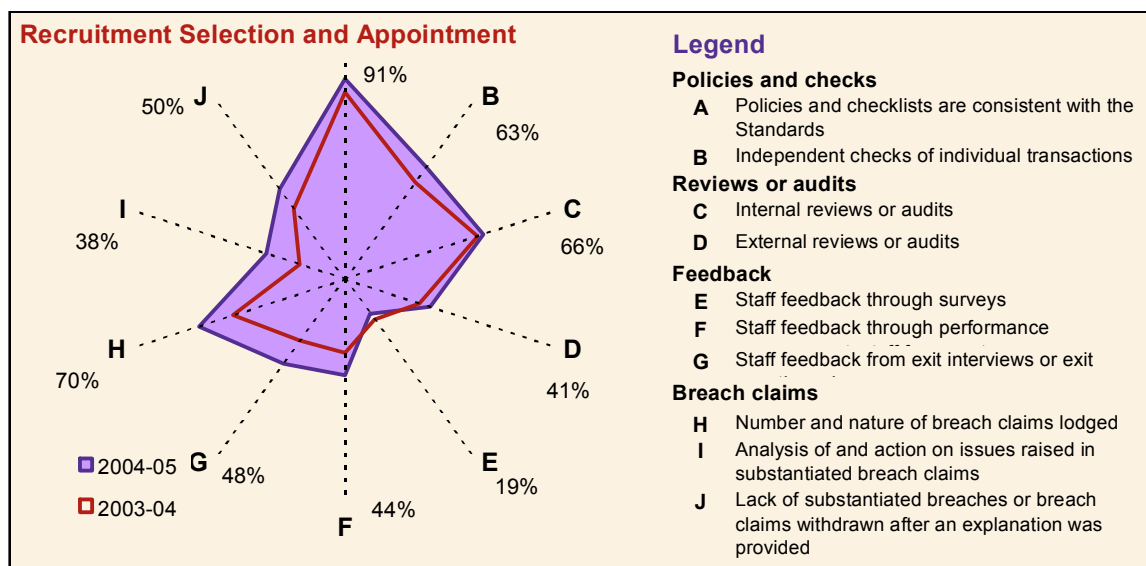
## HRM Integration and Monitoring

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

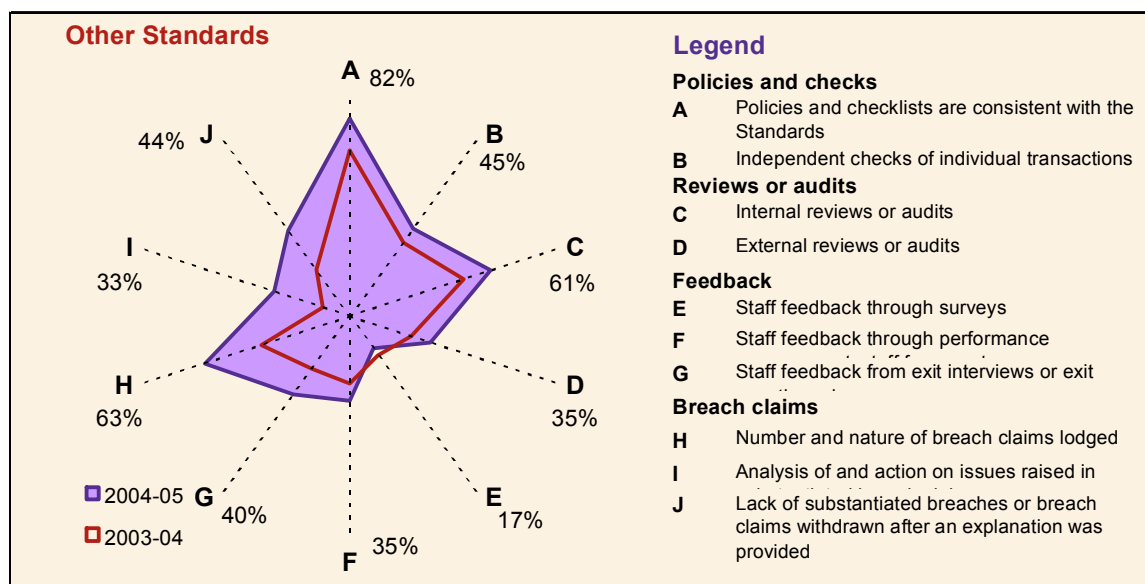


### Agency Self-reporting

In their yearly report, agencies were asked 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.



The above chart illustrates that agencies have consistently increased their usage of all methods to assess compliance with the RSA Standards, with the exception of “Staff Feedback through Surveys” which decreased from 23% in 2003-04 to 19% in 2004-05. The fact that agencies have increased their use of other methods is a positive sign, particularly given that more breach claims are lodged against the RSA Standard than any of the other Standards. It is therefore appropriate that agencies use a wide range of methods to assess compliance with this Standard in order to minimise the potential for areas of non-compliance.



As can be seen from the chart above, agencies have consistently increased their usage of methods to assess compliance with the Other HRM Standards in 2004-05, in comparison to 2003-04. The only exception to this is “Staff feedback through surveys”, which decreased in 2004-05 to 17% when compared to 2003-04 (20%).

The fact that all other methods experienced an increase in usage by agencies is a positive sign that agencies are devoting more time and resources to assess compliance with the Other HRM Standards. The fact that the use of most methods for assessing compliance with the RSA and Other Standards has increased is positive and is preferable than the over-reliance of one or a small number of methods.

It is also important to note that as the frequency of grievances and acting transactions are considerably less than those of Recruitment, Selection and Appointment, agencies are less likely to focus attention on relevant compliance issues. Failure by agencies to adequately focus attention on these issues could be counterproductive. Agencies are advised to introduce more internal strategies to address these issues in the future.

### Agency Reports on Extent of Compliance with the HRM Standards

Agencies were asked to summarise in writing, the extent of their compliance with the Public Sector Standards in HRM in 2004-2005. Agencies commonly reported the following as indicators of the extent of their compliance:

- No breach claims were reported;
- Agency conducts internal audit of compliance with Standards (eg reviews of decisions, staff surveys);
- Staff have access to their Code of Conduct and procedures for breach claims are readily available (mostly on the intranet);
- A claim occurred, but no breach was determined;
- Simply stating that “compliance was achieved”; and
- External audits of procedures conducted.

Three agencies identified that they used more than 6 different types of methods to assess compliance with all HRM Standards, breach rights, codes of conduct, etc. Worthy of note is that few agencies mentioned that they undertook independent assessment of compliance, audit reviews, transactions, or quality control activities. The majority of agencies relied on

‘no breach claims being reported’ as their primary indicator of assessing compliance with the HRM Standards. Whilst the existence of such claims is a tangible indicator of alleged compliance issues, caution should be exercised by agencies who place a high reliance on such a method as a sole indicator of compliance issues.

The absence of breach claims lodged by staff should be viewed in conjunction with a broader range of other methods, and should *not* be seen as the most prevalent method of assessing compliance.

## **Independent Oversight**

### ***Fair Application of HRM Standards***

In the employee perception survey there are several questions relating to merit and fair application of the different HRM Standards. Survey responses are given for the current year and compared to responses for the previous five year period. Full climate survey results are available in Appendix 5.

### **Standards in Human Resource Management**

Overall, employee survey responses in 2004-05 are similar to the previous five years, with 49% of respondents agreeing that selection processes are fair and only 29% who considered that selection criteria are biased towards the work area.

While it is natural that people who do not get a job they have applied for will feel disgruntled or that the decision is not fair, the fact that approximately one out of every four respondents disagreed that recruitment processes were fair and unbiased is still a cause for concern. Agencies need to explore the reasons for these perceptions and take action to address these issues.

Perceptions regarding fairness of transfer decisions remain similar to previous years with 27% agreeing that such decisions are decided upon fairly. A relatively high percentage of respondents either did not know, or chose not to answer this question. This may be due to a number of respondents not being subject to transfers and were unable to comment. Of those who expressed an opinion, a similar number agreed and disagreed that transfer decisions were fair.

In the area of training, there was a slight decrease in respondents agreeing that sufficient training opportunities are available. Training is directly relevant to a workforce’s capacity to meet its objectives. Therefore agencies may benefit from investigating and implementing strategies to address these concerns.

It is encouraging that the percentage of respondents who agreed that their performance is fairly assessed has increased in the last year. This is a positive indicator of the effectiveness of agencies’ performance management systems and the willingness and capacity of managers to conduct fair and objective performance assessment sessions.

The Commissioner’s report on performance management released in October 2004 may have contributed to this outcome.

Consistent with previous years, employees have mixed perceptions about the fairness of HRM decisions. This variation of perception occurs *within* each agency and appears to be more a reflection of differing experiences of individual respondents, rather than differences *between* agencies. Analysis of perceptions of employees in divisions within agencies can show considerable difference and indicates that leadership or culture may be a factor.

Agencies should explore the reasons for varying perceptions and take action where appropriate.

### ***Merit and Equity Outcomes***

The operation of merit and equity within human resource management practices in the public sector can be assessed, to a certain degree by the profile of the workforce of public authorities and whether it 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 (salary scales) of the workforce, measured by the Equity Index<sup>1</sup>.

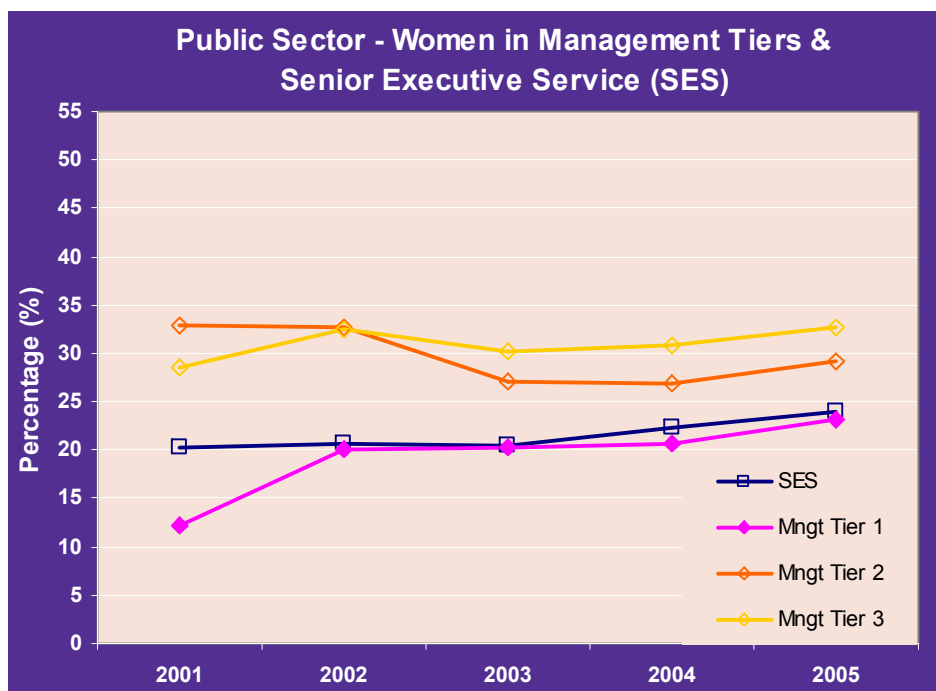
The table below shows that there has been a continued increase in the representation of women in the Public Sector in 2004-05. The Equity Index for women in the Public Sector increased from 59 in 2003-04 to 63 in 2004-05.

Public Sector	Representation (FTEs)			Distribution (Equity Index)		
	% 2003	% 2004	% 2005	EI 2003	EI 2004	EI 2005
Women	58.2	58.5	59.1	58	59	63
Culturally Diverse Backgrounds	6.9	7.1	8.0	132	116	105
Indigenous Australians	2.4	2.4	2.5	30	33	35
People with Disabilities	1.4	1.4	1.7	81	84	79

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

<sup>1</sup> 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.

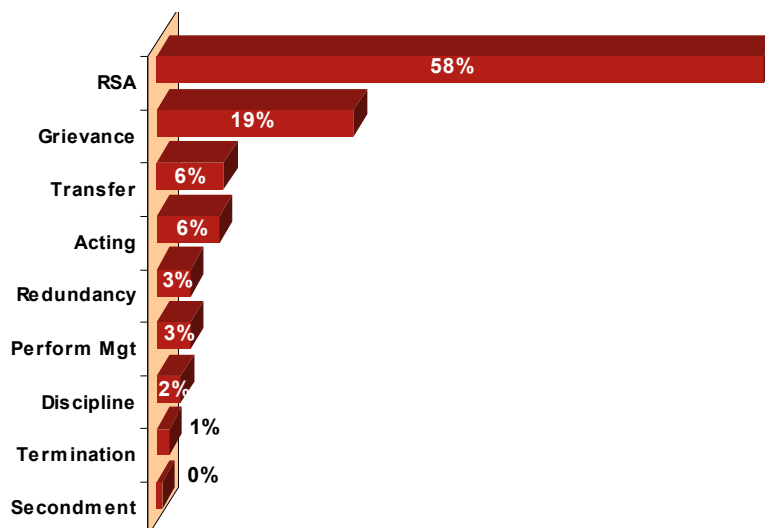
## Management Tiers – Public Sector 2001-2005



The number of women in Tier 1 management positions increased from 24 positions in 2003-04 to 27 positions in 2004-05. In 2004-05, the number of women in Tier 2 and Tier 3 management positions did not increase significantly and they still fall well short of representative levels in the community. It is of significant concern that women remain well under represented at all Tiers compared to representation of the group in the Public Sector workforce.

### General Enquiries with the OPSSC

Public employees, Members of Parliament and the public make contact with the OPSSC to raise issues and concerns. During 2004-05 there were 930 human resource management issues raised in this way (with some people raising more than one issue). Of these, 600 related to the HRM Standards and 228 to the regulations for handling breach of Standards claims. The main issues raised about a specific HRM standard were in the following proportions:



Common issues raised during 2004-05 are shown in the following table and are similar to the main issues raised in the previous year.

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

Recruitment, selection and appointment and grievances continue to be the major focus of enquiries to the Office. This is consistent with previous years. Together, these areas account for approximately 80% of issues raised. The majority of enquiries related to specific incidences where people sought advice about a recruitment or grievance process in which they were involved.

