

Oversight of the
*Public Interest
Disclosures Act 1994*

Annual Report 2012–2013

May 2014

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*Public Interest
Disclosures Act 1994***

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Phone: 02 9286 1000
Toll free (outside Sydney Metro Area): 1800 451 524
Facsimile: 02 9283 2911
Telephone typewriter: 133 677
Website: www.ombo.nsw.gov.au
Email: pid@ombo.nsw.gov.au

ISBN 978-1-921884-81-8

ISSN 2201-2974

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Foreword

I am pleased to introduce the second annual report outlining my office's work under the *Public Interest Disclosures Act 1994* (PID Act). This is an important legislative scheme, and I and my office have continued to work to provide the assistance and support public authorities need to meet their obligations. We have also continued to monitor the way in which public interest disclosures are being dealt with through our interactions with public authorities, the complaints we handle and the audits we conduct.

The report provides a snapshot of the disclosures made and handled by public authorities this year. We have now received three six-monthly reports from agencies outlining the disclosures they have dealt with, as well as the staff awareness mechanisms and policies they have in place. Over time, these numbers will help to monitor trends in disclosures across the public sector.

This year, we have focussed on consolidating and refining the advice and guidance we provide to public authorities and their staff. We have reviewed our model policies as well as a number of our guidelines.

We have also started our audit program under the PID Act. This will be an invaluable source of information about the way in which disclosures are being handled, as well as providing us with examples of good practice to share with other public authorities.

I hope you find this report informative, and I look forward to my office continuing to work to provide advice, guidance and assistance in the day-to-day handling of public interest disclosures.



Bruce Barbour
NSW Ombudsman

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Contents

Chapter 1. Role and responsibilities	3
Public Interest Disclosures Unit	3
Summary of PID related Activities Planned and completed in 2012–2013	4
Planned to be completed in 2013–2014	5
Chapter 2. Public awareness and understanding.....	6
Guidance materials	6
Training.....	8
e-News.....	8
Stakeholder engagement	9
Chapter 3. Monitoring and review	10
Audit program	10
Steering Committee	11
Chapter 4. Complaint handling and investigation.....	12
Inquiries.....	12
Complaints.....	12
Chapter 5. Public interest disclosures in NSW	14
Reporting by public authorities.....	14
Internal reporting policies and staff awareness.....	14
PIDs reported by public authorities	17
PIDs received by investigating authorities	19
PIDs received in other jurisdictions.....	22

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Chapter 1. Role and responsibilities

The role of the NSW Ombudsman in its public sector jurisdiction is to make sure that the authorities that we oversight properly fulfil their functions and provide high quality services to the public. We work with public sector agencies to ensure they make fair, reasonable and transparent decisions and demonstrate effective public administration.

As part of these responsibilities we oversight the implementation and operation of the *Public Interest Disclosures Act 1994* (PID Act) and are required to annually report on our work in this area.

The PID Act enables public officials to report serious matters in NSW public authorities that are contrary to the public interest and sets out the system where reports can be made about the functioning of the public sector in a way that minimises the risk of reprisal. This Act applies to all public authorities in NSW.

The object of the PID Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, a failure to properly fulfil the functions under the *Government Information (Public Access) Act 2009* (GIPA Act), and a pecuniary interest contravention under the *Local Government Act 1993*.

In addition to our responsibilities as an investigating authority under this Act, we also have other statutory roles:

- promoting public awareness and understanding of the Act and promoting the object of the Act
- providing information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to the Act
- issuing guidelines and other publications for the assistance of public authorities and investigating authorities in connection with their functions under the Act
- monitoring and providing reports (monitoring reports) to Parliament on the exercise of functions under the Act and compliance with the Act by public authorities
- auditing and providing reports (audit reports) to Parliament on the exercise of functions under the Act and compliance with the Act by public authorities
- providing reports and recommendations to the Minister about proposals for legislative and administrative changes to further the object of the Act.

Public Interest Disclosures Unit

The Public Interest Disclosures Unit (PID Unit) is responsible for coordinating the implementation of the Ombudsman's roles under the Act and provides support to public authorities and public officials.

The PID Unit has four objectives:

- To increase awareness of the procedures for making disclosures and the protections provided by the PID Act.
- To improve the handling of public interest disclosures and the protection and support for people who make them.
- To improve the identification and remedying of problems and deficiencies revealed by public interest disclosures.
- To ensure an effective statutory framework is in place for the making and management of public interest disclosures and the protection and support for people who make them.

Summary of PID related Activities Planned and completed in 2012–2013

Public awareness and understanding

- ☑ Provided PID training for public officials
- ☑ Released the remaining e-Learning modules
- ☑ Released the remaining guidelines, including working with other investigating authorities to develop joint guidance on managing referred and external investigations
- ☑ Commenced review of our PID resources
- ☑ Provided practical resources, including a sample disclosure receipt template for use by nominated PID officers and an annual reporting template for use by public authorities
- ☑ Conducted forums and workshops for practitioners, public authorities and specific industry bodies
- ☑ Engaged with stakeholders through relevant conferences, workshops, seminars and events

Monitoring and review

- ☑ Assisted public authorities to comply with the reporting requirements under the PID Act, including by providing reports to our office via the PID online reporting tool
- ☑ Monitored PID related information included in the annual reports of public authorities (provided directly to our office) to better target our awareness-raising and auditing activities
- ☑ Shared information with other investigating authorities about PIDs received
- ☑ Provided secretariat support to the Public Interest Disclosures Steering Committee
- ☑ Conducted our first audit pursuant to s.6B(f) of the PID Act
- ☑ Assisted with the review of the Commonwealth PID legislation as required by s.31B of the NSW PID Act

Complaint handling and investigation

- ☑ Handled complaints received by our office and conducted investigations as identified

Planned to be completed in 2013–2014

Public awareness and understanding

- Coordinate the National Public Interest Disclosures Oversight Network
- Conduct training and awareness sessions as requested by public authorities and scheduled open workshops

Monitoring and review

- Complete the review of the Commonwealth Public Interest Disclosure Act as required by section 31B of the NSW PID Act
- Complete the review and update of all PID resources
- Conduct PID audits of public authorities
- Monitor information reported by public authorities to comply with the requirements under the PID Act, including providing reports to our office via the PID online reporting tool
- Share information with other investigating authorities about PIDs received
- Conduct a practitioner forum for nominated disclosure officers
- Provide secretariat support for PID Steering Committee
- Conduct and complete a review of the Public Interest Disclosures Unit

Complaint handling and investigation

- Liaison meeting with investigating authorities
- Handle complaints and conduct investigations as required

Chapter 2. Public awareness and understanding

This chapter summarises what we have achieved this year to meet our statutory requirement to provide information, advice, assistance and training to public authorities, investigating authorities and public officials.

Guidance materials

As part of our responsibility under the PID Act, we have developed a number of guidelines and factsheets as shown on the following list. Three of the additional guidelines were completed and released in January. The last guideline relating to investigating reprisals is currently being drafted. All our PID resources are available on the NSW Ombudsman website.

In response to requests from a number of nominated disclosure officers during training sessions, we developed a template to assist authorities with the initial stages of receiving and assessing a public interest disclosure. The template was made available on our website in March and was presented to attendees at the PID practitioner forum in May. Authorities that have adopted the template into their PID process have advised that it is very useful.

The content and layout of the public interest disclosures section of the NSW Ombudsman web site was reviewed and updated this year to ensure it was current and all guidance materials were easily accessible.

As a result of queries the PID Unit received about the complexities involved in addressing requests to release information that related to a public interest disclosure given the requirements under the PID Act and GIPA Act, an additional fact sheet was developed in conjunction with the Information and Privacy Commission which outlines the criteria for releasing PID related information and addresses these specific statutory requirements.

A review of all our guidelines and fact sheets commenced in March.

