

Oversight of the
*Public Interest
Disclosures Act 1994*

Annual Report 2011–2012

November 2012

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Disclosures Act 1994***

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Foreword

This is my office's first annual report under the *Public Interest Disclosures Act 1994*. The report outlines the work we have done since significant changes to the Act commenced in 2011 and we began our additional oversight roles of promoting public awareness and understanding of the objects of the Act, as well as providing advice and guidance to those who make and receive public interest disclosures. While this was the focus of our work in our first year with this new role, we also gained additional functions under the Act in relation to monitoring and auditing.

This is why the report provides detailed information on the work we have done in our first year performing the various new statutory functions. Our future reports will not provide the same level of detail, but will rather provide an update on new directions, developments and areas of interest.

This is also the first report outlining the number of public interest disclosures reported by public authorities in NSW in the period from 1 January to 30 June 2012. These first numbers cannot be used to indicate trends or draw conclusions, particularly as we have concerns about the possibility of substantial under reporting. They are our starting point, and will be of more meaning in coming years.

I would like to thank the Public Service Commission for providing my office with the results of three questions included in their 2012 People Matter Survey of state government employees. These baseline results suggest our focus on awareness and training should continue. Surveys conducted in future years will reveal trends in perceptions over time and help us to monitor the success of state government agencies in creating a positive reporting environment.

I would like to take this opportunity to acknowledge the good work of public authorities and their relevant staff working to implement public interest disclosures systems. Their feedback on our guidance materials and online reporting tool, as well as their insight during discussions, training and information sessions has been invaluable. I and my staff look forward to working with them into the future to ensure public officials in NSW are willing to come forward and report wrongdoing, and have the protection and support they need when they do.



Bruce Barbour
Ombudsman

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Chapter 1. Role and responsibilities

The NSW Ombudsman is an independent and impartial watchdog. Our job is to make sure that authorities we watch over fulfil their functions properly and improve their delivery of services to the public. We work with the public sector and several thousand private agencies within our jurisdiction to achieve a number of results for the community including:

- fair, reasonable and transparent decision making
- improved provision of community services and protection of children
- improved public administration.

In July 2011, we commenced an additional oversight role in relation to the *Public Interest Disclosures Act 1994* (PID Act).

The PID Act

This Act provides an opportunity for people to report serious matters in NSW public authorities that are against the public interest. The Act sets out the system under which people working within the NSW public sector can make reports about the functioning of the public sector in a way that minimises the risk of reprisal.

Public officials can make public interest disclosures (PIDs) about corrupt conduct, serious 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*.

The PID Act applies to all public authorities in NSW and requires them to encourage and facilitate disclosures in the public interest.

Further information about the PID Act can be accessed from our website.

Changes to the legislation

In November 2009 the Joint Parliamentary Committee on the Independent Commission Against Corruption (Joint Parliamentary Committee) made a number of recommendations in their report into whistleblowing in the public sector. This review was preceded by various inquiries examining how best to protect whistleblowers, culminating in three reports in 1993, 1996 and 2000. During this time we lobbied extensively for reform, arguing that the legislative framework in its current form was largely deficient.

Following on from the 2009 inquiry, the *Protected Disclosures Act 1994* was reviewed in light of the major recommendations from the Joint Parliamentary Committee's report. Amendments to the Act were passed by Parliament in October 2010 and September 2011 enacting the *Protected Disclosure Amendment (Public Interest Disclosures) Act 2010* and the *Public Interest Disclosures Amendment Act 2011*.

The main changes included the renaming of the legislation to the *Public Interest Disclosures Act 1994* to reflect its purpose; the introduction of a formal system of oversight of complaints by public officials; altering the test so that protection will apply if the reporter honestly believes, on reasonable grounds, that their disclosure shows or tends to show wrongdoing; a requirement for all public sector authorities to have policies and procedures in place for receiving, assessing and dealing with public interest disclosures; and the explicit inclusion of contractors and volunteers as people who can receive protection if they make a disclosure.

Role of the Ombudsman

The Ombudsman was an investigating authority under the former Protected Disclosures Act.

The amendments to the Act saw the statutory role of our office expanded to include the following functions:

- 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
- acting as Chair in providing secretariat support to and reporting on the work of the Public Interest Disclosures Steering Committee.

A specialist Public Interest Disclosures Unit was established to support this coordination and oversight role, and to champion good practice across the NSW public sector in relation to internal reporting.

This is the first public interest disclosure annual report prepared by the Ombudsman as required under the PID Act. This report incorporates the reporting requirements pursuant to sections 6B(1)(f), 6B(1)(g), 6B(2) and 6B(3).

Objectives

The four objectives of the Public Interest Disclosures Unit are to:

- increase awareness of the procedures for making disclosures and the protections provided by the PID Act.
- improve the handling of public interest disclosures and the protection and support for people who make them.
- improve the identification and remedying of problems and deficiencies revealed by public interest disclosures.
- 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.

Chapter 2. Public awareness and understanding

Section 6B of the PID Act states that the Ombudsman is to provide information, advice, assistance and training to public authorities, investigating authorities and public officials as well as issue guidelines and other publications to assist them.

While the Protected Disclosures Act, now the PID Act, has been in force since 1995, we have been aware that there were significant deficiencies in awareness and understanding of the legislation within the public sector. In our experience public officials often were not aware of the protections available under the Act if they reported certain wrongdoing. Many did not even know the legislation existed.

This chapter will outline the work we have done to raise awareness and understanding in the last year, including carrying out an extensive training schedule and developing a suite of e-Learning materials. This work is closely linked to our responsibility to provide advice and guidance to both authorities dealing with public interest disclosures and those staff considering reporting wrongdoing in the public sector. We have provided advice and guidance in a number of different ways. These have included:

- answering telephone and email inquiries
- drafting and distributing two model internal reporting policies, one for state government and the other for local government
- developing a broad range of targeted and accessible guidance materials
- providing an opportunity for questions and discussions at our hosted forums and information sessions
- delivering presentations and fielding questions at public sector events.

Telephone and email inquiries

The changes to the PID Act required public authorities to develop an internal reporting policy. It also required the principal officer of each public authority to ensure that there were systems in place within their agency to deal with internal reports appropriately and provide staff with protection and support when they report wrongdoing.

Once public authorities became aware of these obligations and the role of our office, we started to receive calls and emails asking for advice and assistance. This was a very effective way to provide advice and guidance to authorities, with staff from our Public Interest Disclosures Unit giving accurate and relevant answers as quickly as possible. Some of the issues we dealt with and the responses we gave are outlined below.

Number of PID officers

Within public authorities, the PID Act applies to disclosures made to the principal officer or other officers nominated in the authority's internal reporting policy. These nominated officers are commonly referred to as PID officers or disclosures officers.

The number of PID officers has been an interesting area of discussion among investigating authorities and with public authorities. Our guidance to public authorities has been that the optimum number of PID officers named in the policy will vary depending on the size and structure of the public authority, as well as its geographical distribution. For example, a small public authority based in one location may only require one or two PID officers in addition to the head of the authority. A larger public authority on the other hand, particularly with staff distributed over than one site, will need to nominate additional PID officers in their policy.

Case Study 1 – Nominated PID officers in NSW Police Force

The NSW Police Force (NSWPF) is a large public authority, employing approximately 20,000 people located across the state. The *Police Act 1990* makes it clear that it is an offence to take any form of action against a police officer in reprisal for them making a complaint. Protections against reprisal are also available to civilian police employees and police officers under the PID Act.

However, the internal reporting policy of the NSWPF nominated only one person other than the Commissioner of Police who could receive public interest disclosures – the Manager of the Internal Witness Support Unit. We believed this was seriously inadequate and potentially unfair to police employees (both officers and civilians) who may be denied additional protections under the PID Act.

Staff from our Public Interest Disclosures Unit and Police and Compliance Branch have been working with the NSWPF to try and increase the number of staff who can receive public interest disclosures. This included providing PID training to the Professional Standards Command (PSC), and attending a workshop for PSC staff as well as Professional Standards Managers (PSMs) from the regions. The discussions were beneficial as they enabled us to directly respond to any concerns or problems encountered.

We have recently been advised by the NSWPF of its intention to increase the number of nominated PID officers in January 2013 to include the Commander of the PSC and the PSMs from the regions. This will increase the number of staff able to receive a public interest disclosure to more than 20.

Impact of legislative amendments

One of the government's commitments when coming to office was to provide greater protection and support to those who report wrongdoing. This formed part of a range of reforms the government committed to implementing during its first 100 days. We provided advice to the Premier on possible amendments to the PID Act, many of which were introduced by the Public Interest Disclosures Amendment Act.

This presented additional challenges for public authorities, and also for our office. Many authorities were close to finalising, or had already finalised their policies when the amendments were passed. This meant that they had to either make changes at the last minute, or amend a policy that had already been approved. We answered any questions we received as quickly as possible, providing a clear summary of the changes that needed to be made to policies and procedures.