### **Matters of Referral**

In 2004-05 OPSSC handled 31 matters, including 21 matters received this year, regarding alleged non compliance with HRM standards and ethical codes in agencies. Approximately three quarters of these related to human resource management issues.

The Office does not have a legislated complaint taking and resolution function other than handling claims of a breach of HRM Standards, as provided for in the *Public Sector Management (Breaches of Public Sector Standards Regulations) 2005*. However, matters referred to the office about non compliance with the HRM principles and standards are used for the purposes of monitoring compliance across the sector and for selecting agencies for review.

Human resource management matters referred to the Office covered all standards, but were noticeably higher in the areas of recruitment and grievance resolution. Common issues raised about grievance resolution are consistent with activity observed by the OPSSC in breach of Standard claims. Key issues raised include:

- Failure to adequately investigate employee concerns particularly when grievances involve allegations against other employees or managers, or where they involve multiple issues;
- Lack of decision making or conclusion of grievances;
- Delays in grievance/complaint processes; and
- A lack of rigour in the process of investigating all or some of the concerns in the grievance.

Many of the issues will be addressed by the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*.

The new Breach of Standards Regulations, which became effective on 1 September 2005, require agencies to inform employees of decisions arising from grievances and of their

rights to lodge a breach of Standard claim against grievance decisions. They also provide for a conciliation process, which should assist in providing relief while supporting a positive relationship between the employee and the agency. This may mean that employees are more willing to raise issues in the future. Accordingly, it is expected that employees will increasingly seek and obtain redress through the breach claim process. This may result in an increase in the number of breach claims made about the Grievance Resolution Standard in 2005-06.

In addition to improving the ability for individuals to obtain individual redress, the OPSSC will conduct a sector wide review on grievance resolution for 2005-06. This will examine the extent to which selected agencies are complying with the Grievance Resolution Standard.

## **Reviews and Inquiries**

During the year, the Office completed several agency reviews or inquiries that allowed a more in depth consideration of the extent of compliance with HRM principles and Standards in these agencies. Follow up of reviews or inquiries reported last year also occurred to enable assessment of progress in implementing the recommendations and improving compliance.

### ***Main Roads Western Australia***

A review was conducted into the recruitment and selection practices within Main Roads. This followed the receipt of 10 claims of a breach of the Recruitment, Selection and Appointment Standard (RSA Standard) between 1 July 2001 and 6 September 2004, one of which was found to be a breach of the Standard. Six claims received were made by the same individual. The claims covered a range of issues including that there was a lack of consideration given to overseas qualifications and experience in promotions for technical positions. The review was supported by the Commissioner for Main Roads, who had requested a review of compliance with the Recruitment Standard. A report was submitted to the Minister for Planning and Infrastructure on 11 October 2005.

The review included an examination of 51 randomly selected recruitment actions, primarily in technical areas. Because access to acting opportunities prior to recruitment can be perceived as advantaging people in the recruitment process, compliance with the Acting Standard was also examined for twenty acting arrangements that preceded the recruitment action.

### **Recruitment**

The review showed that Main Roads procedural framework and transactions demonstrated a high level of compliance with the RSA Standard. In addition, examination of the effect of overseas qualifications and experience on promotion in technical positions, showed that five out of nine successful applicants for these positions had experience from a range of countries. These included Sri Lanka, India, Afghanistan, Yugoslavia and South Africa. The results indicate that people from culturally diverse backgrounds with overseas qualifications and experience were not disadvantaged when applying for higher level technical positions.

Some areas for improvement in recruitment processes were identified. Recommendations were made to simplify processes and to emphasise merit rather than compliance with detailed procedures. Better guidance for panels when identifying competencies used to assess selection criteria, management of external consultants and improving transparency through better documentation were also recommended.



### Acting prior to recruitment

It was noted that a number of recruitment processes were preceded by extended periods of acting, for which there was no evidence of a merit based assessment or the required redeployment clearances. A lack of transparency from insufficient documentation about acting decisions was also a concern. Recommendations were made for Main Roads acting policies and procedures to include the need for advertising opportunities for expressions of interest, assessments to be based on merit and equity and ensuring decisions are adequately documented.

The low level of compliance with the Acting Standard in Main Roads is consistent with findings about acting in other agencies. In addition, regular climate surveys conducted by the OPSSC show widespread employee perceptions across the sector of favouritism in the selection for higher duties, indicating that compliance with the Acting Standard is an issue in a wide range of agencies.

Main Roads has been proactive in addressing the issues and recommendations. OPSSC are currently assisting them to support their implementation of the recommendations and improve compliance.

### Department of Health

As a result of the review into the Department of Health (Royal Street Divisions) in 2003-04 a number of recommendations were made about the extent of compliance with the Public Sector Standards, the ethical codes and the ethical principles. The report was tabled in Parliament in August 2004.

This year, advice was sought from the Department on its progress, as at August 2005, in implementing the review's recommendations and an assessment of progress, based on this advice, is detailed below.

The OPSSC has established a program to continue to monitor and report on the Department's progress in implementing the recommendations.

OPSSC Recommendations	Assessment of Progress based on the Department's Advice
<b>Recruitment, Selection and Appointment Standard</b>	<p><b>Substantial progress.</b></p> <p><i>Comment</i></p> <p>Nine JDFs for positions in the Office of Aboriginal Health have been updated to spell out the nature of the skills required in working with Indigenous people and communities. These JDFs have been used in recent recruitment exercises.</p>
<p>To assist continued progress in the recruitment of Indigenous people in Aboriginal Health and achieve the stated aim of a majority of Indigenous staff in the area, Health should either:</p> <ul style="list-style-type: none"> <li>• Review the use of Aboriginality as a genuine occupational qualification as allowed for under the Equal Opportunity Act (under Section 50D); or</li> <li>• More clearly spell out the nature of the intercultural, communication and negotiation skills required in the criteria for positions that work with, and service Indigenous people and communities.</li> </ul>	



<b>Temporary Deployment (Acting) Standard</b>	<p><b>Substantial progress.</b></p> <p><i>Comment</i></p> <p>Policies have been updated to include requirements for calling for expressions of interest and higher duties allowances are checked by HR and senior management. These monitoring processes will need to be accommodated when the Health Corporate Network becomes operational.</p>
<b>Grievance Resolution Standard</b>	<p><b>Substantial progress in updating policies and procedures.</b></p> <p><b>Unacceptable progress in enhancing skills.</b></p> <p><i>Comment</i></p> <p>The Department's response indicates a training plan has been developed but not implemented.</p>
<b>Performance Management</b>	<p><b>Unacceptable progress.</b></p> <p><i>Comment</i></p> <p>A Performance Management Implementation proposal was developed in August 2005 and significant work undertaken by the Director General to develop processes for corporate executives. However, there has been no roll out for all employees. In addition there is not a comprehensive monitoring and reporting system in place and Royal Street cannot determine the extent to which performance management is occurring.</p> <p><b>Urgent action is required.</b></p>

<b>Ethical Codes</b>	
<p>The Department of Health should develop and implement a comprehensive communication plan to inform employees of:</p> <ul style="list-style-type: none"> <li>• procedures to lodge a grievance, a public interest disclosure, and a breach of standard claim including which applies in a range of circumstances</li> <li>• the need to utilize correct procedures to ensure their compliance with the Public Sector Management Act and the Public Interest Disclosure Act.</li> <li>• the internal systems it has in place to ensure effective organisational responses to grievances, public interest disclosures and breach of standard claims, including protection from victimisation and/or reprisals.</li> </ul>	<p><b>Limited progress.</b></p> <p><i>Comment</i></p> <p>To date, the development of an electronic induction tool has been the primary communication tool. A draft training plan for grievance management and ethics has been developed but has not yet been approved.</p>
<b>Office of Aboriginal Health</b>	
<p>The Department of Health should build on recent improvements in the application of human resource management practices in Aboriginal Health to ensure they address any continuing concerns of employees about valuing diversity, respect and availability of appropriate mechanisms for raising issues. Both Indigenous and non-Indigenous employees should be consulted prior to deciding on the action to be taken.</p>	<p><b>Significant progress.</b></p> <p><i>Comment</i></p> <p>The Department reports that team building and bonding sessions and cultural awareness sessions have been conducted and there has been active recruitment and development of Indigenous employees (through secondments). No grievances have been reported.</p> <p>To verify the claims, the OPSSC will conduct a climate survey of employees in 2006.</p>

### Concerns about Performance Management and Processes to Raise Concerns

The follow-up with the Department provided only some evidence that performance management has been conducted or monitored over the last twelve months. In addition, the information provided by the Department does not indicate that they have implemented a comprehensive communication plan to inform employees of procedures to lodge a grievance, a public interest disclosure and a breach of standard claim including which applies in a range of circumstances.

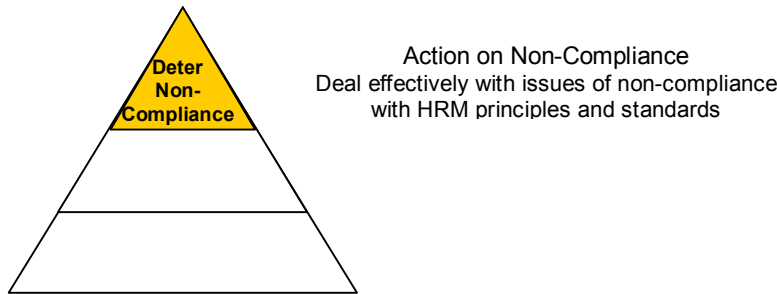
The original review arose from concerns raised with the Commissioner by a number of stakeholders. These included issues that were publicly raised by a Health Department employee in July 2003 about alleged breaches of human resource Standards and the treatment of staff in the Royal Street Divisions in general and the Office of Aboriginal Health

in particular. The Commissioner, in her review in 2004, concluded that there was an urgent need for improvement in performance management and stated that; *“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.*

The lack of progress as advised by the Department in improving and implementing performance management and access to grievance processes is particularly disturbing and exposes the Department to significant risks.

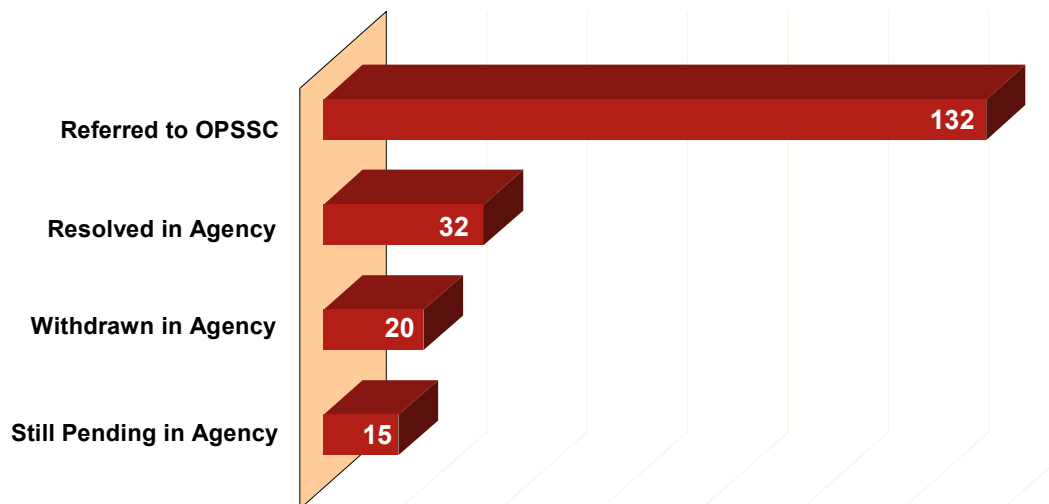
## Taking Action on HRM Non-Compliance

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 on the number of breach of standard claims made in the agencies and the outcome of those claims. Agencies received 199 breach of standard claims in 2004-05. The following chart shows the outcomes of the claims handled by agencies.



The number of breach claims lodged in agencies, particularly for Standards other than Recruitment, Selection and Appointment, is low, particularly when compared against the number of human resource transactions that occur within the public sector during any given year. Grievance Resolution transactions continue to be the second most prevalent form of breach claim lodged, being surpassed only by the recruitment, selection and appointment claims. The employee survey results and other information received by this Office indicate a significant concern that employees are unaware of what courses of action are open to them where there is a breach of standard.

### **Independent Oversight**

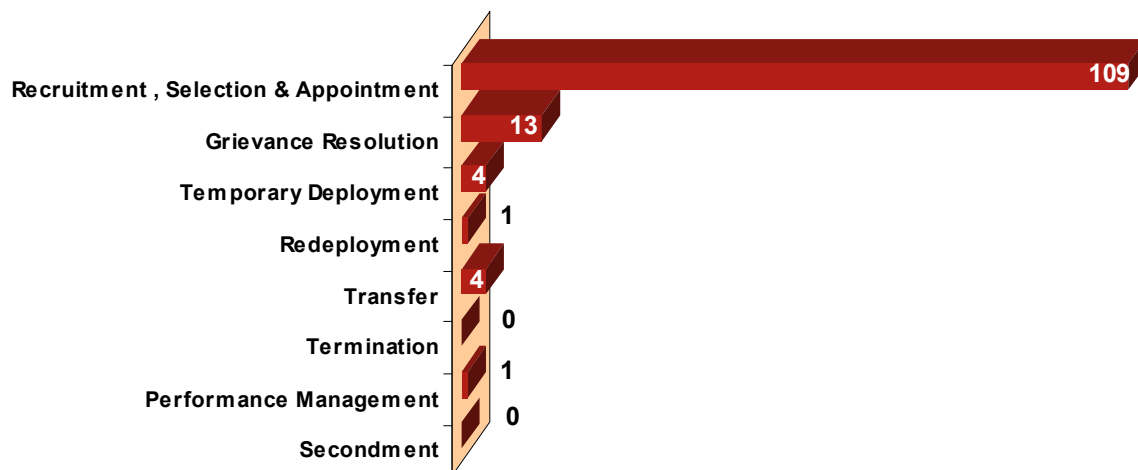
#### ***Employee Willingness to take Action if Aggrieved***

The employee survey includes questions that relate to the willingness of employees to take action if they are aggrieved about a job selection decision. Survey results indicate that 40% of respondents would not take action if they felt aggrieved by a selection decision, a slight increase from the previous years. The percentage of respondents that felt aggrieved by a HRM decision increased slightly to 22% and the number of people aggrieved that took action also increased slightly to 6% in 2004-05.