List of Public Interest Disclosures Publications

Guidelines	Fact sheets
Organisational commitment	
A1: Management commitment to internal reporting	1. Changes to the public interest disclosures system
A2: Internal reporting policy and procedures	2. Public interest disclosures
A3: Awareness and training	3. Thinking about reporting serious wrongdoing?
A4: Evaluation of policy, procedures and practices	4. Thinking about reporting serious wrongdoing in local government?
Facilitating reporting	5. Obligations and responsibilities of state government principal officers
B1: Who can report wrongdoing?	6. Obligations and responsibilities of local government general managers
B2: What should be reported?	7. Confidentiality and its alternatives
B3: What's not a public interest disclosure?	8. Interaction between the PID Act and the GIPA Act
B4: Reporting pathways	
B5: Reporting to Members of Parliament and journalists	
B6: Anonymous reporting	
Assessing and investigating disclosures	Other resources
C1: People that are the subject of a report	Checklist: Ensuring your internal reporting policy is best practice
C2: Reporting to the NSW Ombudsman	Template: Initial reporting of Public Interest Disclosure
C3: Assessing and streaming internal reports	User manual: PID online reporting tool
C4: Managing risk of reprisals and conflict	Overview: Reporting annually on public interest disclosures
C5: Investigating public interest disclosures	Model internal reporting policy – State Government
C6: Managing interactions with investigating authorities	Model internal reporting policy – Local Government
C7: Confidentiality	Promotional poster
Supporting and protecting internal reporters	
D1: Internal reporter support strategy	
D2: Information, advice and feedback to internal reporters	
D3: Internal reporters involved in wrongdoing	
D4: Preventing and containing reprisals and conflict	
D5: Investigating reprisals (to be released)	
D6: Finalisation and follow-up	
Implementation (taking an integrated organisational approach)	
E1: Model for internal reporter support	
E2: Roles and responsibilities	

Training

The NSW Ombudsman has a statutory obligation to provide public interest disclosure training and we do this by conducting face-to-face sessions and providing e-learning modules. We are pleased that this year we have continued to receive very positive feedback from participants.

Face to face sessions

The PID Unit training officers conduct in-house and open workshop sessions for public authorities at no cost. The content covers the why, what, how and who of public interest disclosures and sessions are tailored for nominated disclosure officers, coordinators, staff and executives.

The authorities we trained in-house during this year included three local health districts, several local councils, the NSW Police Force and a number of principal departments.

As stated in our last annual report, we focussed on scheduling more open workshops this year. The five open workshops we held were well attended by participants from a wide variety of public sector authorities. Four workshops were held in our training room and the other was held in Albury, which was scheduled to coincide with the ICAC Outreach program in that location.

This year 737 participants attended 31 overview sessions and 358 participants attended 20 PID management sessions. There was a decline on the number of sessions conducted in the previous year which was expected due to the high demand for training following the implementation of the amended legislation in mid 2011.

e-Learning

We provide an alternative training option for public authorities and public officials through our four e learning modules. These modules assist with raising awareness and informing staff about public interest disclosures, reporting and management. This year all four modules were released and made available on our website.

The e-learning modules are:

PID Awareness outlines the main provisions of the PID Act, protections for public officials who report wrongdoing and the responsibilities of public authorities.

PID Reporting provides further information and suggested reading for public officials who are contemplating making a public interest disclosure.

PID Management covers the management of disclosures and outlines specific responsibilities, obligations and risks through interactive exercises, guidance, examples and case studies.

PID Executive informs principal officers, executives and senior managers about their obligations and responsibilities under the PID Act.

e-News

The PID e-News continues to be an effective way for us to communicate with public officials about relevant and current PID issues. This year we provided information on a range of PID related topics including amendments to legislation; changes, updates and reminders about reporting requirements; new and updated guidance materials; available training; auditing and monitoring schedules and outcomes; release of new practitioner tools; and latest research.

Our distribution list has grown steadily in the past year and now contains just over 850 contacts. During this reporting year e-newsletters were distributed in November, February, May, June and July. The latest issues of the PID e-News are made available on our website.

Stakeholder engagement

We consider stakeholder engagement an integral part of our work. During this year, in addition to our daily interaction with authorities and public officials we were also involved in a number of specific events.

Through our PID complaint work we identified the need to inform Unions of the requirements under the PID Act and how Union representatives may be involved in the process. We held a half day session in August and the feedback received from attendees was very positive indicating that it clarified certain aspects of the process and provided information they could relay back to their organisations and members.

In April, we addressed a meeting of Internal Auditors from all local health districts, at the request of the Ministry of Health to clarify specific issues relating to the assessment, management and referral of PIDs within that Department.

In May we held our yearly PID Practitioners Forum which was attended by 80 representatives from a wide range of public authorities. Agenda topics were identified through our interaction with authorities and gave an opportunity to discuss and address pertinent issues, such as our audit schedule, the assessment template, reporting obligations and timeframes.

In response to requests from the NSW Police Force, we held two training sessions and attended a forum to assist the organisation with effectively meeting the requirements of the PID Act. The forum was held in November and involved members of the executive team and staff from the Professional Standards Command including Professional Conduct Managers who were to become nominated disclosure officers. A representative from our Police Division also attended and assisted throughout this process.

In May, we hosted a meeting for representatives from the Commonwealth Ombudsman in response to their request to gain an insight into the structure and functions of our PID Unit, to assist with establishing processes within their office when the Commonwealth PID legislation is implemented. This also helped us with preparing to meet our obligations under s31B of the PID Act which requires the NSW PID Steering Committee to complete a review of Commonwealth legislation within six months after its enactment.

In March and May we attended meetings with NSW Aboriginal Land Council representatives to assist the organisation with the facilitation of PID training and to provide assistance and guidance on reporting requirements. We are working together on a PID training schedule for locations throughout the state, which may commence in the next reporting year.

We held information stalls at the Corruption Prevention Network Forum in September and the National Investigation Symposium in November, which gave participants the opportunity to raise queries relating to PID with us and clarify our role and responsibilities under the Act.

Most investigating authorities under the PID Act not only receive, assess and investigate public interest disclosures themselves, but have the ability to monitor their handling by public authorities. In October and February we met with staff from the Audit Office of NSW, the Division of Local Government (DLG), the Independent Commission Against Corruption (ICAC), the Information and Privacy Commission (IPC) and the Police Integrity Commission (PIC) to assist with a consistent and coordinated approach in handling PIDs.

Chapter 3. Monitoring and review

Section 6B(1)(f) of the *Public Interest Disclosures Act 1994* states the Ombudsman has responsibility

To audit and provide reports (“audit reports”) to Parliament on the exercise of functions under this Act and compliance with this Act by public authorities (other than investigating authorities in respect of their functions as investigating authorities).

Audit program

This year has seen the implementation of the PID audit program, with an initial pilot audit conducted in December 2012 and monthly audits commencing in March 2013.

The Ombudsman’s oversight role of the PID Act commenced on 1 July 2011 and the Ombudsman has published a number of guidance documents to assist agencies in their handling of public interest disclosures. Agencies were required to have an internal reporting policy in place by October 2011.

The audit function involves reviewing the handling of agency investigations using random sampling techniques, checking agency compliance with the statutory reporting requirement and reviewing policies and procedures.

In December 2012, the formal audit schedule commenced. The first audit was conducted at the Ambulance Service of NSW followed by audits at Fire and Rescue NSW, Ashfield Council, Blacktown City Council and Wollongong City Council.

Audits proposed for the next reporting year include local health districts and universities.

The types of recommendations made as a result of our audits included improved documentation of assessments of internal reports to determine whether or not they should be treated as PIDs; increasing the number of disclosure officers within the organisation; accurately reporting PIDs; appropriate recording of referral of disclosures; ensuring the internal reporting policy is current and readily available; conducting risk assessments to determine if confidentiality can be maintained; and managing the possibility of reprisals.