Guidance, not direction

One of the challenging aspects of our role has been to explain to authorities that we can provide advice and guidance not direction or determination. Many of the calls, emails and questions at information sessions and training have been seeking clear direction on a particular matter. Staff dealing with matters have wanted us to say if it is a public interest disclosure, and if it is, how they should deal with it.

When our office received requests for advice and guidance such as this, we made it very clear that our advice is based on the information we have been provided. We have made it clear that we are not directing the public authority to deal with the matter in a certain way, and that ultimately they have to decide how to respond.

Model internal reporting policies

The foundation of an effective internal reporting system is a clear, effective and appropriate policy and procedure. Before the changes to the PID Act, we had provided public authorities with model internal reporting policies as part of our then protected disclosures guidelines. Some authorities – particularly local councils – chose to adopt these, but there was no legislative requirement to have an internal reporting policy in place. The changes to the PID Act meant public authorities not only had to have policies in place, but they have to consider our guidance when preparing their policy.

We attempted to make the model internal reporting policies as adaptable as possible. This meant there was not a great deal of confusion about how to adapt the model to suit various authorities. Some chose to use the model entirely, only changing sections such as the public authority's name and the roles and responsibilities of staff. Some public authorities used the models as guidance and either completely re-wrote their policy or created a new policy.

The number of requests for advice we received on policy preparation was very encouraging. Some requests were very simple including questions around issues such as why disclosures made frivolously or vexatiously are no longer specifically referred to in the Act as a reason for saying a matter was not a public interest disclosure (primarily because it required the public authority to make an assessment of the reporter's motive in making the disclosure). Other requests for advice and assistance were more detailed. Case Study 3 is an example of such a matter.

Case Study 2 – Making a policy accessible for all staff

The Department of Education and Communities (DEC) provided us with a draft version of their policy to review. The DEC had developed their policy in two parts. The first was a brief description of the responsibilities of the department, designated recipients of disclosures and all staff. This was then supported by a more detailed guideline. This was a standard approach adopted by the DEC for the format of its policies, as it enabled them to use the outline as a web page. This allows staff to gain information about public interest disclosures quickly and easily. They can then look at the guidelines if they are either dealing with a disclosure or want more information about how a disclosure should be handled.

Case Study 3 – A statutory body, but no staff

When preparing their policy, the Sydney Olympic Park Authority (SOPA) identified a possible problem. While the *Sydney Olympic Park Authority Act 2001* clearly establishes SOPA as a public authority, the Department of Education and Communities employs almost all staff working at the SOPA. The PID coordinator contacted us to ask our advice on whether their staff could be considered 'officers' of the SOPA. We provided initial advice that as the PID Act was beneficial legislation it should be interpreted broadly, and the SOPA policy should apply to all the staff working for it. We recommended the SOPA seek legal advice, and the Crown Solicitor's office provided brief advice agreeing with us, enabling the SOPA to finalise its internal reporting policy.

Guidance materials

Ever since the Protected Disclosures Act commenced, our office has realised the importance of providing guidance material to public authorities. Our comprehensive protected disclosures guidelines were in their sixth edition when the changes to the PID Act were made. In light of our enhanced role, and the difficulties encountered in keeping a single comprehensive guideline up to date, we decided to take a different approach in providing advice to public and investigating authorities on meeting their obligations under the PID Act and appropriately managing the public interest disclosures they receive.

Our new public interest disclosures guidelines comprise a series of individual practice notes. During 2011–2012, we released guidance on 21 topics – each reflecting an element of good practice in agency internal reporting systems identified by the *Whistling While They Work* research project (see table on page 6). The remaining topics in the series will be released in the coming year.

This format allows us to update our guidance quickly and easily, both to reflect developments in our thinking as well as any legislative changes. For example, we updated all guidance material released prior to November 2011 to incorporate the changes arising from the Public Interest Disclosures Amendment Act.

We also developed a number of fact sheets and other resources during 2011–2012. These shorter, easily accessible publications are aimed at specific audiences, including public sector staff thinking about reporting wrongdoing, the heads of public authorities including general managers, nominated PID officers and other staff who might receive reports of wrongdoing, and PID coordinators and other staff who are responsible for the implementation of their public authority's PID system.

In November 2011 we amended all of our previously released guidance material to incorporate the changes arising from the Public Interest Disclosures Amendment Act. All of our guidance material is available on our website.

Guidelines and other resources released during 2011–2012

Guidelines	Fact sheets
Organisational commitment	<ol style="list-style-type: none"> 1. Changes to the public interest disclosures system 2. Public interest disclosures 3. Thinking about reporting serious wrongdoing? 4. Thinking about reporting serious wrongdoing in local government? 5. Obligations and responsibilities of state government principal officers 6. Obligations and responsibilities of local government general managers 7. Confidentiality and its alternatives
A1: Management commitment to internal reporting	
A2: Internal reporting policy and procedures	
A3: Awareness and training	
Facilitating reporting	
B1: Who can report wrongdoing?	
B2: What should be reported?	
B3: What's not a public interest disclosure?	
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	
C2: Reporting to the NSW Ombudsman	
C3: Assessing and streaming internal reports	
C4: Managing risk of reprisals and conflict	
C5: Investigating public interest disclosures	
C7: Confidentiality	
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	
Implementation (taking an integrated organisational approach)	<p>Checklist: Ensuring your internal reporting policy is best practice</p> <p>User manual: PID online reporting tool</p> <p>Promotional poster and postcard</p>
E1: Model for internal reporter support	
E2: Roles and responsibilities	

Training

Providing public interest disclosure training is a statutory requirement for this office under s.6B(1) of the PID Act.

To meet this obligation comprehensive training modules were developed and a rigorous training scheduled commenced in August 2011.

The training content provides an overview of a public authority's obligations under the PID Act. It covers the why, what, how and who of public interest disclosures by focusing on the parties involved, as well as the responsibilities of nominated PID officers, executives, public sector staff and our office. Tailored sessions were conducted for nominated PID officers, executives and staff.

The training is offered at no cost and was conducted in house as well as at regional and metropolitan workshops. We conducted training for principal departments, local health districts, universities, public agencies and trusts, energy providers and local councils.

During 2011–2012:

- 4,360 public officials attended 167 overview sessions
- 1,096 nominated PID officers and managers attended 82 PID management sessions
- 65 senior managers attended seven executive sessions.

e-Learning

In addition to facilitated training sessions, we have developed e-Learning modules to provide another option for authorities to raise awareness and inform their staff. All of these modules are available at no cost.

The first module, *PID Awareness*, was released in November. It was designed as an overview for all staff and outlines the main provisions of the PID Act, its protections for staff who report wrongdoing and the responsibilities of public authorities. The second version was released in February and a number of authorities have incorporated this module into an induction package for new staff and have uploaded the module to their intranets.

The *PID Reporting* module was the next to be released. The content provides further information and suggested reading for public officials who are contemplating making a public interest disclosure.

PID Management is a module mainly aimed at nominated PID officers and coordinators as well as others involved in the management of disclosures. It contains interactive exercises, guidance, examples and case studies. This module is undergoing final approval at the time of writing.

The *PID Executive* module focuses on informing executives and senior managers. It clearly outlines the obligations and responsibilities of principal officers and senior executives in relation to public interest disclosures. This module is in the final stage of development.

e-News

The Public Interest Disclosures Unit distributes regular PID e-News bulletins to practitioners and e-News subscribers. These bulletins keep subscribers up-to-date with relevant public interest disclosure news, changes to legislation and regulations, upcoming training sessions, events, publications, guidance material and educational resources. On occasion, news items of interest from around Australia and overseas are included.

As at 30 June 2012, the Public Interest Disclosures Unit had distributed 17 issues of the PID e-News bulletin to 638 subscribers. Past issues can be accessed from our website and we continually receive requests from new subscribers.

Stakeholder engagement

Engaging with public authorities and individuals is an important part of the work of the Public Interest Disclosures Unit and part of our statutory requirements. Developing and maintaining professional relationships enables us to promote awareness of the PID Act, to provide support and guidance to public authorities and individuals, and to identify problems and respond appropriately.

Hosting events

During June, July and August 2011, we conducted seven information sessions for representatives from public authorities to inform them of the changes to the PID Act, the role of the Ombudsman, the strengthened protections for public officials who report wrongdoing as well as defining the responsibilities of each party involved in the public interest disclosure process. We also advised them of their obligations, the requirement to develop a policy for dealing with disclosures as well as the need to nominate a position to coordinate the process.

In August 2011, the Ombudsman and Deputy Ombudsman (Public Administration) addressed the heads of agencies and senior managers at a breakfast event hosted jointly by our office and the Corruption Prevention Network. The NSW Attorney General also spoke to the audience about the importance of reporting wrongdoing and effectively managing disclosures. The focus of the breakfast was to clarify the statutory responsibilities of principal officers under the PID Act. The message relayed outlined the benefits to agencies of having effective systems to receive, manage and handle public interest disclosures.