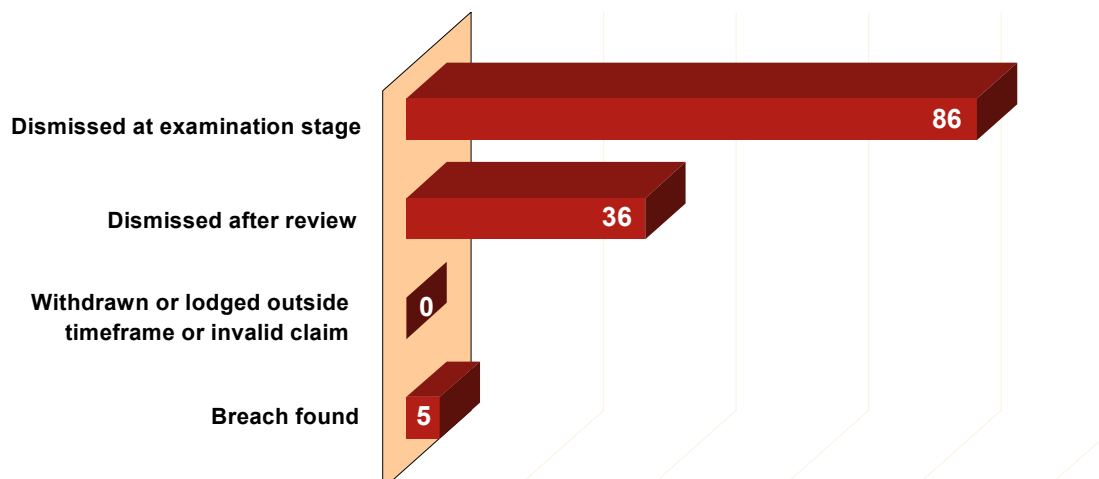
This indicates that, although most employees (60%) say they would take action if they were aggrieved, when it occurs most employees do not take action. Other survey responses indicate that employees may be reluctant to raise issues because of potential victimisation. Contacts with the office also indicate that people do not believe anything will happen as a result, or that there will be a negative impact on them, eg loss of career opportunities. Agencies need to ensure that their internal systems provide effective responses to grievances and breach claims, and provide for protection from adverse effects.

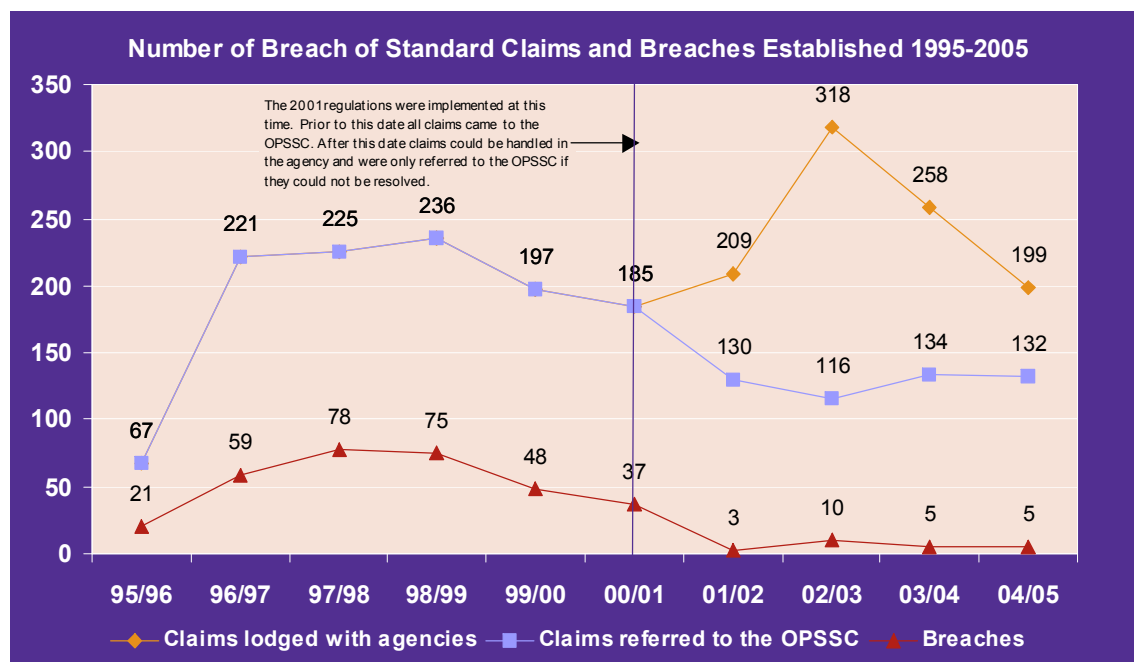
### ***Breach of Standard Claims***

During 2004-05, OPSSC handled 138 breach of Standard claims. Of these 132 were received during the year and six were carried over from 2003-04. Of the claims handled, 127 were finalised in 2004-05 with 11 claims pending. The majority of the 132 claims received during 2004-05 related to the Recruitment, Selection and Appointment Standard (i.e. 109 claims). This trend is consistent with previous years. This year there has been a notable increase in the number of claims forwarded to the OPSSC under the Grievance Resolution Standard, with 13 this year compared to 6 in 2003-04. The remaining spread of Standards claims were as listed in the chart below.



The following chart shows the outcome of the 127 claims finalised this year. One breach was found for the Recruitment, Selection and Appointment Standard, two breaches for the Acting Standard and two breaches for the Grievance Resolution Standard.





Common concerns raised by claimants and themes identified by OPSSC as risk areas for agencies include:

<b>Recruitment Selection and Appointment</b>	<ul style="list-style-type: none"> <li>• Selection panels over relying on limited selection information to reject candidates, irrespective of other selection information such as referee comments;</li> <li>• Selection processes compromised by relationships between panel members and applicants such as conflicts of interest or bias arising from existing grievances;</li> <li>• Perceptions that decisions to appoint people from established appointment pools did not match business requirements or comply with the principles of the Standard;</li> <li>• Increased risks relating to transparency and capability of review due to limited feedback provided to unsuccessful applicants. An example is the use of psychological profiling where feedback was not provided;</li> <li>• Administrative errors such as lost applications and inaccurate letters to applicants.</li> </ul>
<b>Grievance Resolution Standard</b>	<ul style="list-style-type: none"> <li>• Failure to articulate and address all issues contained in the grievance, particularly where the issues related to multiple jurisdictions.</li> <li>• Significant delays in handling grievances. This hampered resolution and as time passed, employees becoming increasingly frustrated.</li> <li>• Reluctance to take action where employees specifically identified managers as being the cause of the grievance. Whilst there were instances of confusion between whether the concerns were general staff conflict/management issues, some were clearly not handled effectively or addressed at all. These concerns often escalated as no decision was made about the grievance.</li> </ul>

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

The Recruitment, Selection and Appointment Standard remains a key area of focus for employees lodging breach claims, and this is consistent with previous years. There appears to be an increasing awareness of the right to lodge a breach claim relating to grievances. One area of risk is where the grievance includes multiple issues, particularly if they can be handled using a number of processes (such as different areas within an agency, or different external agencies). There is a risk that the grievance will be handled through one process, such as industrial provisions, and matters that cannot be handled through that process are not addressed.

There is also a risk where the agency continues to attempt to resolve the matter over a lengthy period and does not undertake an appropriate investigation and/or does not make a clear decision that is communicated to relevant employees. It is not a requirement of the Standard that the matter is resolved to the satisfaction of all parties. Rather, the Standard requires that a proper consideration of the facts and circumstances and that decisions are impartial and transparent.

Both of these issues result in an increased risk of a breach, due to the failure to properly consider all the relevant facts and circumstances of the matter or the failure to make a decision that is transparent and capable of review.

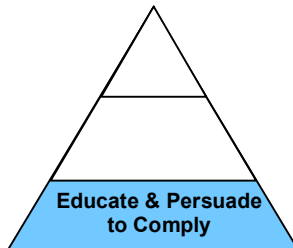
The new regulations now require notification of employees at the end of a grievance process and this may address some of these concerns.

Across the public sector, a number of the matters referred to the Office related to a failure by an agency to implement proposed actions following an agency review or breach claim. This is of significant concern and this report includes information about the extent to which recommendations and relief are implemented based on follow up by the Office. The Commissioner will continue in 2005-06 to follow-up on recommendations so that Parliament is informed of this on-going non-compliance.

## 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

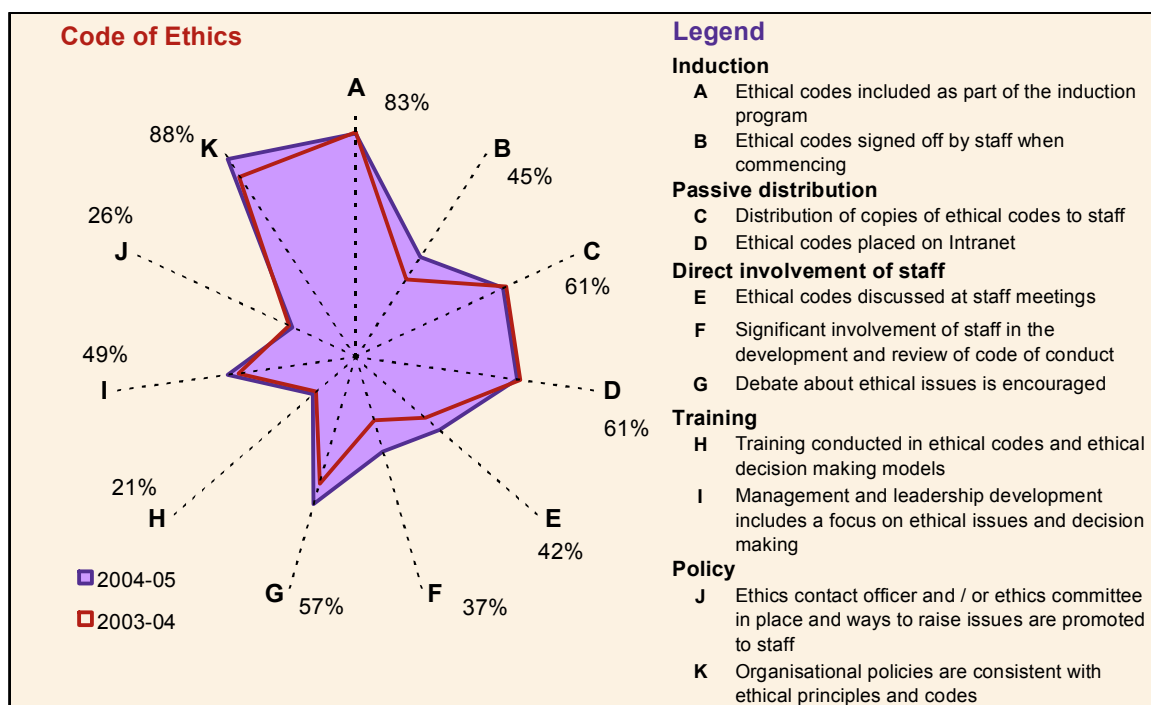
#### Developing Codes of Conduct

As part of their annual reporting requirements to this Office, agencies were asked to identify the methods they used to communicate their codes of conduct to staff and the dates of the last time they reviewed their code. Based upon the information provided, 96% of agencies reported that they had a code of conduct in place, of which, about 78% reported that they had reviewed their code since 2000. The willingness of agencies to review their codes of conduct reflects an ongoing commitment to ensure that their codes are up to date and relevant to their specific needs.

#### 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.

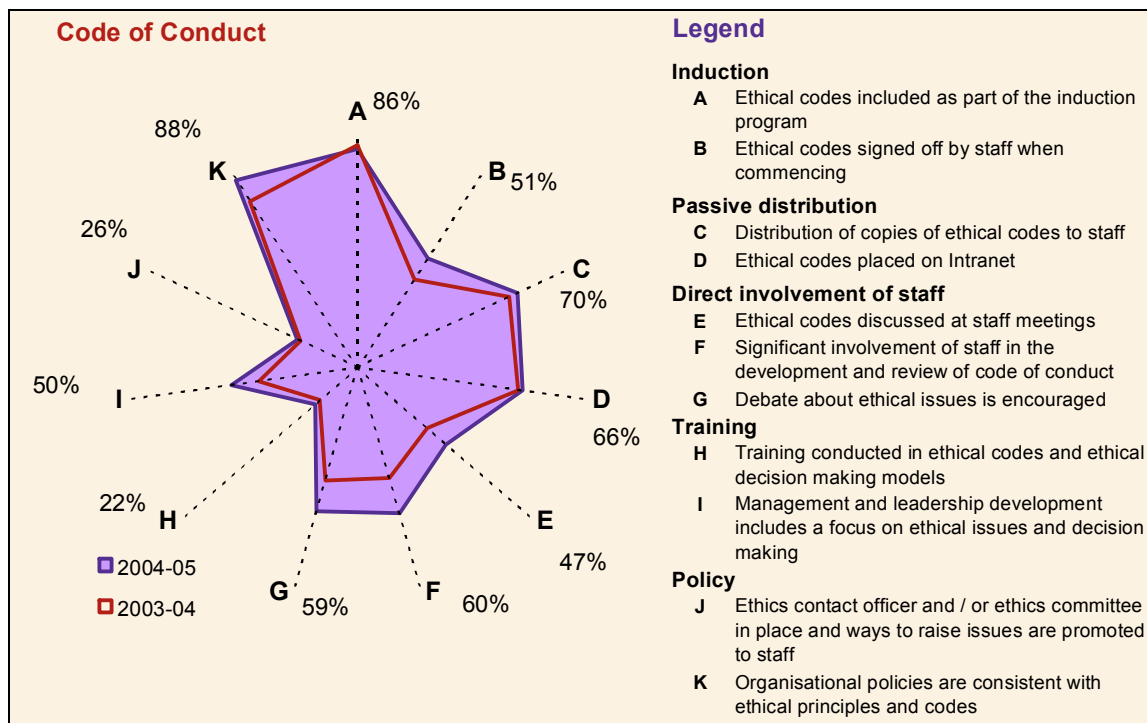
#### Methods Used to Communicate the Code of Ethics and Code of Conduct





The most common methods for communicating the Code of Ethics are induction and policies. However, agencies have increased their use of discussion of ethical codes at staff meetings and involvement of staff in the development and review of codes of conduct, as well as signing off that they have read and understood the ethical codes.