Best practice identified through our audit work

We were pleased to see examples of effective practices incorporated into the PID processes of the authorities we audited this year. These are the type of practices we recommend should be included in every authority’s PID procedures, including:

- **Using a disclosure assessment checklist**
- **Appointing an appropriate number of nominated disclosure officers**
- **Separation of investigation and decision-maker responsibilities**
- **Keeping the reporter informed during the process**
- **The inclusion of relevant examples of wrongdoing in internal reporting policy**
- **Thanking staff for coming forward to report. This practice was part of a number of authorities’ procedure. It is important to acknowledge staff have done the right thing by reporting and formal recognition is a positive approach. For example:**

I understand that it can be difficult to raise concerns of this nature and thank you for providing this information to... It is very important that staff report issues of corrupt conduct so appropriate action can be taken.

I would like to thank you for your diligence in reporting the misconduct you observed in the workplace and your cooperation during this investigation.

[Council] has a zero tolerance approach to corruption and we all have a part to play in creating and maintaining a corruption resistant council. I would like to thank you for bringing this matter to my attention.

Steering Committee

The Public Interest Disclosures Steering Committee met in September, March and June. In June 2012, the Committee submitted a proposal for a number of legislative changes to the Premier. The Government supported the amendments and as a result the *Public Interest Disclosures Amendment Bill 2013* was passed in March.

Amendments to the PID Act

The amendments:

- removed the requirement that a disclosure must be made voluntarily in order for the public official who made it to be protected under the PID Act. Previously, the PID Act provided that a disclosure was not made voluntarily if it was made by a public official in the exercise of a duty imposed on that official by legislation.
- extended the period of time within which proceedings may be commenced for reprisal action taken against a person who has made a public interest disclosure. The amendments extend the period from two years after the offence is alleged to have been committed, to three years.
- included the Public Service Commissioner as a member of the PID Steering Committee. The Public Service Commissioner's principal objectives include promoting and maintaining the highest levels of integrity, impartiality, accountability and leadership across the public sector.
- clarified that certain people who are in a contractual relationship with a public sector agency are deemed to be public officials for the purposes of the Act. This includes certain employees or officers of a corporation who are engaged by a public authority under a contract to provide services to or on behalf of a public authority. The amendment also removes any doubt that the Protections of the Act can extend to various volunteers (for example volunteer rural fire fighters and officers or members of SES units), to accredited certifiers under the *Environmental Planning and Assessment Act 1979*, RSPCA inspectors, and certain others.

We believe the amendments will further clarify and strengthen the protections available under the PID Act for people who come forward to report wrongdoing.

As required under the PID Act, a separate annual report specifically outlines the activities of the Steering Committee.

Chapter 4. Complaint handling and investigation

Under section 11 of the PID Act the Ombudsman can receive a disclosure from a public official provided it is made in accordance with the *Ombudsman Act 1974* and the person honestly believes the information they are reporting shows or tends to show the public authority or public official has engaged, is engaging or proposes to engage in conduct that amounts to maladministration. For conduct to be defined as maladministration under the PID Act it must be of a serious nature and contrary to law; unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives.

Not every complaint lodged with our office by a public official meets the threshold set out in the PID Act. The complaint may merely allege misconduct or maladministration and not provide sufficient evidence to show or tend to show why they believe the public authority has engaged in that conduct.

Inquiries

During 2012-2013, the Ombudsman received a total of 140 inquiries relating to public interest disclosures. Of those, 134 related to various issues concerning public interest disclosures, 6 were about how disclosures were handled by public authorities.

Complaints

The total number of complaints received in 2012-2013 potentially related to public interest disclosures was 39. This figure includes reports made to us that did not meet the threshold as set out in the PID Act as well as 3 complaints about how public authorities were managing disclosures. We assessed 17 of these complaints as meeting the threshold under the PID Act. During the reporting year 35 of these complaints were finalised.

Monitoring the investigation of a PID in real time

A complaint was sent to the Audit Office alleging maladministration and serious and substantial waste as a result of a failure of an agency to appropriately manage its data base. Significant errors in the data base would have resulted in miscalculations about assets held by the agency. The Audit Office referred the complaint to this office and it was agreed that we would jointly monitor the investigation into the PID. After seeking advice from this office about how best to manage the allegations contained in the PID, the agency decided it would refer the allegations to an external contractor tasked with conducting a related review. Staff members from the Audit Office and this office were invited to progress meetings with the agency and the contractor; and the agency agreed to provide a copy of the contractor's final report and work papers relating to the examination of the data. Monitoring the handling of the PID enabled the agency the opportunity to resolve the issues itself with assistance from the relevant watchdog bodies.

Reporting back after a PID investigation

A complainant contacted us to express concerns that he had lodged an internal complaint and the agency concerned had advised they would treat the matter as a PID. The agency engaged an external consultant to conduct an investigation. After the investigation had been conducted, the agency provided the internal reporter with a very brief explanation about the outcome, explaining that the allegations had not been substantiated but systemic issues had been identified. The advice did not identify the systemic issues or the strategies the agency would employ to address them. The reporter asked for a copy of the final investigation report. The agency was not able to provide it to the reporter because it would compromise the privacy of the witnesses interviewed. The reporter proceeded to seek a copy of the report under the *Government Information (Public Access) Act 2009* (GIPA Act).

We sought a copy of the final investigation report and provided further information to the internal reporter about the systemic issues identified and the actions already taken by the agency to address them. We explained why we could not release a copy of the final investigation report to him.

This case study highlights the importance of providing as much information to reporters at the conclusion of an investigation as possible. Given the brief response, the reporter suspected the agency had not appropriately dealt with the allegations. This was not the case. Had the agency provided better information to the reporter, it is likely the reporter would not have escalated his concerns in the way that he did.

Chapter 5. Public interest disclosures in NSW

This chapter brings together the information provided to our office by public authorities about public interest disclosures (PIDs) in NSW. In 2012-2013, NSW public and investigating authorities reported receiving a total of 676 PIDs. This is based on the assumption that each PID made in NSW will be retained by either a public or investigating authority, and does not include any PIDs made to Members of Parliament or journalists as provided for in the PID Act.

Reporting by public authorities

Since 1 January 2012, the PID Act has required public authorities to report certain information about their activities under the Act directly to the Ombudsman every six months, as well as in their own annual report. The PID online reporting tool was developed to facilitate the secure provision of reports to our office by public authorities. We use the information to inform and appropriately target our future awareness and auditing activities.

As at 19 September 2013, our office has received reports from:

- 335 public authorities for the 1 January to 30 June 2012 period
- 301 public authorities for the 1 July to 31 December 2012 period
- 309 public authorities for the 1 January to 30 June 2013 period.

Given the broad scope of the definition of a public authority, it is difficult to ascertain the exact number that have responsibilities under the PID Act. Of the public authorities we have identified, one-third did not provide reports to our office in 2012-2013. We will continue to work with authorities to reinforce their reporting obligations under the Act, and seek the compliance of the remaining authorities we have identified that have not provided a report. For example, since the release of our 2011-2012 annual report, we have received an additional 17 reports from public authorities for the period January to June 2012. Some figures reported last year have therefore been updated.

Terminology: PIDs ‘received and retained’

The *Public Interest Disclosures Regulation 2011* (PID Regulation) outlines the information that a public authority is to provide in their report to our office. Clause 4(2)(b) states that this should include the number of PIDs received by the public authority. In this report, we refer to this as the number of PIDs reported by public authorities.

Our advice to public authorities was that the number reported to our office should refer to PIDs the public authority took responsibility for handling, regardless of whether they were made directly to the public authority or referred by another public or investigating authority under sections 25 or 26 of the PID Act. It should not include PIDs made directly to the authority that are subsequently referred for handling by another authority under the PID Act. Our advice to authorities is included in *Guideline C2: Reporting to the NSW Ombudsman*, available on our website.