We also recognise the importance of creating an ongoing network where those responsible for dealing with public interest disclosures can share information and gain a greater understanding of the process and obligations involved. We held a forum in November 2011 attended by representatives from a variety of agencies across the sector. The session included a question and answer section, but focused on a case study and related discussions around assessing disclosures, managing confidentiality and assessing and managing the risk of reprisals. We aim to conduct these forums periodically to facilitate a collaborative relationship between the Public Interest Disclosures Unit and practitioners within agencies.

Attending events

Attending government conferences and events is another way to promote the work of our office and raise awareness of public interest disclosures. Over the year we hosted information stalls at the IPAA State Conference, the Local Government Managers Association Conference and the Corruption Prevention Network Annual Forum.

We have also been invited to speak at a range of events. Members of the Public Interest Disclosures Unit or the Deputy Ombudsman (Public Administration) presented at the Corruption Prevention Network's Annual Forum and a 'Hot Topics' seminar, the Whistleblowers Australia's Annual Conference and to a number of other public sector agencies.

Engaging with other jurisdictions

In May 2012, our office hosted the inaugural Public Interest Disclosures Oversight Forum for Australian agencies with a shared interest in the effective implementation of public interest disclosures type legislation in our respective jurisdictions. Almost all Australian jurisdictions participated in the forum – either in person or via teleconference – and all noted the benefits of coming together. The forum enabled our agencies to exchange information and experiences, share resources such as videos and publications, discuss areas of common interest and explore opportunities for conducting joint projects.

Some of the key outcomes of the day were decisions to establish a Public Interest Disclosures Oversight Network to formalise our ongoing collaboration across jurisdictions, and to establish a working group to identify key measures and items for use in surveys of public sector staff in relation to internal reports of wrongdoing.

Our Senior Researcher/Analyst presented a half day workshop on *Managing whistleblowing—risks and responsibilities* at the Australian Public Sector Anti-Corruption Conference in Perth. This gave our office an opportunity to share knowledge with practitioners from other jurisdictions across Australia.

Chapter 3. Monitoring and review

The Ombudsman is required under 6B of the PID Act to monitor and audit the exercise of functions under and compliance with the Act by public authorities. We are to report to Parliament on our monitoring work once a year, and at least once a year on our audit work.

One of the difficulties in evaluating the effectiveness of the NSW PID system previously has been the lack of information about its implementation. Over time, information about the numbers and handling of public interest disclosures in NSW will be vital to ensuring the objects of the PID Act are being achieved in practice and inform future amendments.

For the first time, it is possible to begin to build a picture of public interest disclosures in NSW. This follows an amendment to the PID Act requiring public authorities to report information directly to the Ombudsman and an agreement among the Act's investigating authorities to exchange relevant information. Based on the information provided to our office, a total of 334 public interest disclosures were received and retained by NSW public and investigating authorities from 1 January to 30 June 2012.

Survey of public sector employees

The NSW Public Service Commission (PSC) ran the 2012 People Matter Survey to gather information on state public sector employees' perceptions of how well they thought the public sector values are applied across the sector as well as their views on their workplaces. In this inaugural year of the survey it has created a baseline for the NSW public sector as a whole and in following years, results will be tracked against this baseline. Over 130 state government agencies participated and more than 60,000 employees responded to the survey.

It is anticipated that the People Matter Survey and its analysis in the 2012 State of the NSW Public Sector Report will be available on the PSC's website from mid November 2012 – www.psc.nsw.gov.au. The PSC's report includes three questions relevant to our work: two on improper conduct and one about protection from reprisal. The survey defined improper conduct as: behaviour that is unethical or wrong, that breaches your organisation's code of conduct, or that compromises your duties. This definition is much broader than the five categories of conduct outlined in the PID Act and includes conduct not serious enough for its disclosure to be in the public interest.

The results of the PSC survey indicate that:

- Just under a third of respondents (30%) witnessed improper conduct at work in the last 12 months. In comparison to surveys conducted in other Australian jurisdictions, the extent of improper conduct in NSW is comparable to levels reported in South Australia (38%) and Western Australia (24-28%).
- Only 23% of those employees who had witnessed improper conduct submitted a formal complaint, representing 7% of all survey respondents.
- When asked about their confidence in being protected from reprisal for reporting improper conduct, 58% of employees that answered either agreed or strongly agreed. Note that 12% of respondents said they did not know or did not answer the question.

These baseline results are concerning and provide considerable room for future improvement. Increasing the proportion of employees who take action when they witness wrongdoing, and the protection provided to those that do, are long-term objectives of the Public Interest Disclosures Unit. We will continue to monitor progress. Most importantly, agencies need to continue their efforts in creating a workplace culture where staff are encouraged to speak up when they see something wrong, are confident they will not face reprisal for doing so and believe appropriate action will be taken in response.

Further detail is provided in the Appendix to this report.

Reporting by public authorities

Since 1 January 2012, the PID Act has required public authorities to report certain information about their obligations directly to the Ombudsman every six months, as well as in their own annual report. As the Joint Parliamentary Committee noted in their 2009 review of the Act, statutory reporting requirements not only ensure information is available, but have the added benefit of emphasising the responsibility of public authorities to comply with their obligations.

To facilitate the secure provision of reports to our office by public authorities, we developed the PID online reporting tool. Registered users can login and submit the required information, as well as view, update and print any reports provided previously. We invited a cross-section of public authorities to test the PID online reporting tool before

launching an enhanced version based on their feedback. As well as holding demonstrations for public authorities at our office, we released a user manual to guide registered users step-by-step through the process.

For the first reporting period 1 January to 30 June 2012, our office received reports from 318 public authorities. Key information about the public interest disclosures reported by public authorities during these six months – as well as the action they took to establish an internal reporting policy and ensure staff are aware of it. Further detail is contained in the Appendix to this report, including an explanation of the terminology we use and how public interest disclosures are counted.

While we are unable to make comparisons over time and are limited in our ability to draw firm or specific conclusions, patterns are emerging. The reports provided by public authorities demonstrate that there is a growing understanding of the PID Act and its requirements. It is clear, however, that some public authorities are not complying with their obligations. We will use this information to inform and appropriately target our future awareness and auditing activities.

Key information from public authorities

Most public authorities indicated that they met two important obligations under the PID Act: 88% reported establishing an internal reporting policy while 87% reported taking action in relation to staff awareness.

These public authorities reported adopting a range of strategies to ensure their staff know how to disclose public interest wrongdoing. Non-compliant public authorities tended to have a very small number of staff, but reported no PIDs. An effective PID system clearly depends on a formal commitment by public authorities to internal reporting.

A relatively small number of public authorities reported 179 public interest disclosures in total. Most public authorities (84%) – including all Local Aboriginal Land Councils – did not report any PIDs. In performing our audit role, we will consider whether public authorities are appropriately identifying and assessing internal disclosures that may be in the public interest.

Most PIDs reported by public authorities primarily concerned corrupt conduct. Very few PIDs reported alleged a serious and substantial waste of public funds or a breach of the GIPA Act.

If we take into account their number of staff, local government authorities reported five times as many disclosures as other types of public authorities. However, they are no more or less likely (around one in five) to report a PID than other types of authorities. This suggests that those local government authorities that do report PIDs handle a disproportionately high number. The two public authorities that reported the most PIDs were both local councils with less than 1,500 staff.

Smaller public authorities seem to deal with public interest disclosures more efficiently, as do local government authorities. As the size of a public authority increases, the proportion of PIDs reported that have been finalised decreases. All PIDs reported by public authorities with less than 150 staff were finalised.

Sharing information with investigating authorities

The role of investigating authorities under the PID Act is an important one – not only do they receive, assess and investigate public interest disclosures themselves, but they monitor their handling by public authorities.

To ensure consistency and coordination in our approach, we met with staff from the Audit Office of NSW, the Division of Local Government (DLG), the Independent Commission Against Corruption (ICAC), the Office of the Information Commissioner (OIC) and the Police Integrity Commission (PIC). We agreed to share information with each other about the public interest disclosures we received in our capacity as investigating authorities.

While further information on public interest disclosures received by investigating authorities is in the Appendix, from 1 January to 30 June 2012:

- The majority of public interest disclosures received by investigating authorities alleged corrupt conduct (77%). More than half (65%) were received by the ICAC.
- One in 20 PIDs received by investigating authorities were referred on to public authorities under the PID Act. Investigating authorities retained responsibility for most (87% or 148) of the PIDs that they received and for meeting certain obligations under the PID Act. Of the PIDs retained, 15 resulted in a formal investigation into the wrongdoing alleged.

Interestingly, while research consistently shows a strong preference among employees to report wrongdoing internally, information provided to our office indicates that 45% of all PIDs received and retained were reported by investigating authorities. This may be because investigating authorities are more adept at identifying reports about wrongdoing made by public officers as PIDs.

Audit program

Section 6B(1)(f) of the PID Act 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).

The audit function will involve reviewing the handling of investigations by public authorities using random sampling techniques. It will also look at the compliance of public authorities with their obligations under the PID Act, such as the statutory reporting and internal policy requirements.