The increased reliance on these methods is a positive indicator of agencies being more active in their communication with staff and is a positive indicator that agencies are raising the awareness of conduct issues and ethical decision making processes.



The above chart illustrates that agencies have increased their use of all methods to communicate their codes of conduct during 2004-05 when compared to 2003-04. Of particular note are increases in methods that directly involve staff such as discussion about the code of conduct at staff meetings, and debate about ethical issues. The direct involvement of staff in the development, review and debate about the code of conduct can be seen as an effective strategy for encouraging personal ownership and awareness of ethical and professional conduct issues.

It is encouraging that agencies are increasing their use of a range of methods to communicate and promote the Code of Ethics and their code of conduct to employees. There is a greater emphasis on encouraging the direct involvement of staff in gaining awareness and willingness to debate ethical issues. These issues require a personal and professional commitment from staff to encourage a positive culture that supports integrity in official conduct.

Areas where agencies may be able to improve active communication about ethical conduct include the use of the Ethics Contact Officer or Ethics Committee's, and training in ethical decision making. These two methods are not commonly used at present. Most agencies now have senior staff involved in the Senior Integrity Officer Network, established by the OPSSC in 2004-05. This will facilitate the exchange of ideas and assistance in relation to public sector integrity issues, especially as this network is now linked with the Integrity Co-ordinating Group comprising the Commissioner for Public Sector Standards, the Auditor General, the Corruption and Crime Commissioner and the WA Ombudsman.

## **Independent Oversight**

### ***Awareness of the Ethical Codes***

While agency self-reporting provides insight into the development of their code of conduct and methods of communication, employee surveys conducted by the OPSSC provide an independent oversight of the extent of the achievement of this element of compliance (Refer to Appendix 5).

The level of awareness by public sector employees of the ethical codes and courses of action available to report unethical behaviour is positive, with 73% of respondents indicating they are aware of their agency's ethical guidelines. This highlights the importance of agencies embedding the Code of Ethics into their internal codes and policies. In addition, one quarter of respondents indicated that they are not aware of their own agency's ethical policy guidelines, and this is an area of risk for some agencies.

This year there has been an encouraging increase in the percentage of respondents who have read the Code of Ethics. However, it remains a concern that only 56% of the respondents answered "yes" when asked *Have you read the WA Public Sector Code of Ethics?* In spite of efforts by agencies to communicate their codes, it appears there is an ongoing need to continuously and proactively communicate the Code of Ethics and its relevance to the public sector as well as promoting the agency's codes of conduct.

In order to promote understanding of their codes of conduct, agencies may need to consider ongoing communication and active participation and debate with employees. Communication methods that are interactive, rather than relying on employees finding and reading the code of conduct, are likely to be more effective in increasing awareness amongst employees and in building a positive culture which supports ethical conduct.

### ***Ethical Leadership***

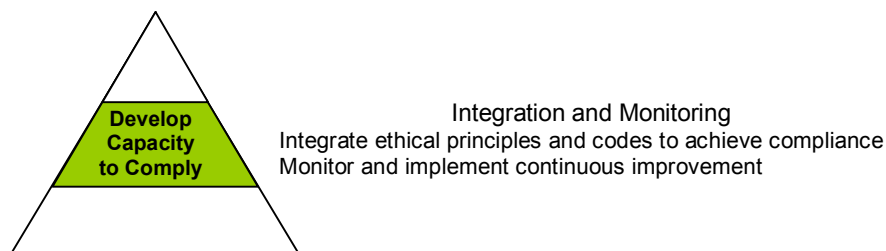
An important contributing factor to an agency's ability to build public trust and enable employees to better serve the public interest is a strong and demonstrable ethical base. Whilst all employees, including managerial staff, are contributors to building a strong ethical base, it is the managers who have a key role in making explicit the organisation's values and modeling the behaviour implicit in the ethical codes. In this sense, managers have greater scope and capacity to effect the cultural and systemic changes necessary to build public trust.

The degree to which managers are perceived by staff to successfully fulfill their ethical leadership role is shown by the responses to the employee survey questions relating to communicating and promoting integrity in official conduct (Appendix 5). Results from climate surveys show that respondents' perceptions about ethical leadership have improved this year, with 62% of respondents agreeing that management leads by example in ethical behaviour and 52% agreeing that management monitors ethical conduct. However, approximately two out of every five respondents still disagreed that management lead by example and nearly half of respondents thought that management did not monitor ethical conduct. Overall, there has been an improvement in positive perceptions about managers leading by example in ethical behaviour and monitoring of ethical conduct. It is a positive sign that agencies are attempting to effectively communicate the importance and relevance of the ethical codes.

Research indicates that ethical leadership is a critical factor in achieving ethical conduct in an organisation. Improving perceptions about and confidence in ethical leadership needs to be a priority area for agencies and the inclusion of ethics components in leadership programs may assist in this area. This will be an area of focus for the OPSSC in 2005-06 in assistance and monitoring.

## Ethics Integration and Monitoring

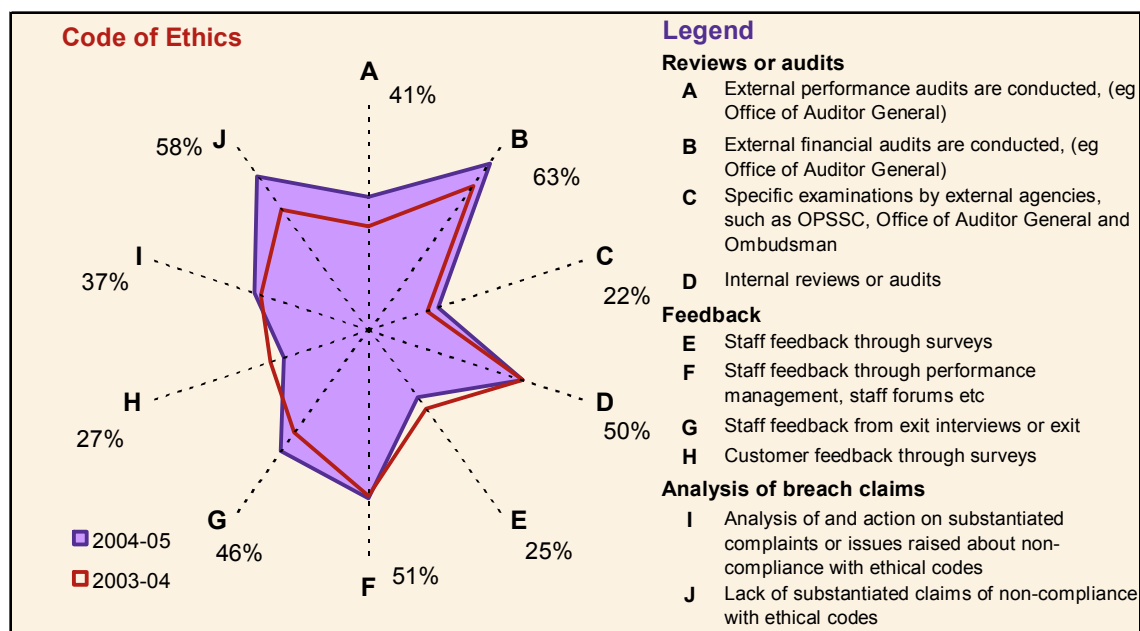
This section outlines the actions taken to develop the capacity to comply with the ethical principles and codes - the second element in the compliance framework.



### Agency Self-reporting

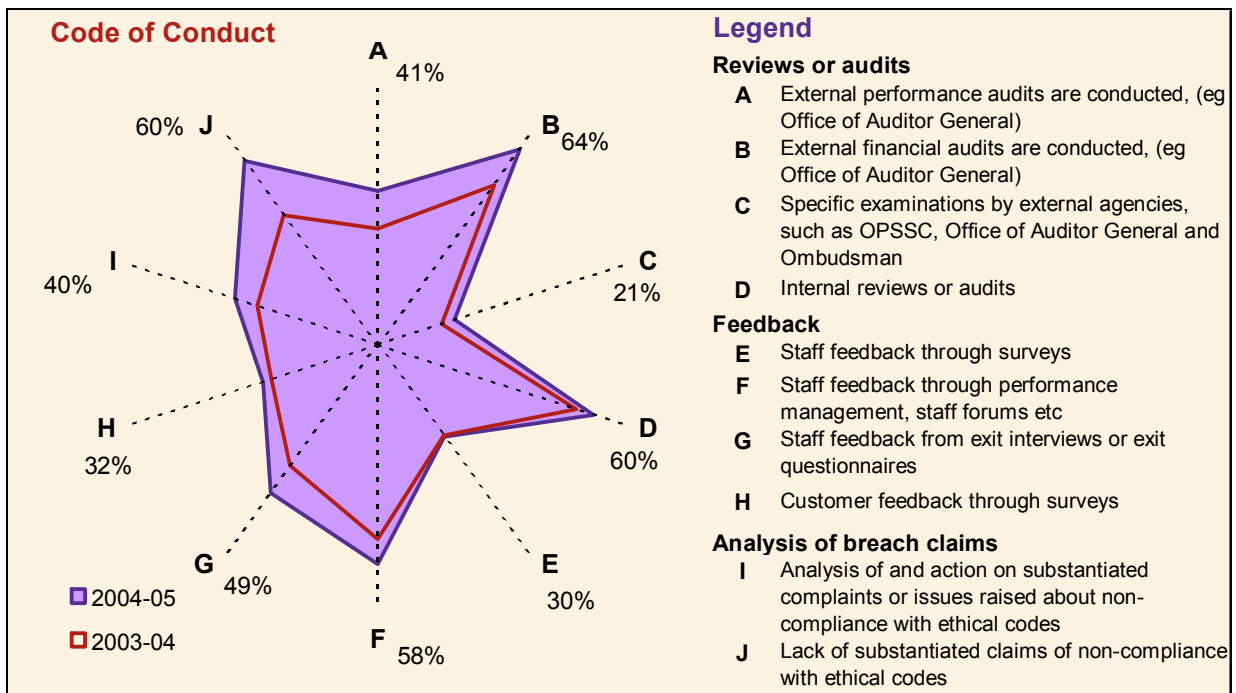
In their yearly report, agencies were asked this year to indicate what methods they used to assess compliance with ethical codes, including the Code of Ethics and the agency's codes of conduct.

### Methods Used to Assess Compliance



The above chart shows that agencies are increasingly using external reviews and audits as means of assessing compliance, eg Office of Auditor General audits. There has also been an increased reliance on information received through exit interviews. Over half of agencies rely on lack of substantiated claims, but this is not sufficient in itself to assess compliance and agencies are encouraged to use a broader range of methods.

However, little use is made of staff and customer feedback through surveys, with only approximately a quarter of agencies using these methods. This means that they may not have access to important information; for example, staff may be more willing to convey compliance issues through an anonymous survey, or by raising them as general issues of concern at staff forums, rather than making a specific allegation. Agencies may wish to consider these methods as a means of getting broader based information to assess compliance issues.



The above chart illustrates that agencies are more likely to assess compliance and are using a wider range of methods this year. The majority of agencies (around 60%) are using external and internal audits or reviews to assess compliance with their codes of conduct.

Staff feedback through surveys is not widely used. As staff surveys generally offer an anonymous means for staff to communicate concerns, agencies may wish to consider using this method in the future. Greater reliance on staff surveys may be instrumental in gathering perceptions about issues and concerns of staff and allow agencies to address such perceptions as a means of improving compliance with the code of conduct.

Forty percent of agencies are using analysis of substantiated complaints and issues raised about non-compliance. Disciplinary action may be related to issues of non-compliance with their codes of conduct and a greater analysis of these issues may prove useful.

Agency reports indicate that assessment of compliance with the Code of Conduct and Code of Ethics is increasing and is using a wider range of methods. This is a positive indicator that agencies are devoting more attention to proactive compliance issues.

Greater use of staff and customer feedback surveys may support an improved assessment of compliance. The development of ethics scenario surveys, currently being developed by the OPSSC may assist agencies making greater use of this option.

A further source of information would be the analysis of issues associated with disciplinary action and the OPSSC is considering a sector-wide collation of this information for next year.

### **Agency Reports on Extent of Compliance with the Code of Ethics**

Agencies were also asked to summarise in writing, the extent of their compliance with the ethical codes in 2004-05. A broad analysis shows the common issues included in their written responses are:

- Number of reports of non-compliance;
- Policies distributed to staff/accessible via staff intranet;
- Code of conduct adopted formally in the agency;
- Code of conduct part of induction program; and
- Policies relating to the code of conduct regularly reviewed.

The majority of agencies relied on the number of reports of non compliance as their primary indicator of the extent of compliance with the ethical codes. While such claims can give an indication of areas of non compliance, caution should be exercised by agencies who place a high reliance on such a method as a sole indicator of the extent of compliance.

In describing the extent of their compliance with the ethical codes, few agencies mentioned the outcomes of their independent audits or reviews, or other quality control activities. This would allow a more informed-analysis and greater confidence in any claims of compliance.

### **Independent Oversight**

The OPSSC employee survey provides some insight into aspects of integrity in ethical decision-making and conduct within agencies. Questions in the survey relate to the three key principles in the Code of Ethics, justice, respect for persons and responsible care. Climate survey results are available in Appendix 5.

#### ***Justice (Impartiality)***

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

Increasing numbers of respondents agree that contracts within their agencies rarely or never result from favouritism. However, 14% consider that this occurs sometimes, often or always. The fact that this perception persists for some respondents indicates an ongoing need to ensure that processes are transparent as well as fair. In order to maintain high levels of integrity and public confidence it is important that contracts are always seen to be awarded fairly.

Whilst the majority of respondents do not consider that favourable or preferential treatment is given to relatives of staff, there is a substantial minority (30%) who consider that this occurs sometimes, often or always and this proportion has increased from the previous years.