The reasoning behind this interpretation is primarily to ensure that PIDs are not double counted. A PID made directly to Agency X and then referred under section 25 of the PID Act to Agency Y should only be counted as one PID, despite the fact that two agencies were involved in its handling. The PID Regulation does not require public authorities to tell us how many PIDs made directly to them they had referred to another authority. We believed it was more important for our office to know about the extent to which disclosures in the public interest are being made, rather than have an indicator that is more reflective of the workload of public authorities in handling these matters.

Internal reporting policies and staff awareness

The heads of public authorities have certain responsibilities under section 6E of the PID Act. Their obligations include ensuring their public authority establishes an internal reporting policy and that staff are aware of its contents as well as the protections available under the Act.

Figures 1 and 2 show the steady increase in the proportion of public authorities of all types that indicated they had met these obligations over the three reporting periods. Most recently, 95% of public authorities reported establishing an internal reporting policy, while 94% reported taking action in relation to staff awareness.

Figure 1. Proportion of each type of public authority that reported having an internal reporting policy over time

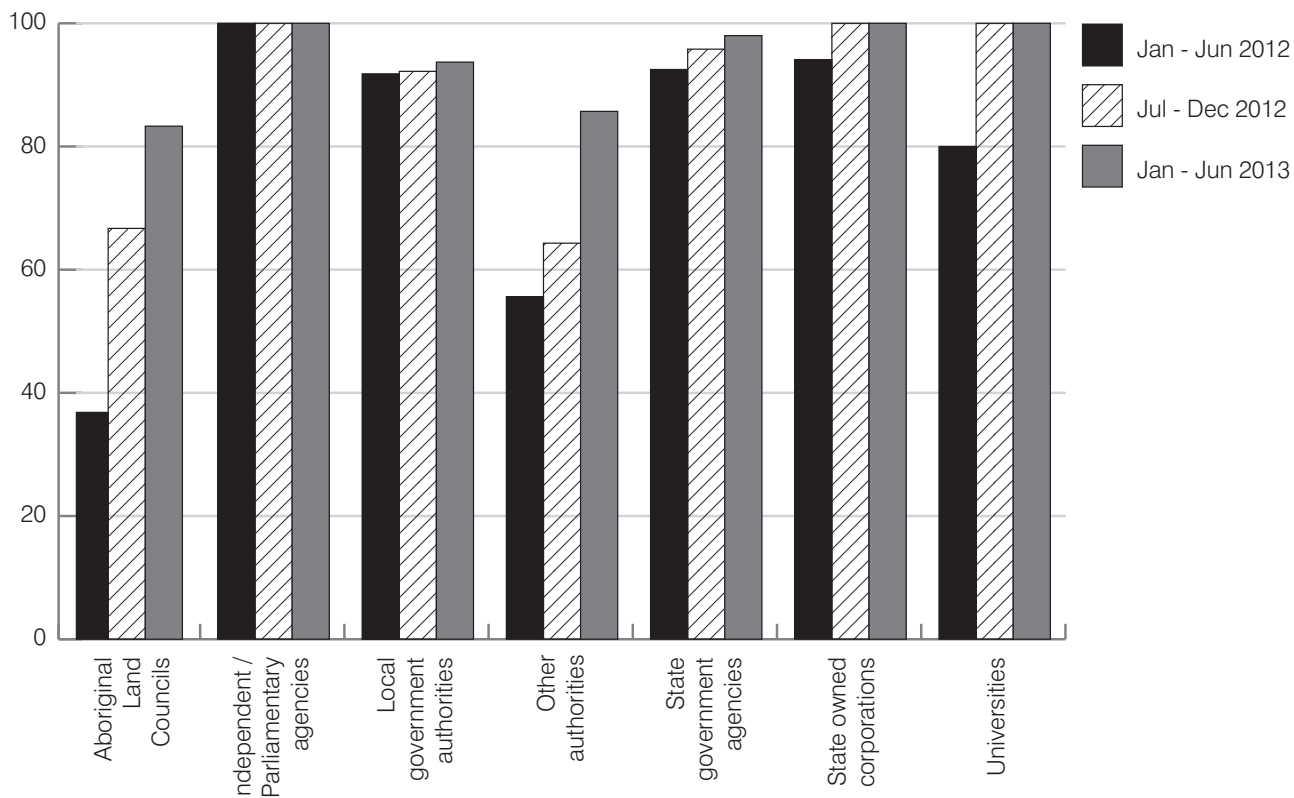
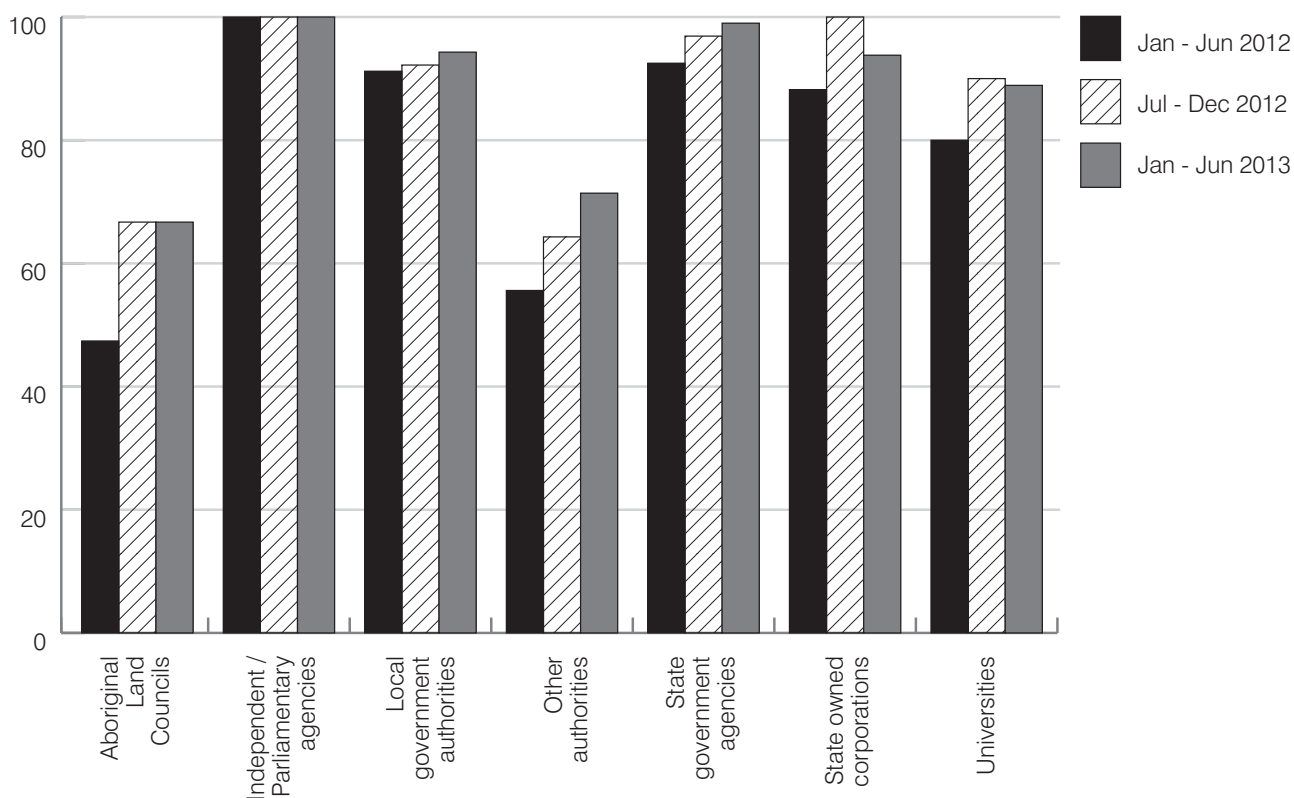


Figure 2. Proportion of each type of public authority that reported conducting staff awareness over time