We anticipate that the audit program will comprise three components: a survey measuring agency compliance with the PID Act, targeted compliance audits involving the examination of documentation associated with the handling of disclosures by public authorities, and broader audits addressing best practice or sector specific issues.

During 2012–2013, we will focus on a survey examining agency compliance with the PID Act. Public authorities were only required to have an internal reporting policy in place by October 2011. The aim of the first survey will be to measure the extent to which authorities have put in place policies and procedures to address their obligations under the Act.

This self-assessment checklist will give public authorities an opportunity to evaluate their own policies and practices. It will gather valuable information about current practices in the public sector that can be used as a baseline indication of how public authorities are performing. The information will also assist our office in identifying trends over time and targeting our other audit and awareness activities.

The survey will comprise over 70 questions covering topics including internal reporting policies, management commitment, how disclosures are assessed, how the risks of reprisal are managed, how public interest disclosures are investigated, how the confidentiality of internal reporters is maintained, how support is provided to internal reporters and record keeping.

Public authorities will be asked to complete the survey online. The initial survey will not be mandatory however all public authorities will be required to complete the survey in future years. A report on the outcomes of the audit will focus on best practice already in place.

Steering Committee

Sections 6A, 31B and 32 of PID Act outline the membership, role and responsibilities of the Public Interest Disclosures Steering Committee. The Committee is responsible for providing advice to the Premier on the operation of the Act, making recommendations for reform, considering reports from the Ombudsman under the Act, and reviewing any Commonwealth legislation relating to whistleblower protection.

The Committee membership is made up of the Ombudsman, the Director General of the Department of Premier and Cabinet, the Auditor General, the Commissioner for the ICAC, the Commissioner for the PIC, the Chief Executive of the DLG, the Police Commissioner and the Information Commissioner, or their nominees.

The Secretariat for the Committee is provided by our office. The Committee meets quarterly.

A separate annual report on the work of the Committee is being prepared and will be provided to the Premier as the Minister responsible for the PID Act.

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 providing 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 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 but not set out evidence that shows or tends to show why the complainant believes the public authority has engaged in conduct that amounts to maladministration.

Inquiries

During 2011–2012 the Ombudsman received a total of 300 inquiries relating to public interest disclosures. Of the 300 inquiries, 220 related to policy or training. Of the remaining 80 inquiries that related to specific public interest disclosures, 47 inquiries were about their handling by public authorities.

Complaints

The Ombudsman received 48 complaints during 2011–2012 regarding matters relating to public interest disclosures. This figure includes disclosures made to us that did not meet the threshold as set out in the PID Act and complaints about how public authorities were managing disclosures.

Of the 48 complaints we received, 28 were assessed as meeting the threshold under the PID Act and 20 were assessed as not meeting the threshold. Seven were related to emergency service agencies, seven related to local councils, five related to the NSW Police Force, seven related to local health districts, and the remainder were about a number of different public authorities.

There are certain matters that the Ombudsman Act specifically prevents us from investigating. Schedule 1 to the Act sets out these exclusions, including under clause 12:

Conduct of a public authority relating to:

- (a) *the appointment or employment of a person as an officer or employee, and*
- (b) *matters affecting a person as an officer or employee,*

unless the conduct:

- (c) *arises from the making of a public interest disclosure (within the meaning of the Public Interest Disclosures Act 1994), or*
- (d) *relates to a reportable allegation or reportable conviction (within the meaning of Part 3A of this Act), or to the inappropriate handling or response to such an allegation or conviction.*

If a complaint relates to matters affecting a person as an officer or employee and there is no evidence to suggest the complainant has made a public interest disclosure, the Ombudsman does not have jurisdiction to investigate the complaint. The complainant needs to demonstrate that they have already made a public interest disclosure internally and are suffering reprisal for having done so. If making a public interest disclosure directly to the Ombudsman, the complainant needs to provide evidence that shows or tends to show a public authority has engaged in conduct of the kind that amounts to maladministration.

Other examples of complaints received by our office that do not meet the threshold under the PID Act include disclosures from local government councillors made primarily for political purposes.

During 2011–2012 our office finalised 38 complaints, including 19 assessed as meeting the requirements of the PID Act. In addition, five public interest disclosure complaints that we received during the period are currently the subject of a formal investigation.

Case Study 4 – Disclosure that did not meet the threshold under the PID Act

The complainant had been employed for a number of years until his position was displaced following a restructure. Following the restructure he applied for a position which had similar responsibilities to his former position but was unsuccessful in attaining it.

The complainant said his employer breached the then *Occupational Health and Safety Act 2000* (OH&S Act) by: failing to ensure that its systems of work and the working environment were safe and without risks to employees; failing to consult with employees as required under section 15(e) of the OH&S Act; and failing to take reasonable care to identify foreseeable hazards arising from its conduct.

The complainant argued that this conduct constituted maladministration. Public interest disclosures made to the Ombudsman must relate to matters within our jurisdiction under the Ombudsman Act. Employment related matters fall outside our jurisdiction. Although this office can look at matters relating to the employment of a person arising out of the making of a public interest disclosure, there was no evidence that this complainant had made a disclosure internally and that the issues arising in the workplace were in reprisal for having made a disclosure.

Case Study 5 – Disclosure that related to a review under a code of conduct

This office received a complaint from a councillor regarding a complaint made against him under the council's code of conduct. The councillor advised he wished to respond to the review by way of a public interest disclosure to protect him from the possibility of an action in defamation or any other retribution.

After reviewing the information and documentation provided by the councillor we advised that any response he made to the review under the code of conduct would constitute his defence to alleged impropriety by him at a council meeting. This did not constitute maladministration under the PID Act and therefore could not be the subject of a public interest disclosure to this office.

The aim of the PID Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste and government information contravention in the public sector. In our view it was neither contemplated nor intended that the Act would be used by councillors for the purpose of responding to code of conduct matters.

Case Study 6 – Alleged detrimental action taken in reprisal for making a disclosure

In July 2011 a complainant lodged a complaint alleging that he and others in his work unit had suffered detrimental action in reprisal for making a public interest disclosure in May 2010 about the conduct of the Manager of Human Services. The disclosure related to the Manager:

- failing to appropriately manage the learning and development team
- misusing overtime and travel allowances
- failing to enter into a competitive tendering process for the provision of printing services.

The complainant raised these matters internally with the Director of his area and also with the Director of Human Resources who was a nominated PID officer. Following an internal report on the matter, the complainant's team was advised that it would be moved to a regional office as part of a restructure. The complainant claimed this was detrimental action taken in reprisal because he had made an internal disclosure.

We made inquiries of the agency concerned and it appeared that the agency did not identify the complainant's report as a public interest disclosure. It had been treated as an opinion the complainant had expressed regarding his supervisor and the management of the training and development function of the agency. In relation to the complainant's concerns about detrimental action in reprisal, the agency advised that the reason for the restructure was because there was no longer a physical requirement for the officers in question to be located in regional areas once regional officers had been introduced into each of the regions located in NSW.

The agency advised that formal discussions and proposals regarding the restructure were instigated in November 2010. There was a formal workshop undertaken in relation to the changes in January 2011 and meetings were held throughout early 2011. Formal approval for the restructure was granted by the head of the agency in July 2011. The agency provided documentation setting out the process it had used in undertaking the restructure.

On the basis of the information provided, our office was satisfied there was no evidence the complainant had suffered reprisal. However we wrote to the agency expressing concern that the Director of Human Resources had failed to consider whether the complainant's issues constituted a public interest disclosure. We advised the Chief Executive Officer that following the changes to the PID Act, we would expect nominated officers within a public authority to undertake an assessment of each report received to determine whether it constitutes a disclosure under the Act. There should also be a written record of that assessment.

Case Study 7 – Multiple disclosures and request to remove confidentiality

We received a complaint alleging maladministration and inappropriate management practices within an agency. The complainant provided information on the proviso he be treated as making a PID and that his identity be kept confidential. As our investigation progressed, we received a number of further PIDs relating to the same and similar issues.

One of those additional people who made a disclosure contacted us and stated they had been informed that there would be 'revenge' taken against those who had provided us with information. He was also specifically identified by several of his peers as a person suspected to have provided information to us. He subsequently asked that all executives and line managers within his agency be formally advised that he had made a disclosure to the Ombudsman. He believed that the protections under the PID Act would be difficult to enforce if his identity remained confidential.

We were pleased to note that the head of the agency took immediate steps to remind all agency staff that detrimental action against a person in reprisal for making a PID contravened the PID Act. A number of internal processes were also put in place to provide support for the person concerned, including notifying relevant staff that he had made a PID.

We also noted that while the investigation involved a number of PIDs and interviews with a significant number of witnesses, those interactions were robustly facilitated and coordinated by the agency. We observed how the appointment of a single point of contact for the duration of our investigation ensured that the head of the agency was kept apprised of several issues arising from our investigation as they were identified.