These perceptions are of concern and may place agencies at considerable risk of a loss of public and staff confidence in their impartiality and fairness.

General perceptions are positive that inappropriate favourable treatment either never or rarely occurs. However, there needs to be a low tolerance of this behaviour and even a small percentage can be considered as unacceptable. For this reason, agencies should continue to maintain high levels of vigilance and integrity in this area and ensure that reasons for decisions are transparent so that staff and the public have confidence in the impartial use of power in the public sector.

### ***Justice (Equity)***

Employee survey questions also provide some insight into the extent to which people are not abused or discriminated against when looking at responses relating to men and women and people of different cultural backgrounds being equally welcomed and respected.

The degree to which respondents considered ethnic and cultural diversity is welcomed in the workplace increased to 80% in 2004-05 from 76% in 1999-04. This is encouraging and remains a positive indicator of the effectiveness of agencies' equal opportunity and diversity policies.

Similarly, the percentage of respondents that perceived that men and women are equally welcomed has increased to 82% in 2004-05. Such a result is also an indicator of the effectiveness of agencies equity and diversity policies.

Survey results indicate a high level of agreement that managers treat people with equal respect, regardless of their ethnic or cultural background (78%) or gender (76%). However, almost one in ten respondents disagree and this means that agencies can still do more to address this issue.

### ***Respect for Persons***

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

Overall, the majority of respondents perceive that they are treated with respect by managers (72%) and fellow employees (80%). This is a positive indication of the effectiveness of agencies' policies on appropriate treatment of staff.

One area in which agencies should take action is in addressing staff perceptions is about customers being given reasons for decisions. Whilst 62% of respondents indicate that this occurs often or always, a significant minority (21%) indicate that it only occurs sometimes, rarely or never. Agencies need to ensure that they investigate the reasons behind such perceptions and devote specific strategies to address the underlying causes.

### ***Responsible Care***

Employee survey questions related to serving the public interest provide insight into the application of the Responsible Care principle.

Respondent's perceptions of acceptance by staff of personal responsibility for their actions is similar to previous years (59%). Whilst this is generally positive, staff clearly perceive that sometimes this does not occur.

There are strong positive and improving perceptions about serving the public interest (79% of respondents agree) and the responsible care of public resources (75% of respondents agree). These results are encouraging and are an indicator that respondents perceive that their agencies serve the public interest.

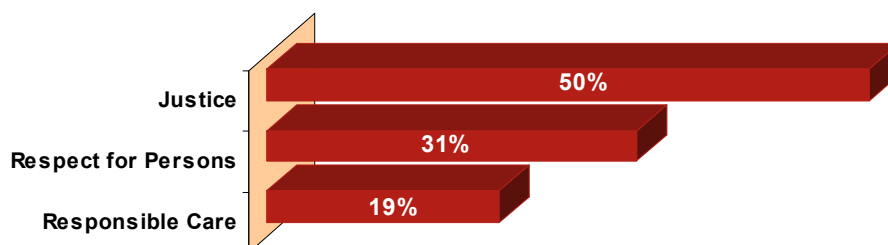
The positive perceptions about responsible care is an indicator of agencies' demonstrated commitment to serving the public interest and responsible resource management. They also indicate that the majority of staff believes that their agencies are acting with integrity in this regard.

With respect to staff taking personal responsibility for their actions, the results are not as positive. This may indicate a need for clearer accountability for actions within agencies, which is an important requirement for integrity and transparency in decision making.



## Contacts with the OPSSC

Public sector employees, Members of Parliament and the public make contact with the OPSSC for assistance about matters relating to the ethical codes. During 2004-05 there were 189 issues raised relating to the ethical codes (with some people raising more than one issue). Issues specifically relating to the Code of Ethics covered the following topics:



Principle	Main Issues Raised
<b>Justice</b>	<ul style="list-style-type: none"> <li>• Treat all people equally and fairly, recognising that fairness can involve treating people differently according to circumstances</li> <li>• Protect people's right to due process</li> <li>• Refrain from using any circumstance or information connected to official duties for personal gain or profit</li> <li>• Report fraud, corruption and maladministration</li> </ul>
<b>Respect for Persons</b>	<ul style="list-style-type: none"> <li>• Protect privacy and confidentiality</li> </ul>
<b>Responsible Care</b>	<ul style="list-style-type: none"> <li>• Minimise harm</li> </ul>

As was the case in previous years, there are fewer contacts with the OPSSC about the ethical codes than there are about human resource management issues. A number of ethics issues were also raised in issues relating to public interest disclosures and these are discussed in the separate Public Interest Disclosures report.

### **Matters of Referral**

In 2004-05 OPSSC handled 31 matters, including 21 matters received this year, regarding alleged non compliance with HRM standards and ethical codes in agencies. Approximately three quarters of these related to human resource management issues.

The Office does not have a legislated complaint taking and resolution function for general human resource and integrity issues other than handling claims of a breach of HRM Standards, as provided for in the *Public Sector Management (Breaches of Public Sector Standards Regulations) 2005*. However, matters referred to the office about non compliance with the integrity issues and ethical codes are used for the purposes of monitoring compliance across the sector and for selecting agencies for review.

Matters referred to the Office about ethical codes and the wider human resource management principles included:

- The denial of natural justice to affected employees particularly arising from performance management processes and the handling of related grievances.

- Issues associated with bullying and harassment, the reluctance of agencies to adequately address the issues and the use of the protracted grievance processes to deal employees' concerns with such issues.

These issues were common themes in four complex cases referred to the OPSSC. Specific inquiries were undertaken in three of these cases, the outcomes of which have been or will be reported to the relevant Minister and Parliament.

## **Reviews and Inquiries**

### ***Department of Justice – relating to procedural fairness in disciplinary investigations and suspensions***

As an outcome of a review undertaken in 2001, the Commissioner recommended that the Department of Justice review its Discipline policy and guidelines.

In a separate action in 2002, the Department commenced a preliminary inquiry to determine whether disciplinary action should be taken against the employee. Whilst this inquiry was underway, the employee was asked not to return to work and issues were raised about procedural fairness.

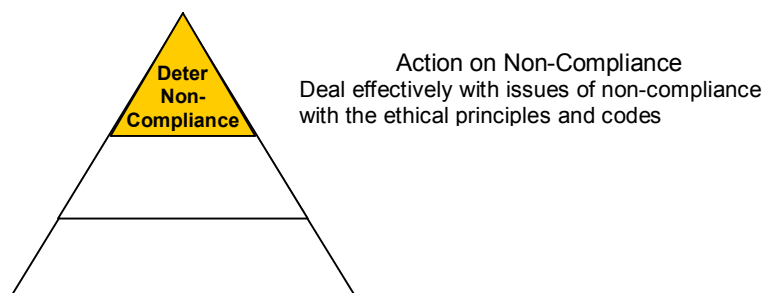
Given the parallels between the two matters, the OPSSC undertook an inquiry into the work done by the Department to improve its disciplinary processes; and its extent of compliance with the Discipline and Performance Management Standards and the relevant principles of human resource management in its dealings with the employee during preliminary inquiries.

There are several other inquiries in other agencies on related issues. The results will be detailed in a separate report to Parliament early in 2006.



## 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 complaints or issues relating to breaches of the ethical codes that were investigated either in the agency, or by an external body. The following chart indicates the numbers of matters investigated. Many of these are investigated as part of disciplinary proceedings or action.

**Number of matters investigated**  
**Complaints relating to non-compliance lodged in 2004-05**

Number of complaints investigated internally	366
Number of complaints investigated by an external agency	4
Total lodged in 2004-05	370

Usually, 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 and WorkSafe.

Contacts with the OPSSC indicate that mainly formal disciplinary matters relating to employee breaches of the ethical codes are reported by agencies. On top of these, there may be other matters raised and dealt with within an agency that are not being reported elsewhere.

It should also be noted that the figures relating to the 'number of complaints investigated internally', showed a substantial increase in 2004-2005 up to 366. The reason for this increase is attributed to one large agency that included disciplinary related cases in the figures they reported to the OPSSC. As a result of this significant change, the reporting requirements in 2005-06 will be amended to require all agencies to include disciplinary related cases in the information they provide to the OPSSC.

### **Reporting Non-Compliance**

The climate survey asks questions about employee willingness to take action to report wrongdoing. There has been an increase in awareness of and reporting of behaviour up from 12% in 1999-04 to 18% in 2004-05. An increase in the willingness to report unethical behaviour is encouraging, however, a significant number of respondents (15%) reported

that they observed unethical behaviour, which they did not report. Agencies should devote specific attention to investigating and understanding the underlying reasons for not-reporting such behaviour.

In 2004-05, a majority of survey respondents agreed that their agency encourages ethical behaviour. The percentage of respondents who indicated that they would feel protected from victimisation and harassment should they report unethical behaviour decreased from 49% in 1999-04 to 44% in 2004-05. This is a drop of 5% and if this trend continues the Commissioner will need to investigate and report to Parliament on what factors are contributing to the decline in confidence.

It is anticipated that the recent introduction of the Public Interest Disclosure Act in 2003, along with the establishment of the Corruption and Crime Commission, will assist employees to perceive a greater sense of trust and protection from victimisation, should they wish to report unethical behaviour.

## 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.

**Case studies** for each substantiated breach claim are presented following the tables.

### Premier, Minister for Public Sector Management; Water Resources; Federal Affairs

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC	Number of breach of HRM Standard claims substantiated
Department of the Premier and Cabinet	2005	2	0
Office of the Public Sector Standards Commissioner	2005	0	-
Parliamentary Commissioner for Administrative Investigations (Ombudsman)	2001	0	-

### Deputy Premier, Treasurer; Minister for Government Enterprises; Minister Assisting the Minister for Public Sector Management

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department of Treasury and Finance	2004	0	-
Economic Regulator Authority	2004	0	-
Government Employees Superannuation Board	2005	0	-
Insurance Commission of Western Australia	2003	0	-
Lotteries Commission of Western Australia	1997	0	-
Office of Auditor General	2005	0	-
State Supply Commission	2005	0	-

**Minister for Agriculture and Forestry; the Midwest and Wheatbelt**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department of Agriculture	2002	0	-
Western Australian Egg Marketing Board	1998	0	-
Forest Products Commission	2001	0	-
Mid West Development Commission	2002	0	-
Perth Market Authority	2000	0	-
Potato Marketing Corporation of Western Australia (Western Potatoes)	2005	0	-
Veterinary Surgeons Board	2004	0	-
Western Australian Meat Industry Authority	2005	0	-
Wheatbelt Development Commission	2000	0	-

**Minister for Consumer and Employment Protection; Indigenous Affairs; Minister Assisting the Minister for Water Resources**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Builders and Painters Registration Board of WA	2005	0	-
Department for the Registrar Western Australian Industrial Relations Commission	1997	0	-
Department of Consumer and Employment Protection	2005	2	0
Department of Indigenous Affairs	2002	0	-
Hairdressers Registration Board	No code	0	-
Worker's Compensation and Rehabilitation Commission (WorkCover Western Australia)	2005	0	-

**Attorney General; Minister for Health; Electoral Affairs**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Animal Resources Authority	2003	0	-
Corruption and Crime Commission	2004	2	0
Department of Health	1998	20	1
Department of Justice	2004	20	1
Equal Opportunity Commission	1997	0	-
Healthway (WA Health Promotion Foundation)	2005	0	-
Law Reform Commission	2001	0	-
Legal Aid Commission of Western Australia	2003	1	0
Nurses Board of Western Australia	2003	0	-
Office of Health Review	2003	0	-
Office of the Director of Public Prosecutions	2002	1	0
Western Australian Centre for Pathology and Medical Research (Pathcentre)	2005	1	0
Pharmaceutical Council of WA	2002	0	-
Western Australian Electoral Commission	2002	0	-
Western Australian Legal Practice Board	2005	0	-

**Minister for the Environment; Science**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Botanic Gardens and Parks Authority	Draft code	0	-
Bunbury Water Board	2005	0	-
Busselton Water Board	2005	0	-
Conservation Commission of Western Australia	2002	0	-
Department of Conservation & Land Management	2002	1	0
Department of Environment	2005	3	1
Zoological Parks Authority	2004	1	0

**Minister for Planning and Infrastructure**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department for Planning and Infrastructure	2005	5	0
East Perth Redevelopment Authority	2003	0	-
Eastern Goldfields Transport Board	No code	0	-
Main Roads Western Australia	2000	13	0
Midland Redevelopment Authority	2000	0	-
Public Transport Authority	2003	14	0
Western Australian Land Authority (LandCorp)	1998	0	-

**Minister for Education and Training**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Building and Construction Industry Training Fund	2001	0	-
Central TAFE	2005	5	1
Central West College of TAFE	2004	0	-
Challenger TAFE	2000	0	-
Country High School Hostels Authority	2004	0	-
Curriculum Council	2005	0	-
CY O'Connor College of TAFE	2004	0	-
Department of Education and Training	2004	22	1
Department of Education Services	2005	1	0
Great Southern TAFE	2003	0	-
Kimberley College of TAFE	2003	0	-
Pilbara TAFE	2004	0	-
South West Regional College of TAFE	2004	0	0
Swan TAFE	2005	2	0
West Coast College of TAFE	2005	0	-
Western Australian College of Teaching	2005	0	-

**Minister for Police and Emergency Services; Community Safety**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Fire and Emergency Services Authority of WA	2004	1	0
Western Australia Police Service	2003	1	0

**Minister for State Development; Energy**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department of Industry and Resources	2005	5	0
Minerals and Energy Research Institute of WA	1999	0	-
Office of Energy	2004	0	-

**Minister for Tourism; Racing and Gaming; Youth; Peel and the South West; Disability Services; Sport and Recreation; Citizenship and Multicultural Interests; Seniors**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Burswood Park Board	No code	0	-
Department of Racing, Gaming and Liquor	1999	0	-
Department of Sport and Recreation	2003	0	-
Disability Services Commission	1998	0	-
Drug and Alcohol Office	No code	0	-
Peel Development Commission	2004	0	-
Rottneest Island Authority	2002	0	-
South West Development Commission	2004	0	-
WA Sports Centre Trust (Challenge Stadium)	2004	0	-
Western Australian Tourism Commission	2003	0	-

### Minister for Community Development; Culture and the Arts; Women's Interests

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department for Community Development	2004	4	0
Department of Culture and the Arts	2002	3	0

### Minister for Housing and Works; Heritage; Minister Assisting the Minister for Planning and Infrastructure

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC	Number of breach of HRM Standard claims substantiated
Architects Board of Western Australia	No code	0	-
Department of Housing and Works	2002	2	0
Heritage Council of Western Australia	2003	0	-
National Trust of Australia (WA)	2004	0	-

### Minister for Local Government and Regional Development; Land Information; Goldfields-Esperance and Great Southern

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department of Land Information	2004	0	-
Department of Local Government and Regional Development	2004	0	-
Goldfields-Esperance Development Commission	2002	0	-
Great Southern Development Commission	2005	0	-
Metropolitan Cemeteries Board	2005	0	-



**Minister for Justice; Small Business**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Office of the Inspector of Custodial Services	2003	0	-
Small Business Development Corporation	2003	0	-

**Minister for Fisheries; the Kimberley, Pilbara and Gascoyne**

	Code of Conduct (Year of last review)	Number of breach of HRM Standard claims referred to OPSSC*	Number of breach of HRM Standard claims substantiated
Department of Fisheries	2003	1	0
Gascoyne Development Commission	2005	0	-
Kimberley Development Commission	2002	0	-
Pilbara Development Commission	2005	0	-

**Case studies*****Department of Health - Grievance Resolution Standard***

An employee lodged a grievance, which included concerns about her performance management and bullying. The employee lodged a claim against the Grievance Resolution Standard because she considered the Department did not adequately recognise or handle her grievances.