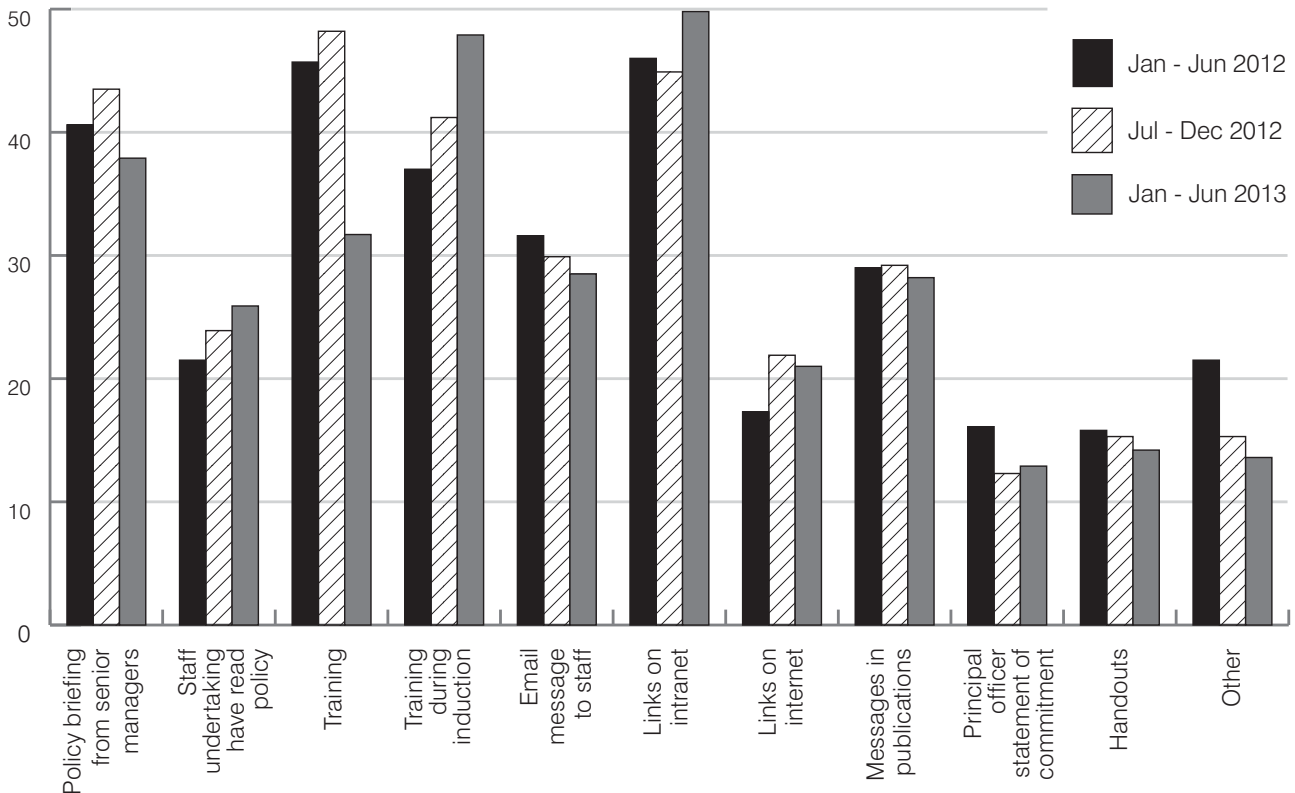


Non-compliant public authorities generally had not met either requirement, and tended to not have staff or have a very small number. For example, Local Aboriginal Land Councils (LALCs) and 'other' public authorities were the types least likely to have met their obligations, while also employing the fewest staff.

How did public authorities raise staff awareness?

Figure 3 shows the range of actions taken by public authorities to raise staff awareness of the protections provided by the PID Act and their internal reporting policy. The majority of public authorities reported adopting a number of strategies. The most common strategies were including a link to their internal reporting policy on the intranet, training staff (including during induction), and senior managers providing a policy briefing.

Figure 3. Proportion of public authorities that reported adopting each awareness strategy over time



It is evident that public authorities are developing innovative ways to ensure their staff are aware of the protections provided by the PID Act and that they are familiar with their public authority’s procedures for reporting wrongdoing. Public authorities have shared some inventive ways they raise staff awareness.

Examples of actions taken to raise staff awareness

Bellingen Shire Council, a regional council that does not have an intranet, uses their shared drive to communicate information to their staff. They also distribute information on USB to staff with no access to council’s shared drive.

Wyong Shire Council developed a screen saver to start a conversation within council about PIDs. It simply read “What is a PID?”

Names and photographs of staff who can receive public interest disclosures are displayed on staff noticeboards at **Coffs Harbour City Council** to assist staff to identify disclosures officers.

Charles Sturt University has developed an online corruption awareness induction for new staff, while ongoing and regular fraud awareness training sessions are conducted by **Macquarie University** for their staff which include discussions about the PID Act. **Ausgrid** includes PID awareness in their Code of Conduct training.

The PID Coordinator of the **Mid North Coast** and the **Northern NSW Local Health Districts** has developed a dedicated PID intranet page as a resource for staff.

Sydney Ports Corporation uses numerous methods to ensure staff are aware of the PID Act including email messages, intranet links to policies, procedural steps for reporting fact sheet, staff training and an undertaking that staff understand their policy.

However, we remain concerned that only one in five public authorities reported having a link to their internal reporting policy on their website. Internal reporting policies are policy documents that are required by the GIPA Act to be publicly available. It is not simply staff members that can make a PID to a public authority – public officials who do not belong to a public authority also need to be provided with accessible information about how and to whom they can make a PID about the staff of that authority.

PIDs reported by public authorities

In 2012-2013, 317 PIDs were reported as being received by 75 separate public authorities. Most public authorities (83%) – including all LALCs, parliamentary agencies and other authorities – did not report any PIDs over the last two reporting periods. State owned corporations were the type of public authority most likely to report PIDs (34%), followed by universities (26%) and state government agencies (24%).

Table 1 shows the variation in the number of public officials who made PIDs directly to public authorities and the number of PIDs received by public authorities over time. While there was a 13% increase in the number of PIDs reported as being received by public authorities in the second half of 2012, the first six-months of 2013 saw the number of PIDs decrease by 45%.

Table 1. Number of public officials that made PIDs directly to and number of PIDs reported by public authorities over time

Jan – Jun 2012	Jul – Dec 2012	Jan – Jun 2013
159 public officials made PIDs directly to 51 public authorities (15%)	148 public officials made PIDs directly to 53 public authorities (18%)	90 public officials made PIDs directly to 37 public authorities (12%)
182 PIDs received by 53 public authorities (16%)	205 PIDs received by 58 public authorities (19%)	112 PIDs received by 46 public authorities (15%)

The decline in the number of PIDs received by public authorities in 2013 could be attributed to a variety of factors, such as:

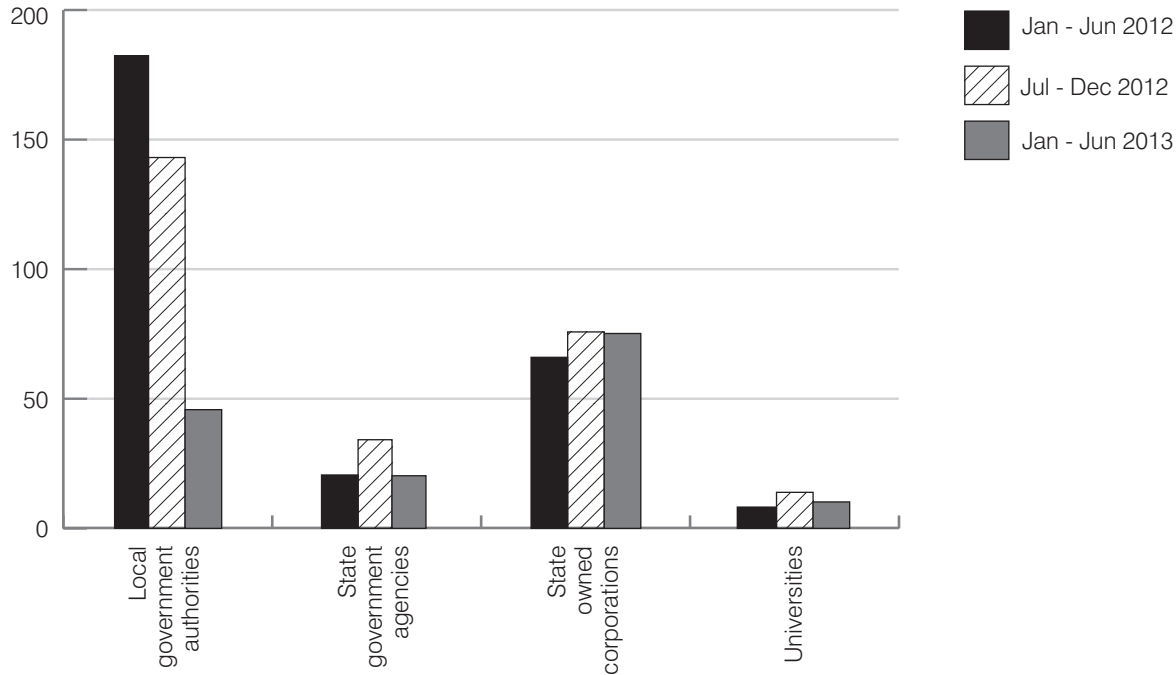
- Following the amendments to the PID Act in 2011, most public authorities revised or established an internal reporting policy and undertook a range of associated activities to raise the awareness of staff. This may have led to the increase in the number of PIDs received. While the January to June 2013 period showed the highest proportion of public authorities undertaking staff awareness and the largest number of specific staff awareness actions reportedly taken by public authorities, the proportion of public authorities who trained staff about PIDs fell by about one-third.
- In both 2012 reporting periods, a small number of local government authorities reported a large number of PIDs. This may have been because of turmoil within these public authorities in the lead up to the local government elections in September 2012.
- Public authorities may be improving in their assessment of internal reports against the criteria set out in the PID Act.
- Following further communication and advice – including the release of *Guideline C6: Managing interactions with investigating authorities* – as well as a number of recommendations made during audits, public authorities may no longer be counting PIDs from investigating authorities that have not been referred to them under the PID Act as PIDs received by their public authority.

How many PIDs were reported per 100,000 staff?

The decline in the number of PIDs received in 2013 is also evident when the number of staff within public authorities is considered. In January to June 2012, 39.5 PIDs were received by public authorities for every 100,000 staff. This increased to 46.8 PIDs received per 100,000 staff in July to December 2012 – then decreased to only 25.3 PIDs per 100,000 staff in January to June 2013.

Figure 4 shows that the increase in the number of PIDs reported per 100,000 staff in the second half of 2012 was because of an increase in the number of PIDs reported by state government agencies, state owned corporations and universities (up 66%, 15% and 70% respectively). Conversely, the number of PIDs reported per 100,000 staff in local government authorities has dramatically decreased by 75% over the three reporting periods. State owned corporations are the only type of public authority that did not see a decrease in the first half of 2013.

Figure 4. Number of PIDs reported per 100,000 staff by type of public authority over time

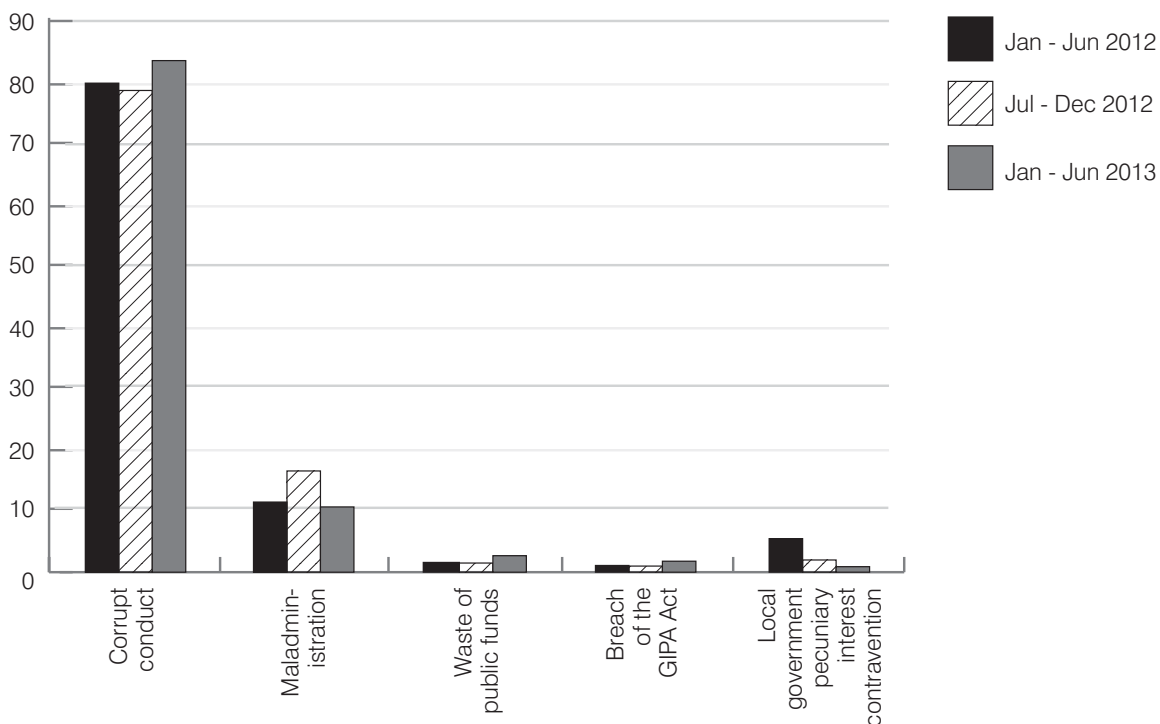


What was the subject matter of the PIDs?

Where a PID contains multiple allegations that could fit more than one category of wrongdoing in the PID Act, we asked public authorities to only report the primary category of wrongdoing alleged – that is, the most significant or serious breach of conduct. We do not know how many PIDs primarily concerning corrupt conduct also contained allegations of maladministration or other categories of wrongdoing.

Figure 5 shows that the vast majority (between 79% and 84%) of PIDs reported by public authorities continue to primarily allege corrupt conduct. The number of PIDs received by public authorities alleging a local government pecuniary interest contravention has decreased from 10 (6%) in January to June 2012 to one (1%) in January to June 2013.

Figure 5. Primary category of wrongdoing alleged in PIDs reported over time

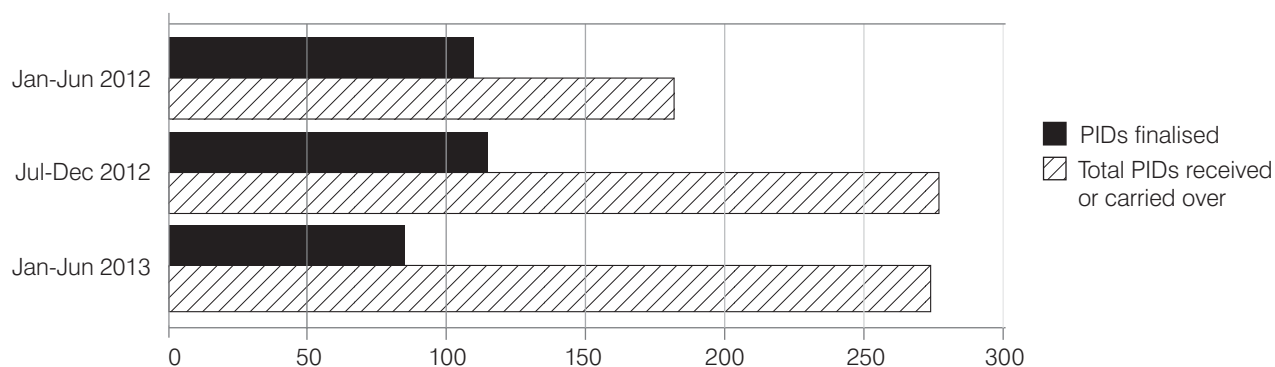


How many PIDs reported were finalised?