Chapter 5. The year ahead

Our monitoring of employee perceptions has underscored the need to build a positive reporting culture across the public sector and further encourage public officers to report wrongdoing of which they are aware. We will achieve this through effective communication and stakeholder engagement and by targeting training to where it's needed most. The release of our e-Learning modules, for example, provides us with an opportunity to deliver key messages directly to practitioners and executives, and increase our reach in regional areas.

Nevertheless, our monitoring and auditing of public authorities will increase and sharpen in focus over the coming year. The commencement of our audit program is key to meeting our objectives of improved handling and the remedying of PIDs by agencies. We have already drawn on the information contained in the reports from public authorities to inform the decision-making and priorities of our training and audit programs, as well as the Public Interest Disclosures Steering Committee – and this process will be enriched by the in-depth information gathered from our targeted audits, the agency survey and agency annual reporting.

Planned for 2012–2013

Public awareness and understanding:

- provide training with a focus on scheduling more open workshops
- release the remaining e-Learning modules
- release the remaining guidelines, including working with other investigating authorities to develop joint guidance on managing referred and external investigations
- commence review of the guidelines
- provide practical resources, including a sample disclosure receipt template for use by nominated PID officers and an annual reporting template for use by public authorities
- conduct forums and workshops for practitioners, public authorities and specific industry bodies
- engage with stakeholders through relevant conferences, workshops, seminars and events
- coordinate the national Public Interest Disclosures Oversight Network.

Monitoring and review:

- assist public authorities to comply with the reporting requirements under the PID Act, including providing reports to our office via the PID online reporting tool
- monitor information included in the annual reports of public authorities and provided directly to our office to effectively target our awareness-raising and auditing activities
- share information with other investigating authorities about PIDs received
- continue to provide secretariat support to the Public Interest Disclosures Steering Committee
- conduct our first audit pursuant to s.6B(f) of the PID Act
- assist with the review of any Commonwealth legislation that is enacted pursuant to s.31B of the PID Act.

Complaint handling and investigation:

- handle complaints received by our office and conduct investigations as identified.

Appendix. Public interest disclosures in NSW

This Appendix brings together the information provided to our office about public interest disclosures (PIDs) in NSW over the period 1 January to 30 June 2012. For the first reporting period, 318 public authorities had provided reports to our office as at 30 September 2012. We have received a further three reports from public authorities since that date that are not included in this analysis (none reported any PIDs).

In these six months, NSW public and investigating authorities reported that they received and retained a total of 334 PIDs. Our calculation is based on the assumption that each PID made in NSW will be retained by either a public or investigating authority. It is the sum of the PIDs reported by public authorities (179), the PIDs received and retained by six of the investigating authorities (148) and the seven PIDs received by the remaining two investigating authorities.

The total does not include any PIDs made to Members of Parliament or journalists as provided for in the PID Act. We also do not know at this stage the extent to which public authorities are appropriately identifying and assessing internal disclosures of wrongdoing in the public interest as PIDs. This will be examined as part of our audit program.

While the exact number of public authorities with responsibilities under the PID Act is unclear, only two-thirds of identified public authorities provided their report by the due date specified in the PID Act. This was despite a campaign by our office to inform public authorities of their reporting obligations, combined with active assistance in the lead up to the end of the reporting period. We will continue to work with authorities to reinforce their reporting obligations under the Act, and seek the compliance of the remaining agencies we have identified that have not provided a report.

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 ss.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 minimise PIDs being counted more than once. A PID made directly to Agency X and then referred under s.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.

In future, we will look at recommending amendments to the PID Regulation to provide both public authorities and our own office with further clarity. For example, in addition to telling us about the number of PIDs they received in total, investigating authorities shared information with our office about how they were received (number made directly, referred under s.25 of the PID Act and referred under s.26) and how they were handled (number retained, handled jointly with another authority, referred to a public authority and referred to an investigating authority).

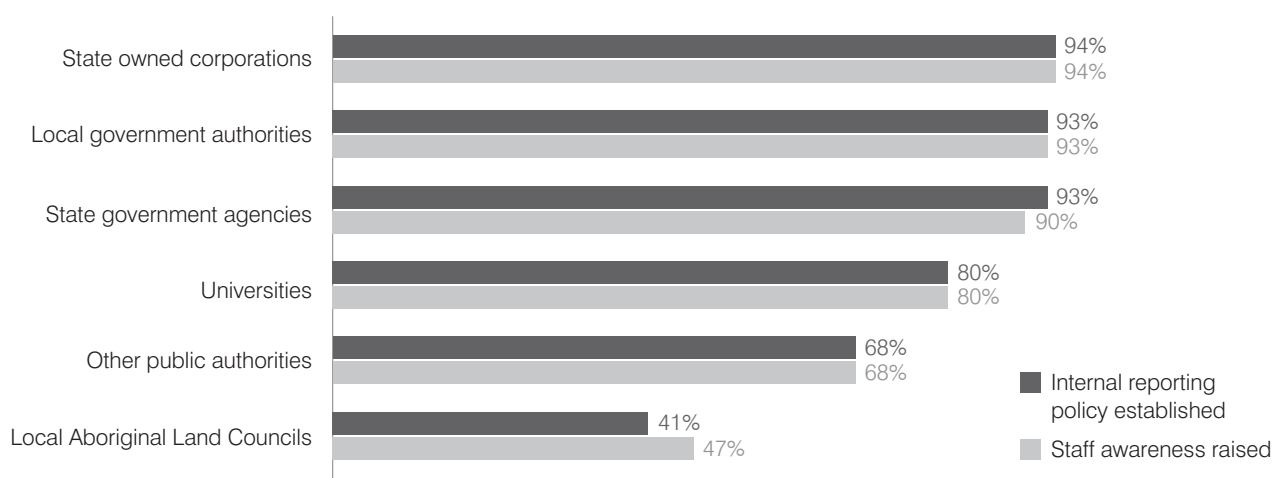
Internal reporting policies and staff awareness

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.

Most public authorities indicated they had met these obligations – 88% reported establishing an internal reporting policy, while 87% reported taking action in relation to staff awareness. Non-compliant public authorities generally had not met either requirement, and tended to have a very small number of staff. For example, Local Aboriginal Land Councils were the type of public authority least likely to have met their obligations, while also employing the fewest staff.

No PIDs were reported by public authorities that did not have an internal reporting policy or had failed to take action to raise staff awareness. Despite this, we are reassured that many of these public authorities are moving towards compliance because they have since sought our advice about their obligations under the PID Act. An effective PID system clearly depends on a commitment by public authorities to internal reporting.

Figure 1. Public authorities that reported meeting their obligations (by type)



How did the heads of public authorities raise staff awareness?

When public authorities indicated that their head took action to raise staff awareness, this most commonly involved training staff or including a link to the internal reporting policy on their intranet. The majority of these public authorities reported that their head had adopted a number of strategies. It's clear that many authorities have invested significant effort in ensuring their staff know how to report wrongdoing and are aware of the protections provided by the PID Act. Public authorities also shared some innovative initiatives they have implemented to build staff awareness.

Examples of actions taken to raise staff awareness

To create awareness and to provide staff with the tools they need to make a PID, the City of Ryde displays information such as a listing of all PID officers in the council alongside their photograph.

One of the means by which staff within the Department of Finance and Services were advised of public interest disclosures was a pod cast involving the Director General introducing their policy.

Senior staff of Taronga Conservation Society Australia attended an interactive session on their PID policy and were provided with information to conduct tool box talks with their staff.

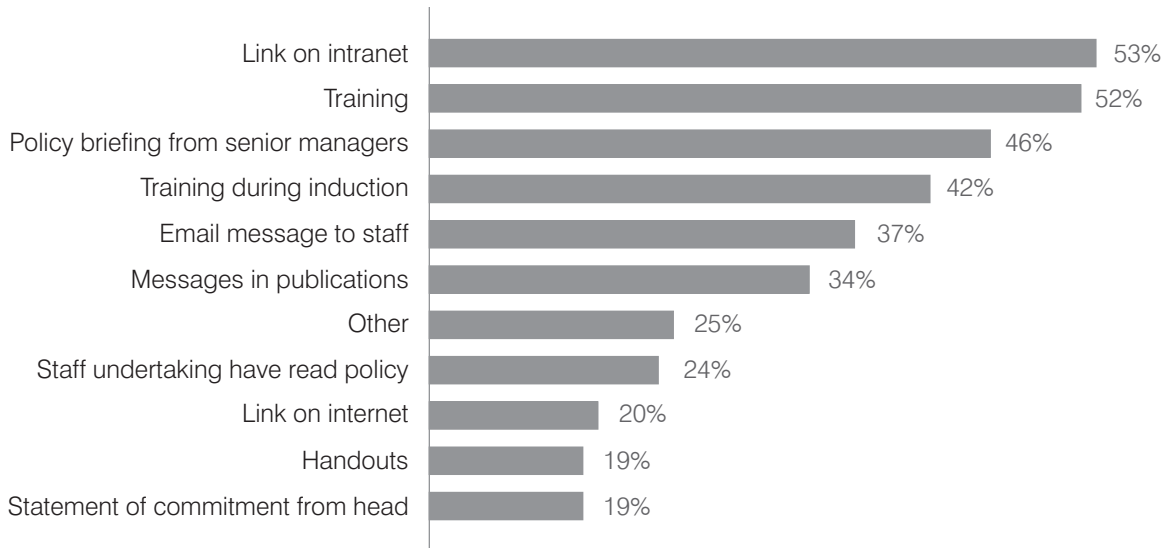
The protections available for making a PID have been included in the Statement of Business Ethics for Transport for NSW and the State Transit Authority – a key compliance document for their suppliers (including contractors).