An independent review by OPSSC found that there was not a proper consideration of the facts and circumstances of the grievance as the Department handled the performance management issues but did not deal with or respond to the allegations of bullying. This failure to investigate and address all concerns raised by the employee in their grievance was found to be a breach of the Grievance Resolution Standard.

The Department's reason for not responding to the employee's grievance, because it was not lodged in a formal enough manner, was also of concern. In response to the Commissioner's breach determination, the Department committed to undertake a proper consideration of the grievance. This is currently underway and will be followed up for next year's Compliance Report.

***Department of Justice – Acting Standard***

An employee lodged a claim against the Acting Standard after not being successful for an advertised acting opportunity. In assessing the claim internally, the human resource officer found that the process did not adequately assess the employee's skills, knowledge or abilities and did not adequately document the assessment. The human resource officer made a number of recommendations to remedy the flaws, however, the Department did not progress the recommendations as it had already offered another officer an opportunity to work in the position.

An independent review by OPSSC confirmed that the Department did not conduct a proper assessment of the employee's knowledge, skills and abilities or the employee's interests. It also found that the Department's reason for not selecting the employee was based on an unconfirmed assumption that he would not be released by his current Manager as it would be too difficult to backfill his position.

As part of the relief required, the Department proposed to reconvene the assessment of the acting opportunity after the expiration of the current occupant's acting period and review aspects of the acting policy in relation to how organisational and employee's needs should be considered.

Following several follow up contacts with the agency by the OPSSC it was eventually revealed that the proposed relief to reconvene the acting opportunity had not been actioned because the substantive occupant had returned to the position and acting was no longer available. The Department has yet to indicate if it had changed its acting policy.

The limitation surrounding the Department's ability to reconvene the acting opportunity is acknowledged. However, the lack of response from the Department regarding changes to its acting policy and the amount of follow up required with the Department about relief action is of significant concern and has been noted for future compliance monitoring purposes.

#### ***Department of Environment – Acting Standard (carried over from 2003/04)***

An employee who applied for an advertised acting opportunity lodged a breach claim, which included allegations of perceived bias, concerns about confidentiality, problems with the assessment process and a lack of consideration of his interests. An independent review of the claim found a number of administrative anomalies such as the claimant's application was initially lost, and also some correspondence about the claimant which caused him some concern. However, these were either rectified by the Department or were not found to be breaches of the Standard.

As part of assessing the allegation of bias, the review revealed that the panel chair was a family relative of the recommended candidate. It was noted by the OPSSC that the Department took some steps to minimise the impact of the bias created from the relationship. However, it should have eliminated any real or perceived bias or conflict of interest by removing the panel chair from assessing this applicant. Accordingly, the process could not be perceived as being free of nepotism and was found to be a breach of the Standard.

As part of the relief, the Department wrote to the claimant acknowledging that the process was flawed, which included a commitment that future processes would be improved. The acting process was not recommenced as action was being taken to fill the position permanently and subsequent acting was no longer available.

#### **Department of Education and Training - Grievance Resolution Standard**

An employee lodged a number of grievances in relation to work related issues, including bullying. A number of agreements were made at a meeting between the employee and management to address the employee's issues. A formal grievance was subsequently lodged as a number of the agreed actions were not implemented and the grievance was not handled in a timely manner.

Rather than addressing each of the issues raised in the claimant's formal grievance, the Department only examined the timeliness of the process. It considered that the delays were

reasonable due to a number of factors such as the employee being absent on leave, no longer located in the particular work area, and a belief that Work Safe was informed.

An independent review by the OPSSC showed that the Department had not investigated all aspects of the grievance, particularly in relation to bullying. A breach of the Standard was found because there had not been a proper consideration of all the facts and circumstances of the employee's grievance.

As a means of providing relief to the breach, the Department agreed to conduct a proper investigation into the employee's grievance. The Department did not forward the proposed relief within the regulated time frame, which subjected the claimant to further delays.

The Department informed OPSSC that the investigation has commenced and will be completed by December 2005.

### ***Central TAFE – Recruitment, Selection and Appointment Standard***

An employee who applied for an advertised position at Central TAFE lodged a breach claim as a result of not being selected for an interview. The applicant alleged that the decision not to interview her was improper and that the selection panel was biased.

An internal assessment of the claim by Central TAFE found that applicants had not been assessed against the advertised selection criteria during short listing. As a result, some applicants who were not short listed were wrongly assessed and should have been interviewed. Accordingly, the claimant was offered an interview. With regard to the allegation of bias against the selection panel, Central TAFE offered to replace one panel member about whom the claimant had made allegations of assault. Allegations of bias were also made against another panel member, who remained on the panel. The claimant did not find this satisfactory and the claim was referred to the OPSSC.

The independent review found that while Central TAFE took some action to remedy the claimant's concerns, the selection process was flawed, as Central TAFE also did not sufficiently address the allegations of bias by removing a panel member where there was a reasonable perception of bias.

As part of the relief process, Central TAFE committed to reviewing its policies in relation to assessment methods, bias and conflicts of interest. However, it did not provide specific relief to the claimant as the claimant had accepted a settlement as a result of an unfair dismissal claim lodged in the Western Australian Industrial Relations Commission.



**Appendices**

## **Appendix 1 – Public Interest Disclosure Act (PID Act)**

The PID Act commenced on 1 July 2003, and applies to the Western Australian public authorities, as defined in the Act.

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 to a designated PID Officer within the public authority concerned, or to one of the named proper authorities, such as the Corruption and Crime Commission, the Auditor General and the State Ombudsman, depending on the nature of the information being disclosed. The PID Act does not protect disclosures made to persons other than 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 the disclosure 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 discloser 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 discloser 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 discloser 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 disclosers 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 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/](http://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**

Thematic and agency reviews and specific investigations relating to key issues are important sources of information for monitoring compliance. Resourcing and staffing constraints, however, have an impact upon the Office's capacity to conduct which of these reviews and investigations are to be the focus of attention. Working within these constraints, the Office analyses information from a range of sources in order to judge which matters are most critical to the achievement of improved compliance, in order to decide how to direct its attention.

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.

### ***Outcome Based Measures***

Sector-wide measures of human resource management and ethical outcomes are derived from aggregated (ie collective) information obtained through agency's yearly reports and other sources. For example, the profiles of diversity groups (eg women, people with disabilities) are used to provide measures of equity outcomes.

### ***Regular Agency Reviews***

Reviews of medium to large public sector agencies (ie approximately 500 staff and above) are conducted on a five yearly basis. These reviews use climate surveys, which are conducted on a five yearly basis. Climate surveys on public sector employee perceptions are conducted in public authorities on a rotating five yearly cycle. Employees are asked a range of questions on their perceptions of their agency's human resource management, ethics and equity climate. Whilst all employees in an agency are invited to participate in the survey, the response rates for each survey are typically 35 to 40% approximately. Information is also obtained through routine yearly reports from agencies; specific information related to the agency obtained through breach claims; and other matters raised with the OPSSC.

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 groups 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**

Agencies selected for review are contacted to negotiate the specific dates based on agency activities and other related reviews being conducted by the OPSSC. Whilst the initial consideration used for selecting agencies for climate surveys and presentations is their scheduled time for review every five years, the actual 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.

### ***Specific Agency Reviews***

Specific reviews (as distinct from regular reviews) and investigations may be conducted into 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(s) associated with the HRM principles and standards, or the ethical principles and codes. A range of tools may be used depending upon 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***

Thematic reviews relating to specific HRM principles and standards and ethical principles and codes are also conducted by the Office. These thematic reviews are designed to provide an in-depth examination of an issue across a range of public sector agencies.

#### **Criteria for Selecting Agencies for Thematic Reviews**

The criteria to select which agencies will be the subject of thematic reviews are as follows:

- 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 (which will be superseded by the new Public Sector Management (Breach of Standards) Regulations 2005 on 1 September 2005), provide an avenue for employees and other people to lodge claims when they believe that a HRM Standard has been breached. Responsibility for administering the procedures for handling breach of standard claims rests with the Office. 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 – Climate Survey results for 2004-05

Climate survey results should be considered in the context of the following.

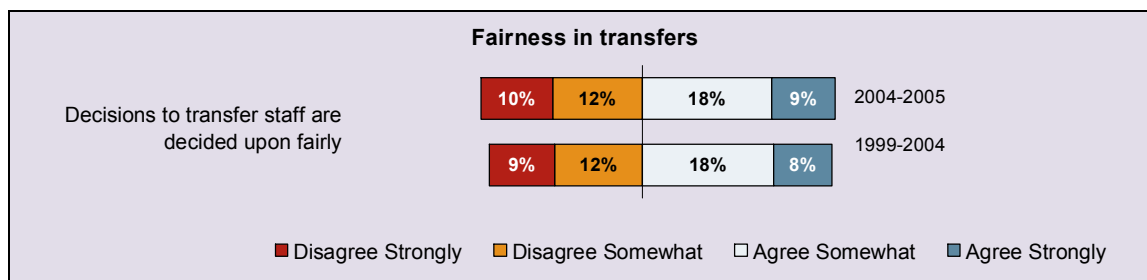
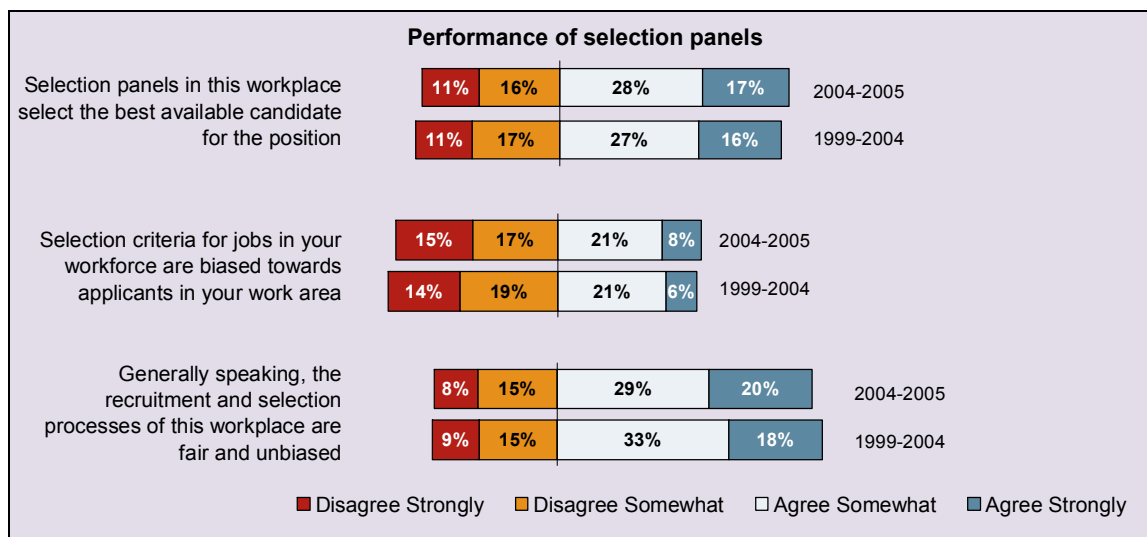
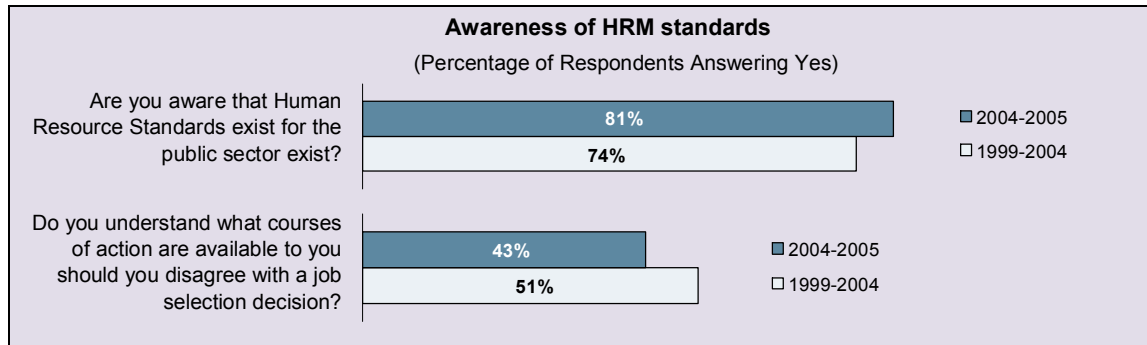
- Each year the Office of the Public Sector Standards Commissioner endeavours to survey between 10 and 15 agencies and each agency is surveyed approximately once every 5 years.
- To ensure a representative sample of public sector agencies are surveyed each year, agencies are selected from each of the main government sectors (The Education Sector, the Health Sector, as well as from the administrative, service based and central agencies).
- In 2004-05 the Office of the Public Sector Standards Commissioner surveyed 10 public sector agencies of which 2,255 completed surveys were returned. The agencies surveyed in 2004-05 are listed in the table below.
- The total number of completed surveys received for the period 1999-04 was 16,362.
- People who neither agree nor disagree or who did not answer a question are not shown in the results.
- The climate survey was overhauled in May 2005 resulting in several new questions being added and some old questions being removed or reworded. The results presented for 2004-05 in this report only include those questions from the climate survey that were the same in the old and new format.
- As a part of the survey overhaul a new section of questions was added on the Public Interest Disclosure (PID) Act (2003). The responses to these questions are included in the figures below.