Figure 5 shows the number of PIDs reported by public authorities that were finalised in each six-month period. Overall, the proportion of PIDs reported that have been finalised has remained steady:

- Of the 387 PIDs reported by public authorities in 2012, 224 (58%) were finalised by the end of the calendar year.
- Of the 499 PIDs reported by public authorities in the 18 month period, 309 (62%) were finalised by 30 June 2013.

Figure 6. PIDs reported that have been finalised



PIDs received by investigating authorities

This section is based on information from eight investigating authorities under the PID Act – the Audit Office, DLG, ICAC, IPC, Ombudsman, PIC, Inspector of the ICAC and Inspector of the PIC. While not required under the PID Act, we coordinate the sharing of information about the public interest disclosures received in our capacity as investigating authorities to obtain a full picture of PIDs in NSW.

Unlike the decline in the number of PIDs reported by public authorities, Figure 7 shows that the number of PIDs to investigating authorities increased in 2012-2013. This differed depending on the particular authority – the number of PIDs to the Audit Office, ICAC, IPC and PIC increased, while the number of PIDs to the DLG and Ombudsman decreased. Note that this section of the report only includes the 17 complaints received by our office that we assessed as meeting the criteria in the PID Act (see Chapter 4).

The ICAC received the most PIDs (70%). Figure 8 shows that, similar to PIDs reported by public authorities, the majority concerned corrupt conduct (78%). These trends are consistent with PIDs received by investigating authorities in the first six months of 2012.

Figure 7. Number of PIDs received by investigating authorities

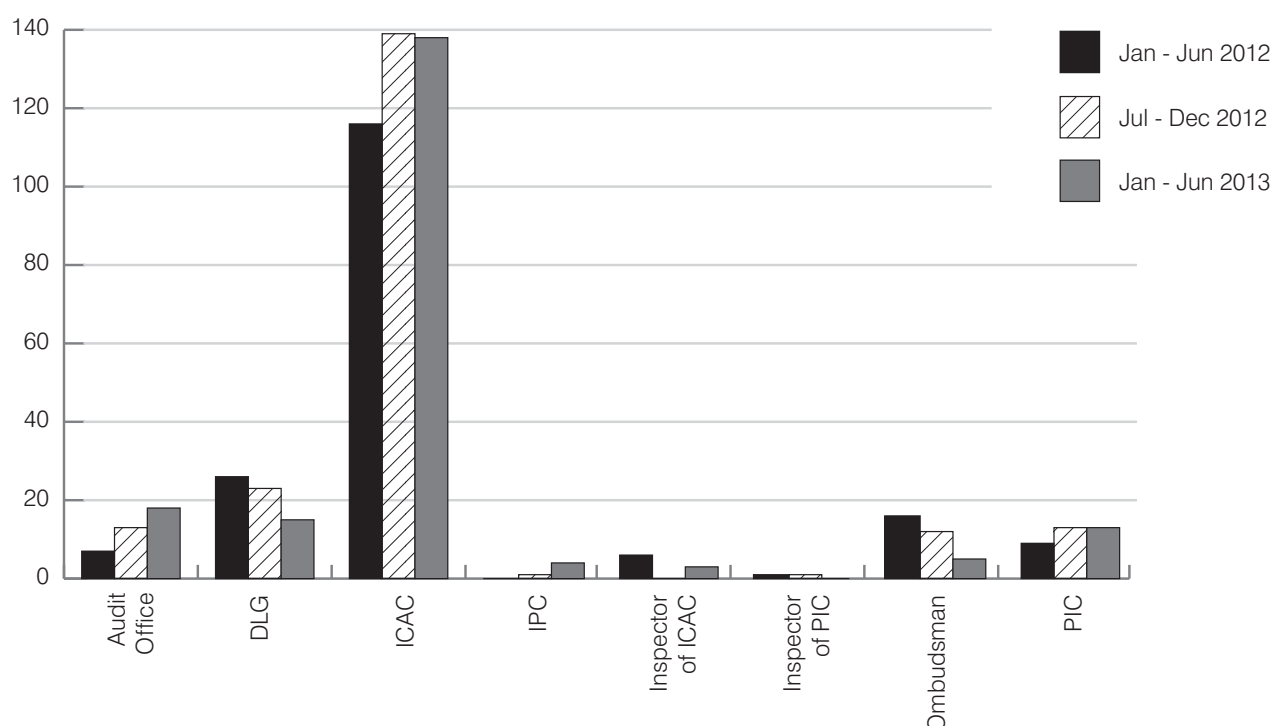
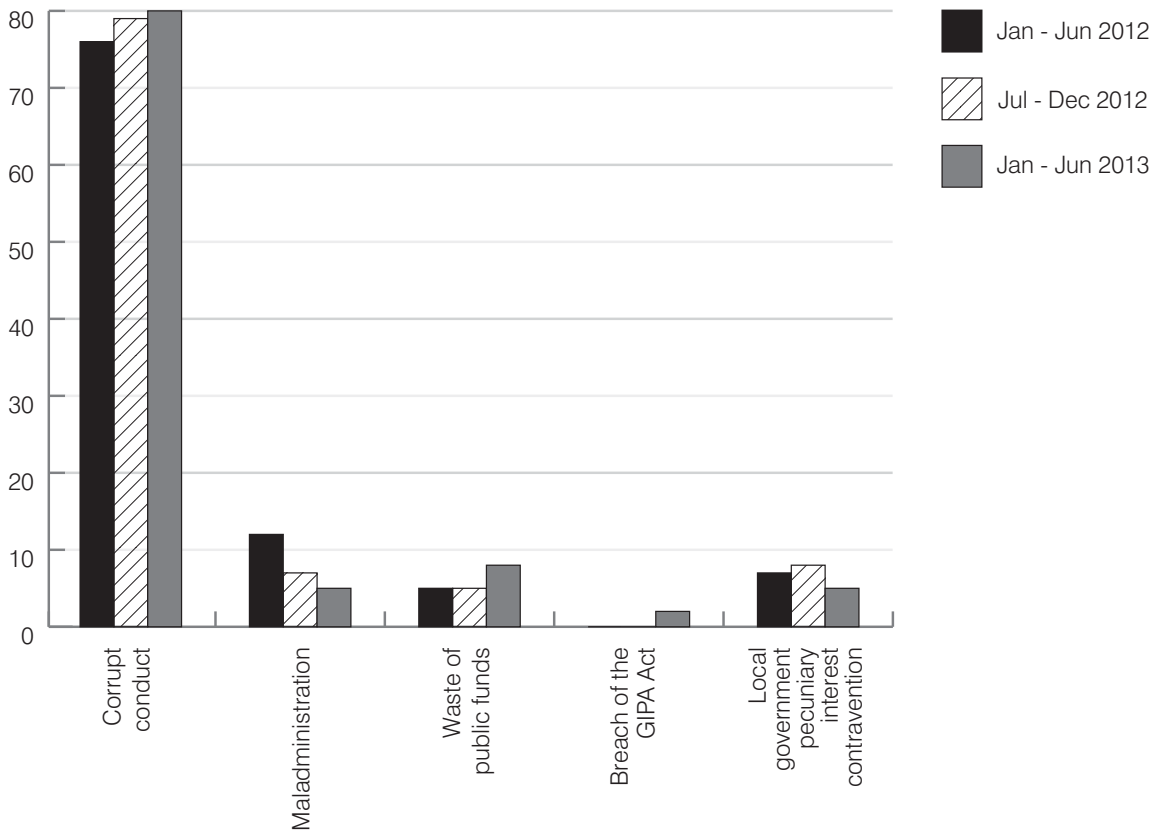