Wollongong City Council includes a message to staff from their General Manager on their intranet, reminding them of the public interest disclosure provisions and council's internal reporting policy – as well as thanking staff who made reports for their contribution to council.

Despite these efforts, we would encourage public authorities to adopt certain strategies:

- Management commitment is key to encouraging staff to report wrongdoing – yet it also appears relatively uncommon for the head of a public authority to explicitly and personally commit to internal reporting. Our model internal reporting policies note the importance of a clear statement of commitment signed by the head of the public authority to supporting and protecting staff if they report wrongdoing.
- While internal reporting policies are policy documents that are required by the GIPA Act to be publicly available, a relatively small number of public authorities indicated that their policy was available on their website.

Figure 2. Public authorities that reported adopting each awareness strategy



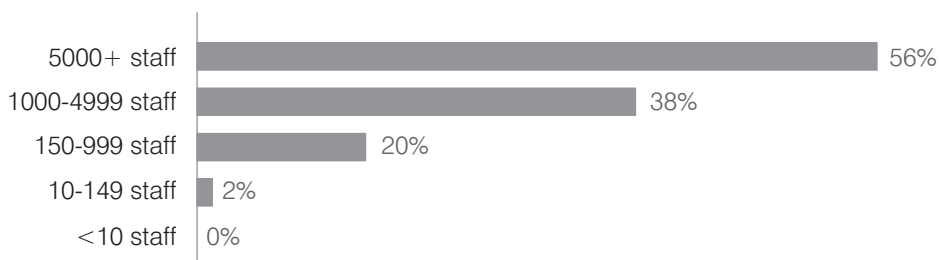
PIDs reported by public authorities

Over the six month period, 51 public authorities reported 179 PIDs. Most public authorities (84%) – including all Local Aboriginal Land Councils – did not report any PIDs. Slightly less than one in five state government agencies, local government authorities, universities and state owned corporations reported a PID.

Our future auditing and monitoring activities will consider whether public authorities are identifying all reports about wrongdoing made internally that might be PIDs and assessing them as provided for in the PID Act.

It makes sense that the likelihood of a public authority reporting a PID depends on their size. Specifically, as the size of a public authority increased, so did the likelihood that they reported a PID.

Figure 3. Public authorities that reported at least one PID (by size)

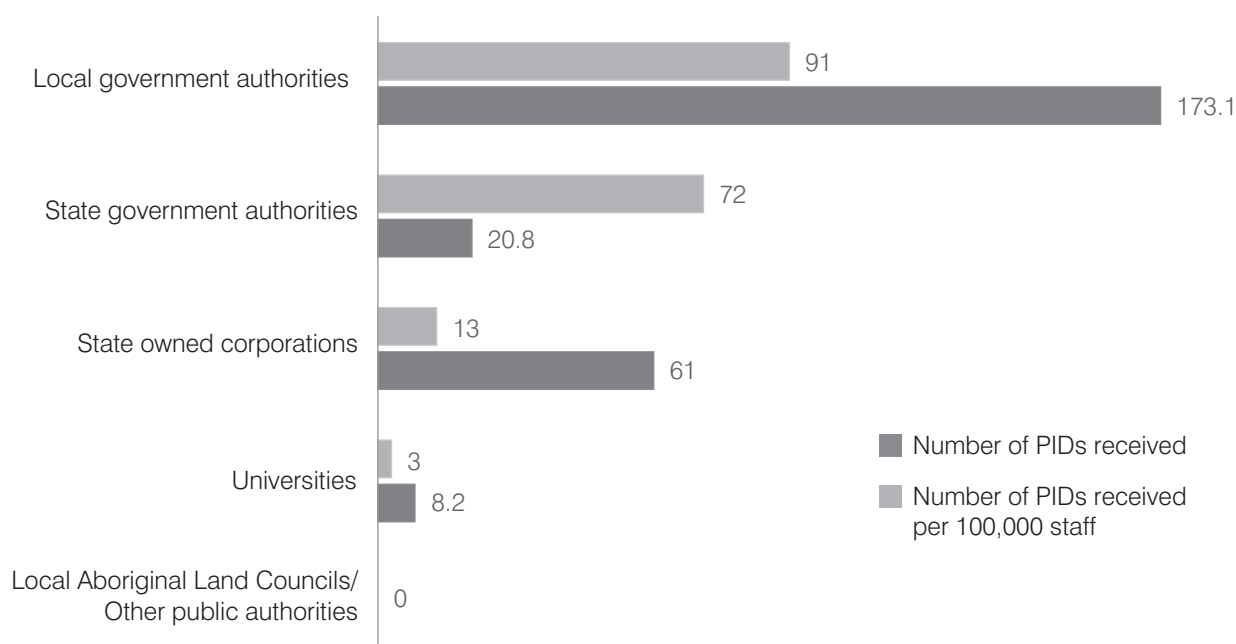


How many PIDs were reported per 100,000 staff?

We would expect a large public authority to report more PIDs than a small public authority. It's therefore important to consider the number of PIDs reported by public authorities in relation to their number of staff. Figure 4 shows both of these indicators according to the type of public authority. Across the 318 public authorities that reported, approximately 39 PIDs were reported per 100,000 staff.

In general, local government authorities were no more likely than other types of authorities to report a PID. Despite this, half of all PIDs reported by public authorities were by the local government sector. When we consider their number of staff, local government authorities report almost five times as many PIDs than other types of authorities. This is indicative of a small number of local government authorities reporting a disproportionately large number of PIDs. As an example, the two public authorities in NSW that reported the most PIDs were both local councils with less than 1,500 staff.

Figure 4. Number of PIDs reported in total and per 100,000 staff (by type of public authority)

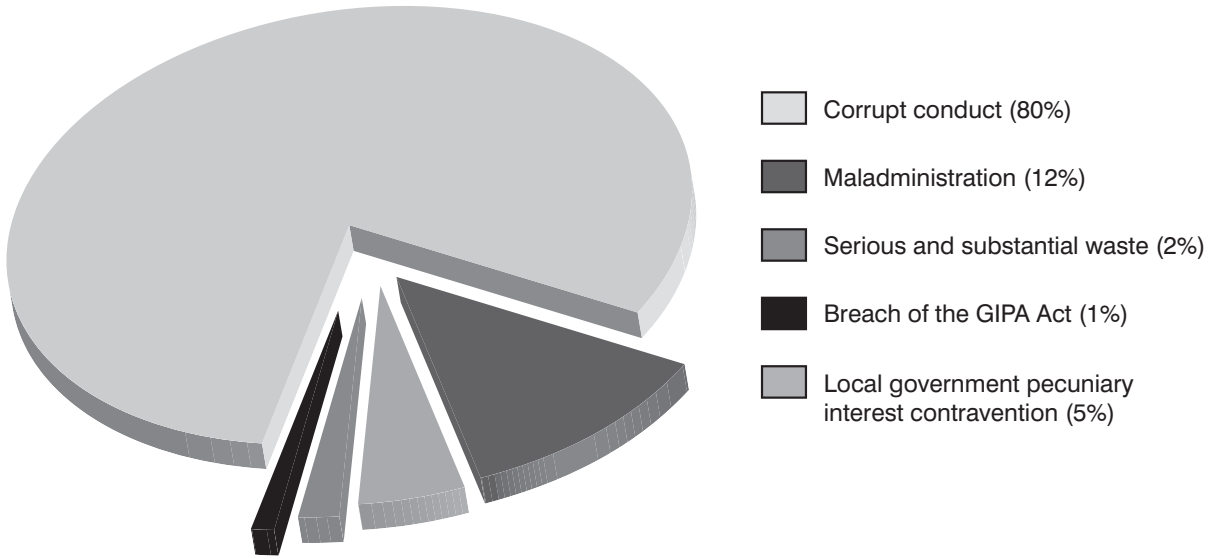


What was the subject matter of the PIDs?

The vast majority of PIDs reported by public authorities primarily alleged corrupt conduct. Where a PID contains multiple allegations that could fit more than one category of wrongdoing, 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.

Unsurprisingly, all 10 PIDs about a local government pecuniary interest contravention were reported by local government authorities.