(NB: the results for PID related questions only represent the two non-metropolitan Departments of Education and of Training and the two non-metropolitan Departments of Health, which were surveyed in June 2005. The results must not be considered as representative of the public sector as a whole).

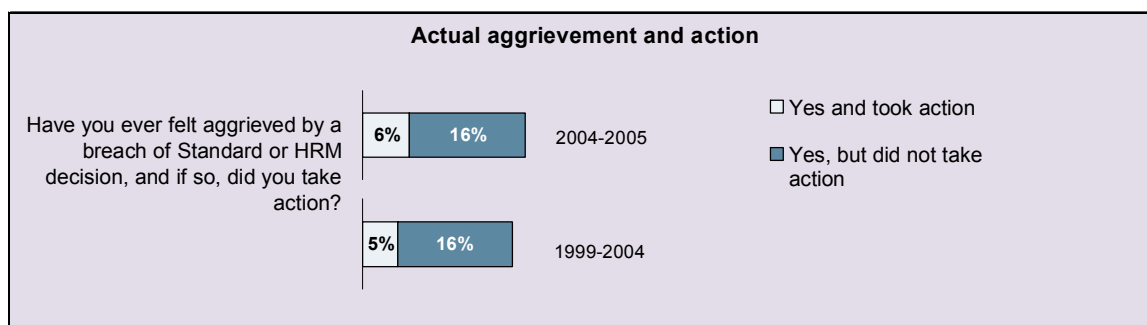
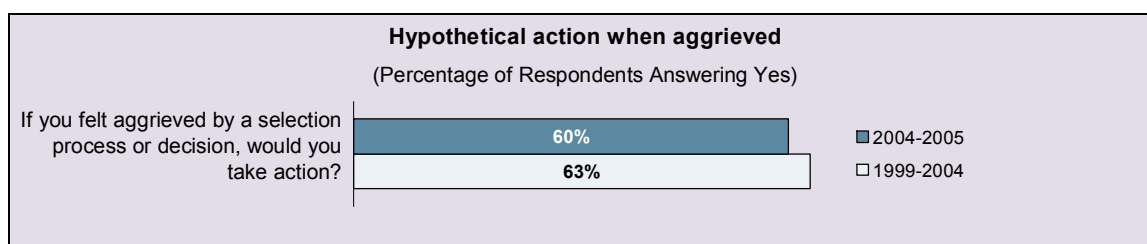
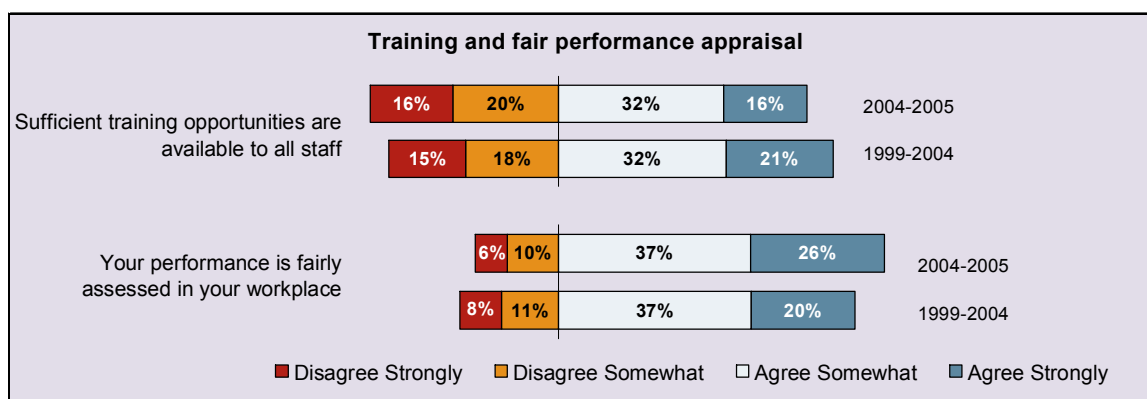
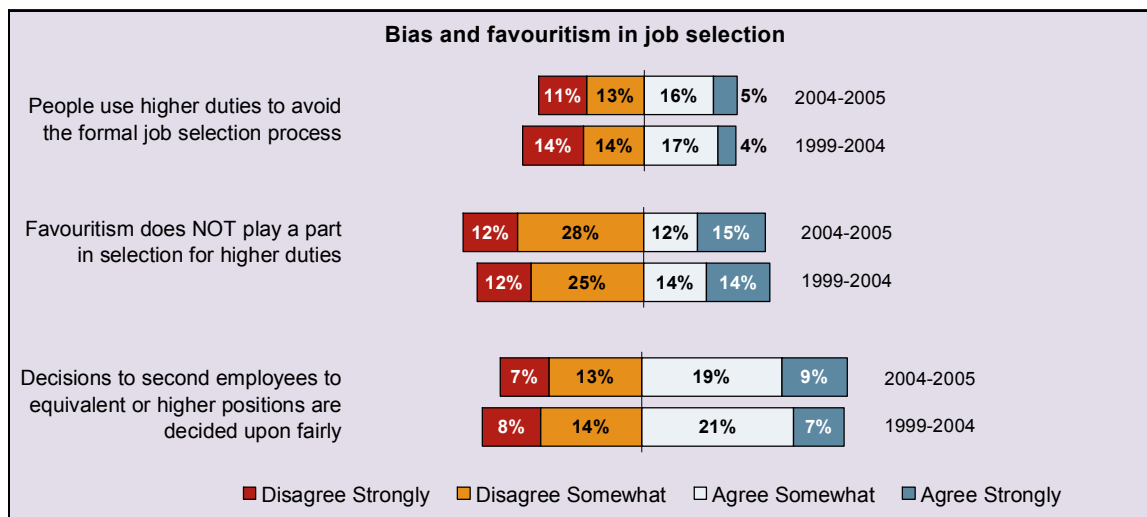
Public Sector agencies surveyed in 2004-05	≈ Number of surveys distributed	Number of surveys completed
Insurance Commission of Western Australia	296	144
Department of Indigenous Affairs	160	83
Department of Racing, Gaming and Liquor	100	54
Western Australian Sports Centre Trust	145	97
Office of Energy	58	42
Disability Services Commission	2090	716
Department of Education & Training - Esperance District *	530	194
Department of Education & Training - Kimberley District *	789	197
Department of Health - Great Southern Region *	1149	374
Department of Health - Midwest & Murchison Region *	810	354
<b>Total</b>	<b>6,127</b>	<b>2,255</b>

\* New climate survey format

## Human Resource Management

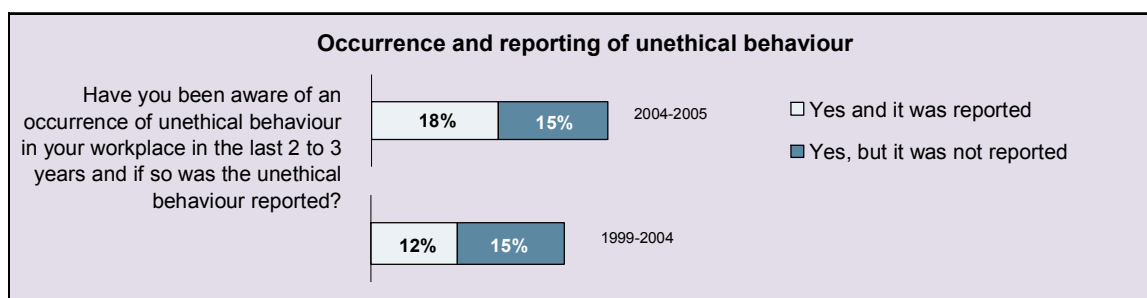
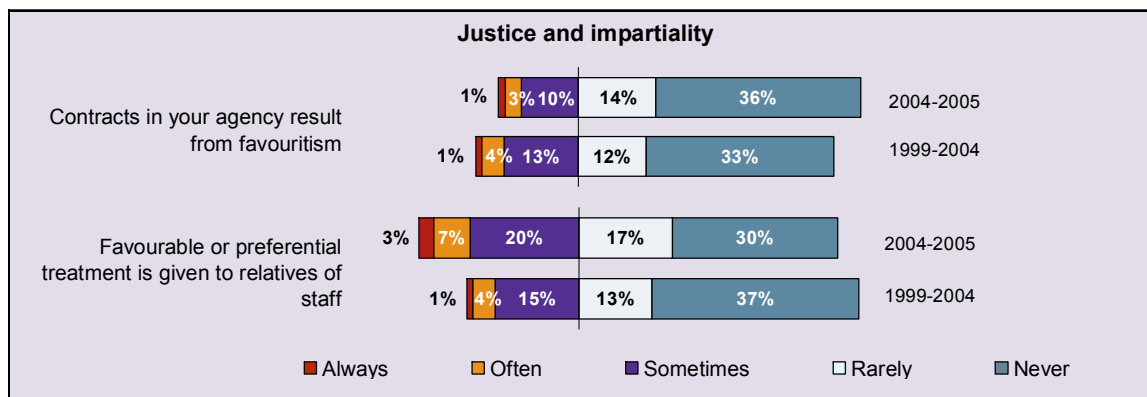
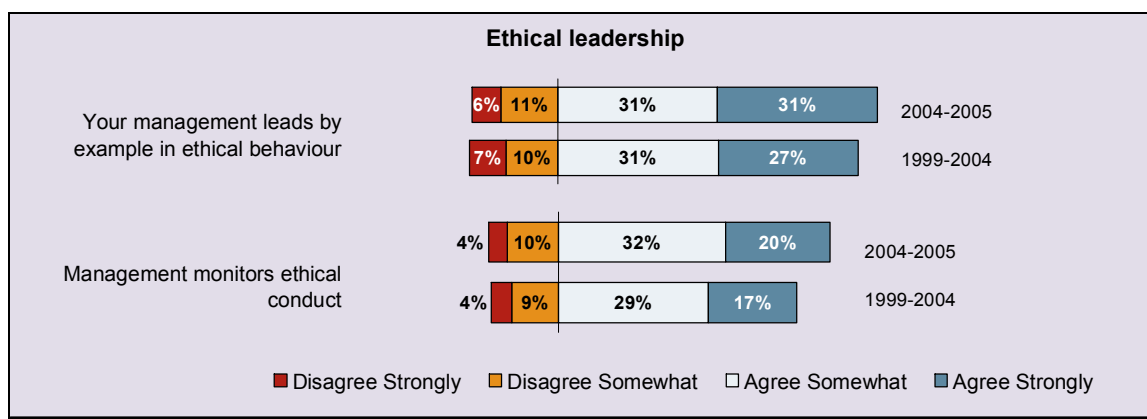
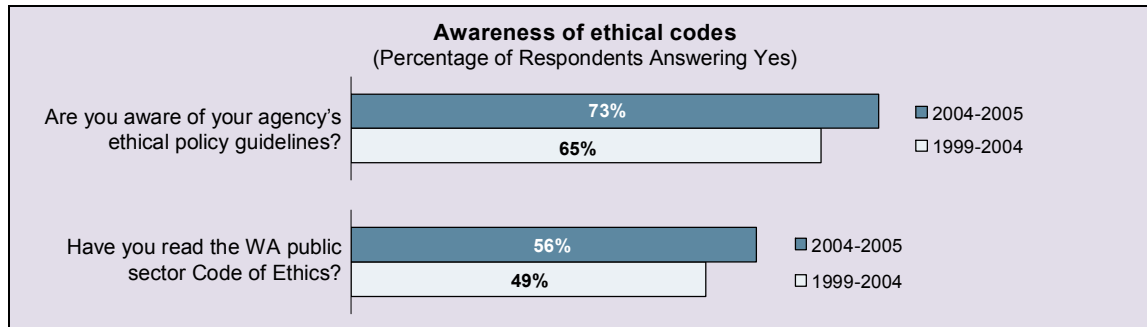


Note: People who neither agree nor disagree or who did not answer a question are not shown in the results.



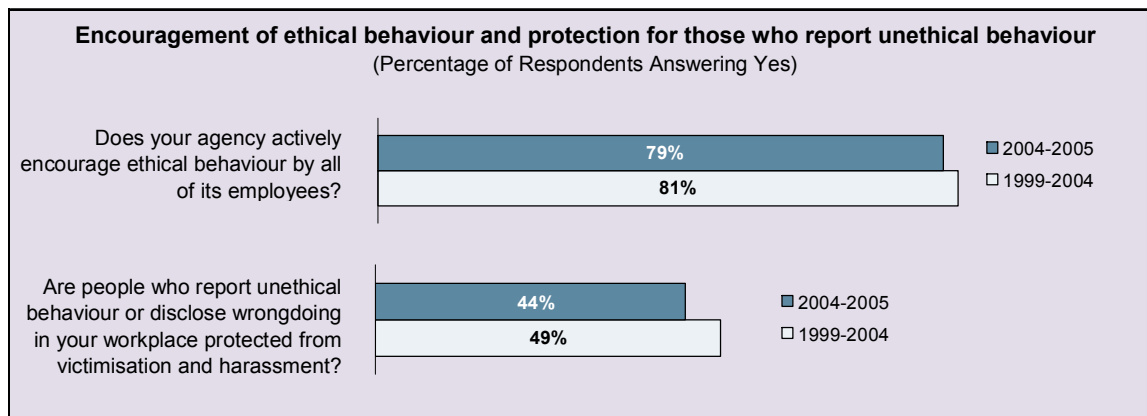
Note: People who neither agree nor disagree or who did not answer a question are not shown in the results.