Figure 8. Primary category of wrongdoing alleged in PIDs received by investigating authorities

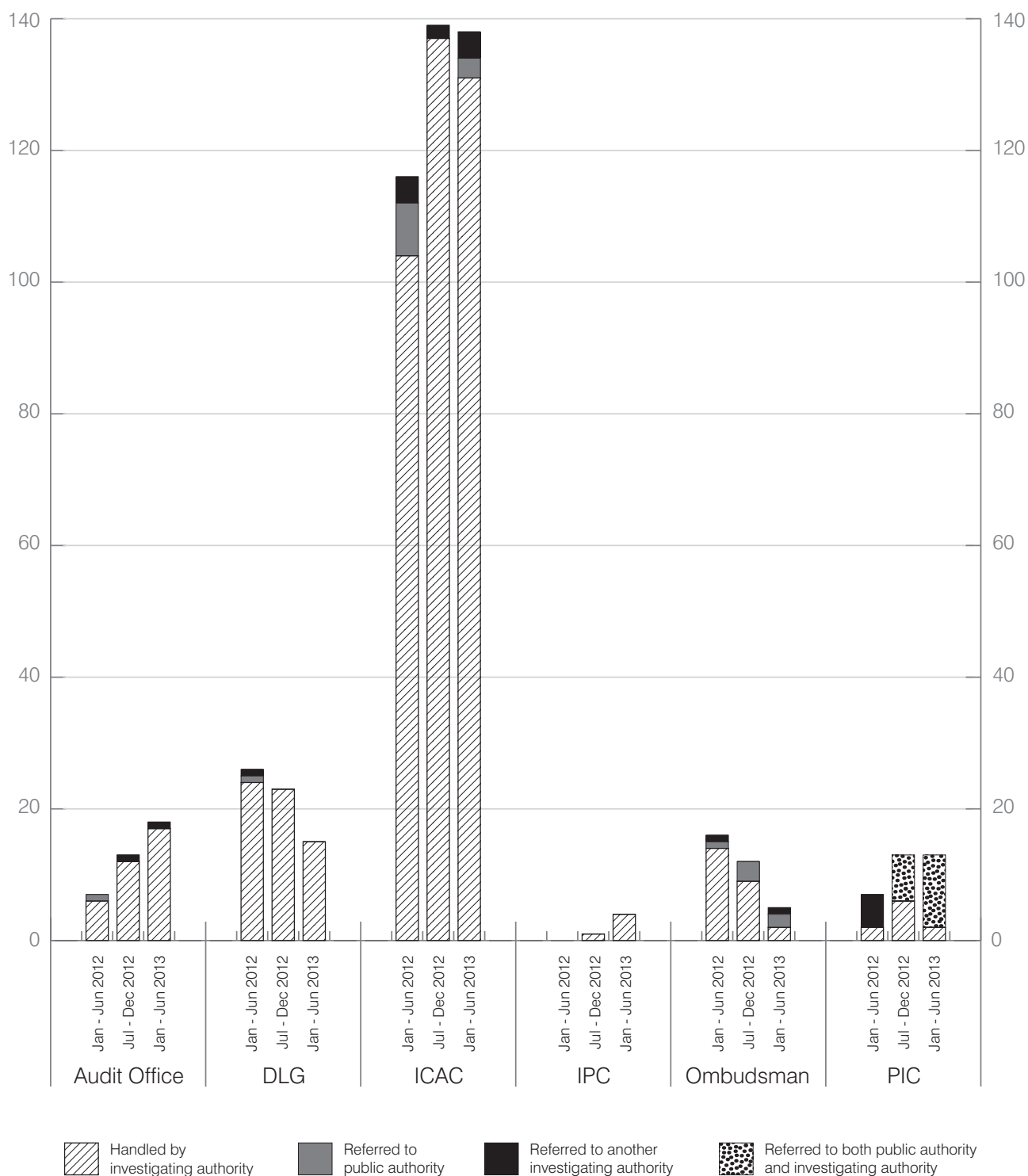


This data suggests that public officials now appear more likely to make a PID externally to an investigating authority than within their own public authority. Given that research shows employees generally prefer to report wrongdoing internally in the first instance, this may indicate that public authorities are failing to take responsive action, leaving public officials to raise their concerns with an investigating authority. However, an alternative explanation is that investigating authorities are more adept at assessing PIDs. Reports made to investigating authorities also do not need to be made to an identified officer to be considered PIDs, as is the case in public authorities.

The Audit Office, DLG, ICAC, IPC, and PIC shared additional information with our office about how PIDs were received and dealt with. Almost all PIDs received by these investigating authorities were made directly to them (93%) by 292 public officials (excluding the number of public officials who made anonymous PIDs directly to ICAC). A small proportion of PIDs received were via a referral to the investigating authority by a public authority under s.26 of the PID Act (3%) or by another investigating authority under s.25 of the PID Act (4%).

Figure 9 shows that investigating authorities also retained responsibility for handling the majority of PIDs they received and for meeting the associated obligations under the PID Act (91%). Few PIDs were referred by an investigating authority under the Act. The exception was PIDs received by the PIC – the majority of these were referred by them to both the NSW Police Force and the NSW Ombudsman under s.25 of the PID Act. In this report, we have not included these matters as PIDs received by the Ombudsman as it is considered that the responsibility for handling them lies with the NSW Police Force and they should not be counted by both authorities.

Figure 9. Handling of PIDs received by investigating authorities



The information provided in 10 PIDs retained by investigating authorities prompted formal investigations:

- The IPC commenced a formal investigation into all five PIDs received about a breach of the GIPA Act.
- The ICAC commenced two formal investigations into PIDs alleging corrupt conduct.
- Three PIDs received by the PIC about corrupt conduct resulted in a formal investigation.

In estimating the total number of PIDs reported in NSW, we do not include PIDs that were referred by investigating authorities as we consider that the responsibility for reporting on the PID also transfers to the receiving authority. Therefore, the total number of PIDs reported by investigating authorities in 2012-2013 was 359.

PIDs received in other jurisdictions

Information about disclosures made in the public interest under similar legislation in other Australian jurisdictions also provides context. Public sector agencies in the Northern Territory (NT), Tasmania and Victoria are required to notify the relevant oversight body in their jurisdiction within 14 days of determining that they have received such a disclosure, while Queensland and Western Australian (WA) authorities report centrally each year on the disclosures they have received.

Across jurisdictions, there appear to be vast differences in the number of disclosures made in the public interest. This is somewhat to be expected given the variations in statutory regimes. For example, disclosures can be made by members of the public in the NT and Queensland, and can allege a broader range of wrongdoing than under the NSW PID Act. In WA, disclosures must be identified as such and lodged formally, but do not need to be made by a public officer.

Disclosures in other Australian jurisdictions, 2011-2012



Northern Territory: The Commissioner for Public Interest Disclosures received 46 new disclosures, including 10 made to Chief Executives and referred as required under legislation. Of the 70 disclosures handled during the period, 18 were assessed as PIDs and either investigated or referred to another body for investigation, 32 were assessed as not being PIDs, and 20 are awaiting assessment.

Queensland: A total of 1,183 PIDs were reported by public sector entities to the Public Service Commission. This was a significant increase and attributed to improved knowledge and understanding of the Act. Of the disclosures that were resolved, 58% were substantiated or partially substantiated.

Tasmania: While the Tasmanian Ombudsman received one potential disclosure, it was determined to not be a PID as it involved an allegation of improper conduct with respect to an employment matter.

Victoria: Of 117 disclosures received by the Victorian Ombudsman, 38 were determined to be PIDs and all of these were investigated or referred for investigation. Procurement was highlighted as a matter of concern that is regularly the subject of whistleblower investigations.

Western Australia: The Public Sector Commission received two public interest disclosure matters.



NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General enquiries: 02 9286 1000
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524
Tel. typewriter (TTY): 133 677
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au

www.ombo.nsw.gov.au