Figure 5. Primary category of wrongdoing alleged in PIDs reported

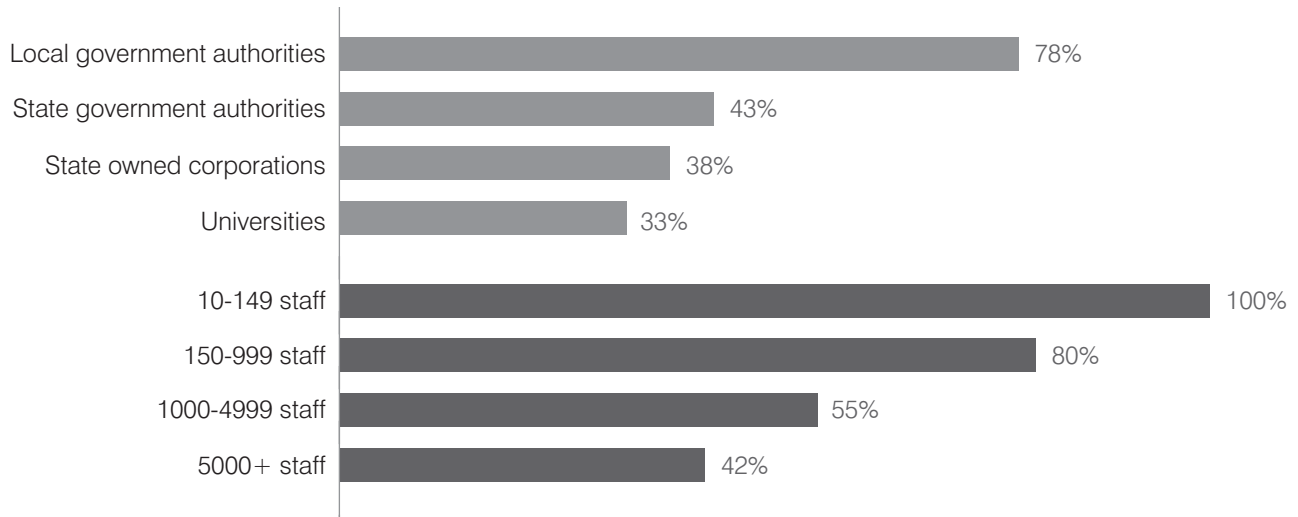


How many PIDs reported were finalised?

Of the 179 PIDs reported by public authorities – all received since 1 January 2012 – a commendable 60% were finalised by 30 June 2012. While public authorities are not required to report on whether PIDs were investigated, or led to systemic improvements or findings about wrongdoing, the handling of PIDs will be examined as part of our audit program.

Smaller public authorities seem to deal with PIDs more efficiently, as do local government authorities. As the size of a public authority increases, the proportion of PIDs reported that have been finalised decreases. All PIDs reported by public authorities with less than 150 staff were finalised.

Figure 6. PIDs reported that have been finalised (by type and size of public authority)



PIDs received by investigating authorities

This section is based on information from six investigating authorities under the PID Act – the Audit Office of NSW, the DLG, the ICAC, the OIC, the Ombudsman and the PIC. We agreed to share information on the PIDs we received as investigating authorities from 1 January to 30 June 2012. The ICAC received the most PIDs and, similar to PIDs reported by public authorities, the majority concerned corrupt conduct.

Figure 7. PIDs received by investigating authorities

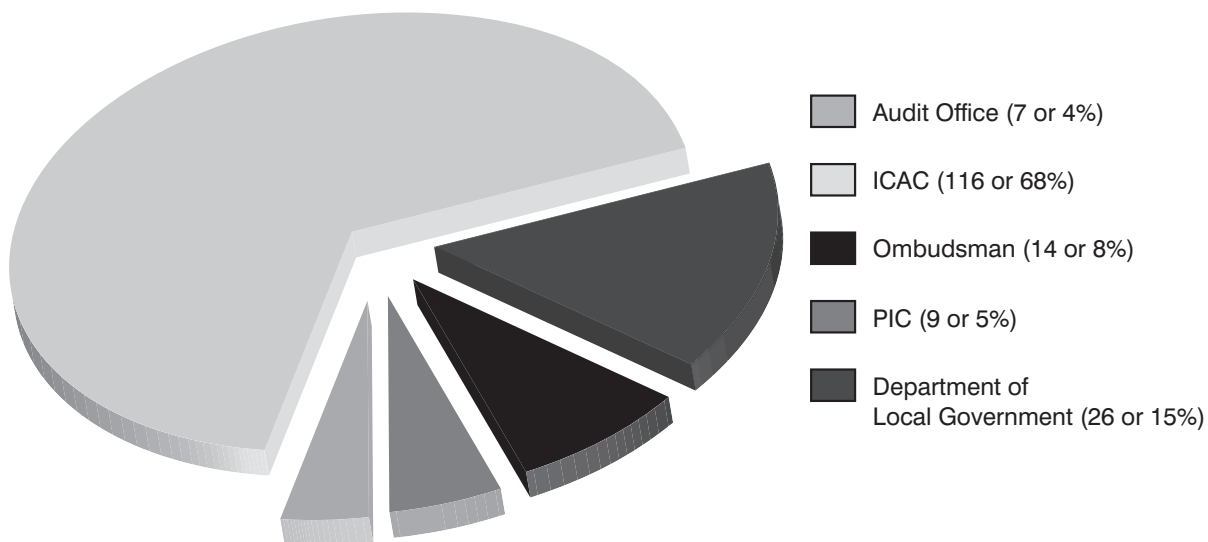
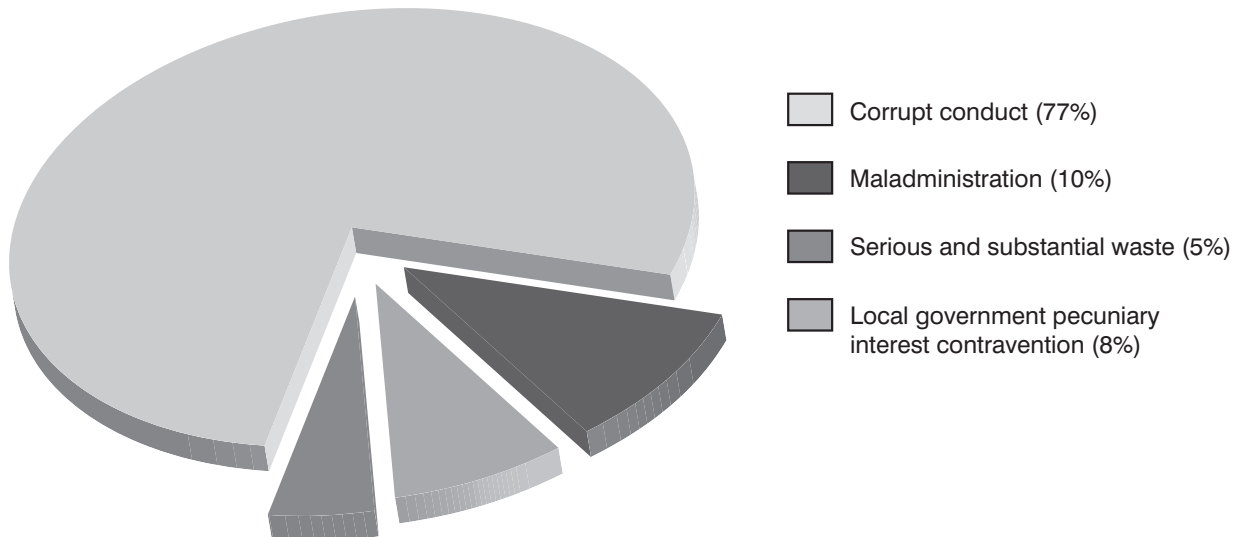


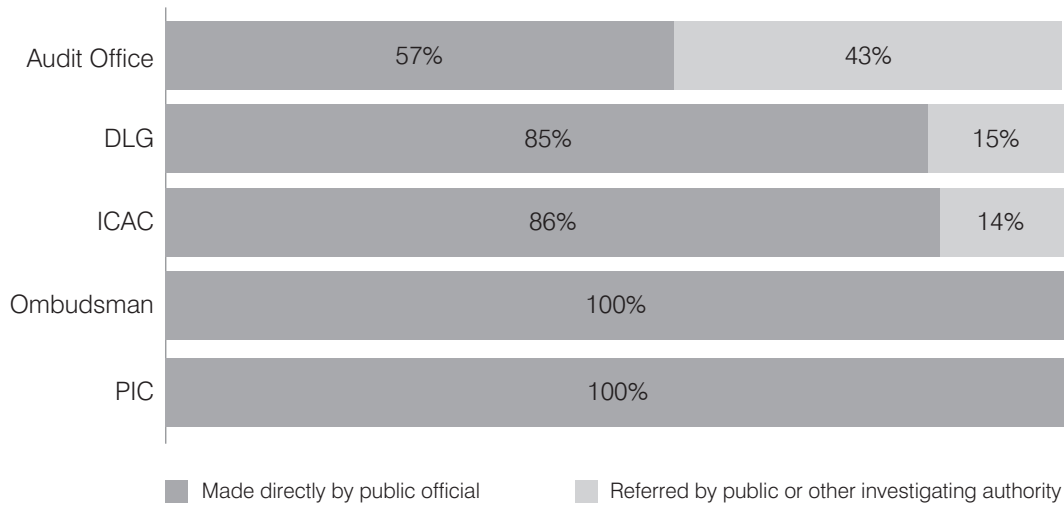
Figure 8. Primary category of wrongdoing alleged in PIDs received