## Ethics

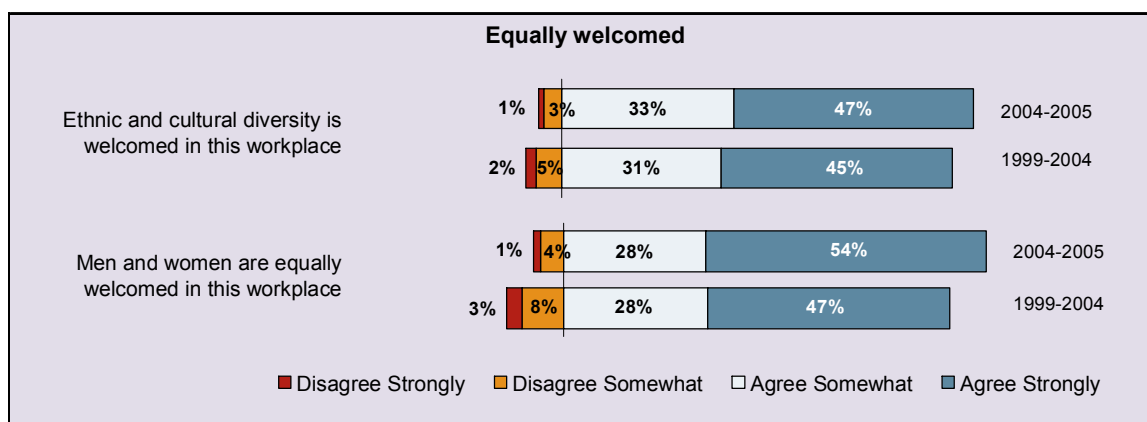
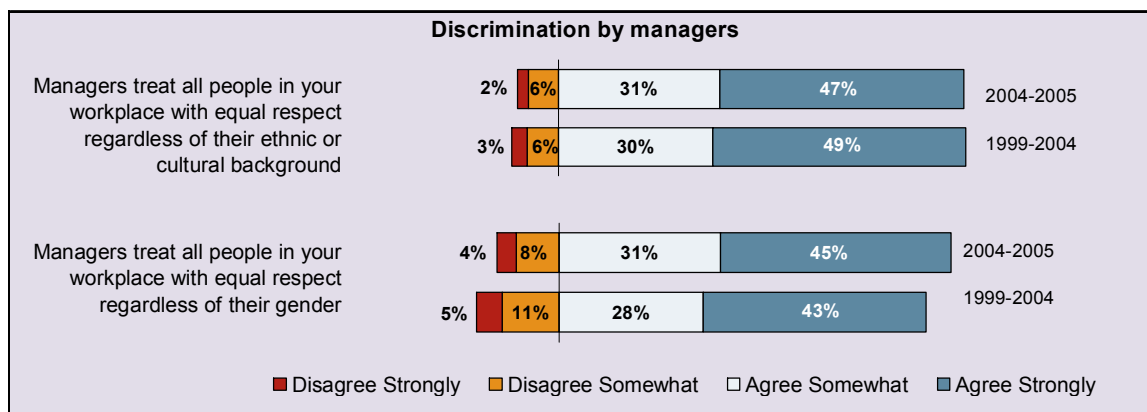


Note: People who neither agree nor disagree or who did not answer a question are not shown in the results.

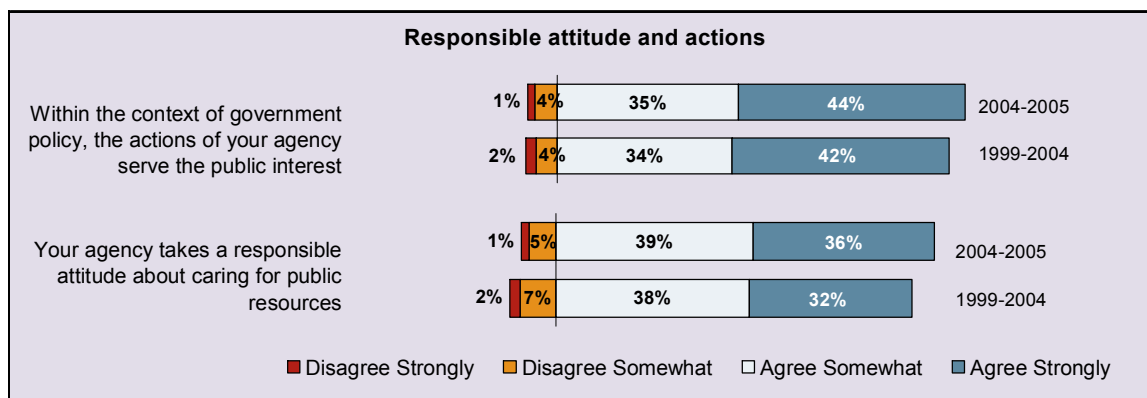
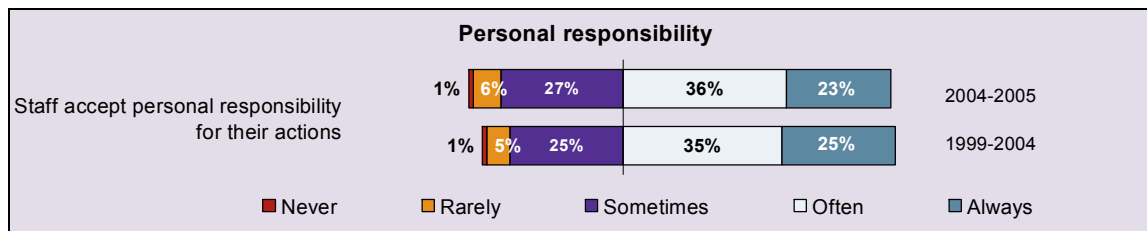
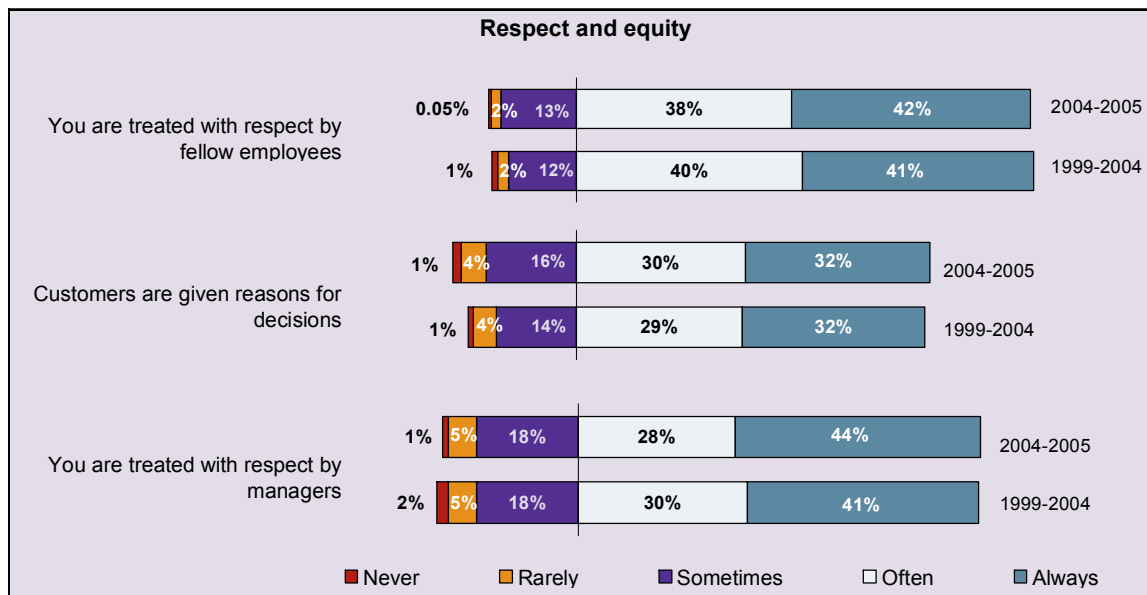




## Equity



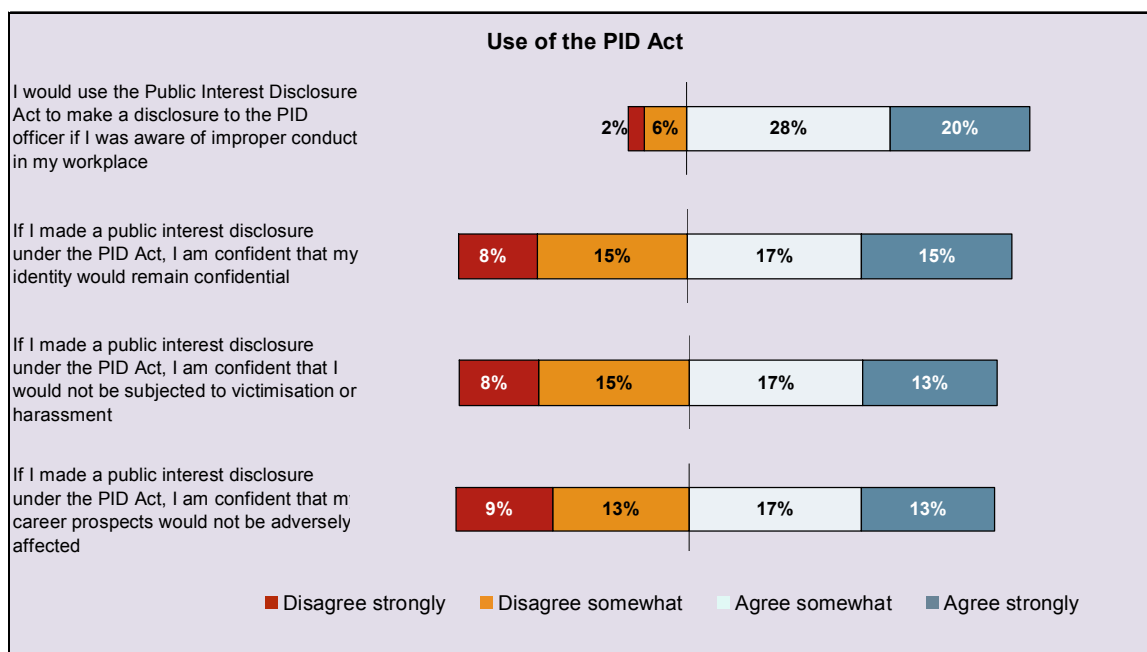
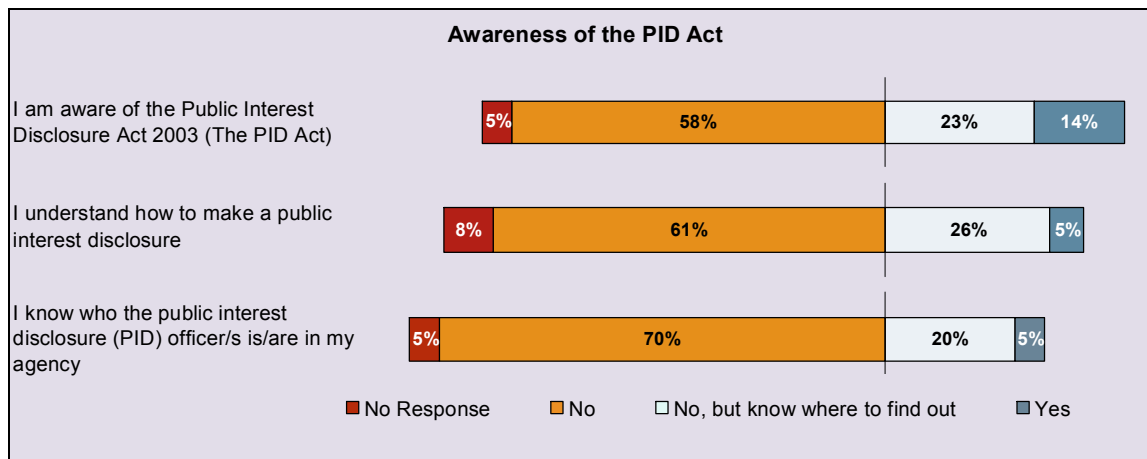
Note: People who neither agree nor disagree or who did not answer a question are not shown in the results.



Note: People who neither agree nor disagree or who did not answer a question are not shown in the results.

**PID Act**

NB: the results for PID related questions only represent the two non-metropolitan Departments of Education and of Training and the two non-metropolitan Departments of Health, which were surveyed in June 2005. The results must not be considered as representative of the public sector as a whole.



Note: People who neither agree nor disagree or who did not answer a question are not shown in the results.

## Appendix 6 – Glossary of Terms

<b>Breach of standard</b>	A determination by the Commissioner that one or more of the requirements of a Public Sector standard has/have not been complied with.
<b>CEO</b>	Chief Executive Officer.
<b>Climate survey</b>	A questionnaire measuring employee perceptions of human resource management, ethical conduct, equity and diversity within an agency.
<b>Compliance Framework</b>	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.
<b>Compliance monitoring</b>	Monitoring the extent of compliance with the HRM standards and ethical codes at either an agency or sector level.
<b>Code of Conduct</b>	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> .
<b>Code of Ethics</b>	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.
<b>Ethical Codes</b>	The <i>Western Australian Public Sector Code of Ethics</i> together with the individual codes of conduct of public sector bodies.
<b>HRM Principles</b>	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.
<b>HRM Standards</b>	The <i>Public Sector Standards in Human Resource Management</i> . There are nine standards: Recruitment, Selection and Appointment; Transfer; Secondment; Performance Management; Redeployment; Termination; Discipline; Temporary Deployment (Acting); and Grievance Resolution.
<b>Indigenous Australians</b>	Persons of Australian Aboriginal and Torres Strait Islander origin.

<b>OPSSC</b>	Office of the Public Sector Standards Commissioner.
<b>People from culturally diverse backgrounds</b>	People born in countries other than those categorised by the Australian Bureau of Statistics as Main English Speaking (MES) countries.
<b>People with Disabilities</b>	People with an ongoing disability that requires adaptation in the workplace.
<b>PSM Act</b>	Public Sector Management Act 1994.
<b>Public Interest Disclosure</b>	A disclosure made under the <i>Public Interest Disclosure Act 2003</i> .
<b>Public Sector Standards</b>	<i>See HRM Standards.</i>
<b>Thematic Review</b>	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.