The PIDs received by investigating authorities were made to them via one of three ways:

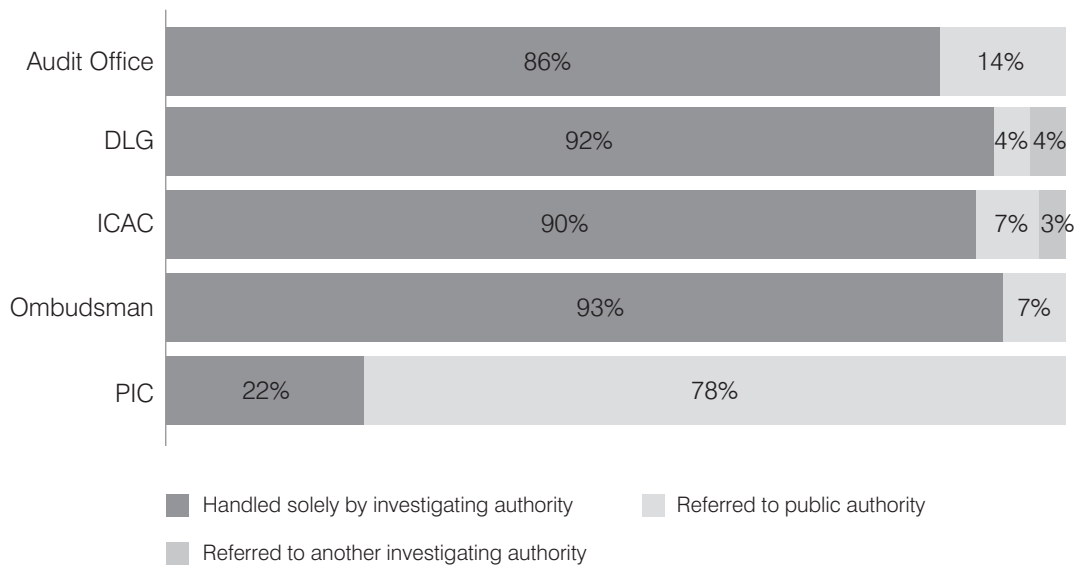
- The majority were made directly by 140 public officials (excluding the number of public officials who made anonymous PIDs directly to the ICAC).
- Close to one in ten were referred to investigating authorities by public authorities.
- 'Misdirected' PIDs – the term used in the PID Act for PIDs made to an authority without the jurisdiction to respond to the conduct alleged – comprised 8%. These PIDs were typically referred to the more appropriate investigating authority.

Figure 9. Source of PIDs received by investigating authorities



Investigating authorities retained responsibility for handling the majority of PIDs (87% or 148) they received and for meeting the associated obligations under the PID Act. Few PIDs were referred by an investigating authority under the Act – 8% to another investigating authority and 5% to a public authority.

Figure 10. Handling of PIDs received by investigating authorities



The information provided in 15 PIDs retained by investigating authorities prompted formal investigations. Five were investigated by our office, one was investigated by the PIC, seven were investigated by the ICAC directly, with another two investigations being oversights by the ICAC after being referred to the authority that was the subject of the allegations under Part 5 of the *Independent Commission Against Corruption Act 1988*.

We have not yet sought to include the two remaining investigating authorities under the PID Act – the Inspector of the ICAC and the Inspector of PIC – in these information sharing arrangements as their jurisdiction includes other investigating authorities. While not included in the figures above, the Inspectors received a further seven PIDs:

- The Inspector of the ICAC reported receiving six PIDs over the period, three concerning corrupt conduct and three about maladministration. All were finalised.
- The Inspector of the PIC reported receiving one PID alleging both corrupt conduct and maladministration. An investigation into the matter is ongoing.

Surveys of public sector employees

The NSW Public Service Commission (PSC) ran the 2012 People Matter Survey to gather information on state public sector employees' perceptions of how well they thought the public sector values are applied across the sector as well as their views on their workplaces. In this inaugural year of the survey it has created a baseline for the NSW public sector as a whole and in following years, results will be tracked against this baseline. Over 130 state government agencies participated and more than 60,000 employees responded to the survey.

It is anticipated that the People Matter Survey and its analysis in the 2012 State of the NSW Public Sector Report will be available on the PSC's website from mid November 2012 – www.psc.nsw.gov.au. The PSC's report includes the results shown in Table 1. The survey defined improper conduct as: behaviour that is unethical or wrong, that breaches your organisation's code of conduct, or that compromises your duties.

Table 1. Results on improper conduct: PSC's 2012 People Matter Survey

Improper conduct	% of those who witnessed	% total respondents
In the last 12 months I witnessed improper conduct at work	Not applicable	30
I submitted a formal complaint regarding this conduct	23	7

Just under a third of respondents (30%) indicated that they had witnessed improper conduct at work in the last 12 months. Only 23% of those employees who had witnessed improper conduct submitted a formal complaint. The group of 23% of employees who submitted a formal complaint represents 7% of all survey respondents.

The PSC survey also asked respondents to indicate the extent to which they agreed with the following statement: 'I am confident that I would be protected from reprisal for reporting improper conduct'. Of all respondents, 12% said they did not know or did not answer the question. Of those respondents who answered, 15% strongly agreed, 43% agreed, 25% disagreed and 16% strongly disagreed.

How do the perspectives of NSW employees compare?

Australian research has shown the proportion of public sector employees who believe they encountered wrongdoing in their organisation to vary greatly: 8-15% in the Commonwealth; 24-40% in Western Australia; 38% in South Australia; and 72% in the *Whistling While They Work* research.¹ Comparisons should be treated with caution given the differences in research methodologies used – the most likely explanation for the variance in results is differences in the wording of survey questions. Nevertheless, the results suggest that workplace wrongdoing is relatively common.

The research also shows that a large proportion of those employees who observe wrongdoing report it – although at least as many chose not to. As we would expect, a lower proportion of NSW respondents said they 'submitted a formal complaint' when compared with the proportion of respondents to other surveys that indicated they had 'reported' (30-60%). Research suggests that most reports are made directly to a supervisor and that many are dealt with informally. Other respondents may not have submitted a complaint because they had dealt with the matter themselves, someone else had complained or it had otherwise been resolved.

Key differences between PIDs and formal complaints

The definition of improper conduct provided to respondents is much broader than the five categories of conduct outlined in the PID Act and includes conduct not serious enough for its disclosure to be in the public interest.

Additional technical requirements outlined in the PID Act and implemented by public authorities must be met in order for a complaint to be assessed as a PID (for example, the complaint must be made to a public officer nominated in the policy of the public authority).

Public authorities are not identifying or considering all formal complaints made by staff that should be assessed as PIDs, or are assessing complaints incorrectly.

Employees lack knowledge about what constitutes improper conduct, or misperceive or misinterpret the conduct.

¹ Australian Public Service Commission 2006, 2007, 2009, 2010, 2011; South Australian Commissioner for Public Employment 2007; Western Australian Office of the Public Sector Standards Commissioner 2008, 2009, 2010; Western Australian Public Sector Commission 2011; *Whistling While They Work* 2008

What factors influence an employee's decision to report?

While most research examines individual differences in reporting behaviour, findings consistently show that context – in relation to the particular situation, workplace, organisation or culture – is more strongly related to the decision to report than personal factors. Two of the major reasons given by employees for not reporting wrongdoing are: that they didn't think anything would be done if they did; and a fear of reprisals or lack of adequate support.

A positive reporting culture within an agency is evidenced by:

- the visible and personal commitment of senior management to internal reporting
- an effective internal reporting policy and supporting procedures and processes
- skilled and knowledgeable PID coordinators, officers and investigators
- staff awareness of the importance of reporting wrongdoing, what should be reported, to whom and how.

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.

How many PIDs did other jurisdictions receive in 2010–2011?


Northern Territory: The [Commissioner for Public Interest Disclosures](#) received 41 disclosures, including two matters referred by public authorities. Almost two-thirds concerned government departments and 29% were about local government.

Queensland: In the first six months of centralised reporting from January to June 2011, public authorities reported to the [Public Service Commission](#) that they received 371 disclosures. Most were made by public sector employees (81%), and only 12% were received by local government.

Tasmania: While the [Tasmanian Ombudsman](#) received six potential disclosures, only two were determined to be PIDs. No disclosures were referred by a public authority.

Victoria: Of 145 disclosures received by the [Victorian Ombudsman](#), 41 were determined to be PIDs. All but one was investigated: 57.5% were retained by the Ombudsman, 37.5% referred to public authorities and 5% referred to other investigating authorities.

Western Australia: Public authorities received 12 PIDs according to their reports to the [Public Sector Commission](#). All were investigated and, of the nine investigations that had been completed, four were found to have substance. No claims of detrimental action or victimisation were made over the period.



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