Governance

Governance

Strong governance at an organisational and system level is an important feature of accountable and ethical public authorities. Parliament, the government of the day and the Western Australian community all need confidence that public officers are making decisions consistent with the governance and decision making frameworks in place, and have the skills to function within them.

> 'Governance encompasses not only the system by which organisations are controlled, but the mechanisms by which organisations and those who comprise them are held to account'[16]

At the organisational level, governance is the framework of legislation and related instruments, systems, policies and processes that provide the roadmap for public authorities to be transparent, accountable and ethical.

At a system level, the reporting, management and prevention of misconduct in public authorities changed when the *Corruption, Crime and Misconduct Act 2003* (CCM Act) came into effect. Over the coming year, system level changes are being introduced regarding the way lobbyists interact with public sector agencies. The role of the Auditor General in performance and annual audits of local governments, and the role of the Salaries and Allowances Tribunal in setting the remuneration bands for government trading enterprise CEOs are also being explored. These changes are intended to further improve the integrity, accountability and transparency of public authorities, and reaffirm the public's trust in them.

The Commission captures data from various sources to create a broad picture of the conduct of public officers and we are committed to continuing to report data collected from authorities, in a meaningful way. During the year, the Commission has sought to assure that public authorities understand how to report matters and comply with their legislative requirements. The results of this work—as well as other integrity evaluations and examinations—are featured in this chapter.

[16]Governance Institute of Australia, 2016, *More thoughts on governance*

What does our ethical environment look like?

Accountability

Public officers operate in, and must have the skills to navigate, a complex framework of legislation. Some of this will be job-specific but there are a range of accountability requirements that apply to us all.

Importantly, public authorities should:

- be familiar with relevant accountability requirements and frameworks and use these requirements as the basis for systems, policies and processes
- ensure accurate and contemporary information about accountability requirements is communicated to all employees.

Conduct

In the main, public officers act with integrity and professionalism in performing public duties. Occasionally though, public officers make poor decisions and behave inappropriately. Public authorities should, and do, have mechanisms in place to deal with conduct-related matters, however the level of maturity in systems varies.

Many conduct-related matters in public authorities will relate to a breach of an ethical code or an authority-specific policy, and can often be dealt with under a disciplinary framework at the local level. Other matters may be managed by the authority as a public interest disclosure, or a formal grievance, among others. In some cases a conduct-related matter will trigger a requirement to notify an oversight agency.

The way conduct-related matters are reported and captured across public authorities is complex. Adding to this complexity are; varied legislative frameworks and administrative processes and systems; which reporting and/or management process an authority uses to manage conduct-related matters; and how conduct-related matters are recorded.

IN THEIR OWN WORDS

Transforming the integrity landscape

By Hon. John McKechnie, QC, Corruption and Crime Commissioner and Mal Wauchope, Public Sector Commissioner

Explain your understanding of the word 'transforming'?

MW 'Transformation is about a fundamental change in the way business is undertaken. In the public sector it is adapting to our dynamic operating environment.'

JM 'For the Corruption and Crime Commission (CCC), legislative amendments to our CCM Act in July 2015 enabled us to move into a new and important phase as an organisation. In practice, 'transforming' involved a comprehensive review of business policies, processes, and organisational structures to ensure the CCC is better placed to expose serious misconduct in the WA public sector.'

Tell us about your project.

MW 'The change was an acknowledgement that after 12 years, the existing framework had not been as efficient and effective as anticipated. As a CEO who operated under that regime, I could see there was an opportunity to redesign the model to update its functionality.

The change to the legislation and my role required a further reform that commenced with the establishment of my office in December 2010.'

JM 'I was part of the judiciary at that time. I believed Parliament and the WA community needed confidence that matters of integrity and misconduct were being handled effectively, transparently and in the public interest.'

MW 'It was vital we established an effective working relationship with the CCC and a strong understanding of all our stakeholders, including those outside the public sector; namely local government, the public universities and the government trading enterprises. It was important we understood them and they understood us, and what was involved in the new framework.'

JM 'Developing an approach to transition and successfully implementing the plan was critical. I commenced as Commissioner halfway through this project, and it was evident that a lot of planning had been done and milestones had already been achieved.'

MW 'At our very first meeting we talked about a practical and pragmatic approach and the importance of simple and consistent messaging for the sectors. Over the last 18 months, we have worked together with public authorities to ensure wrongdoing in the sector is managed appropriately, integrity risks are highlighted and minimised, and information is fed back to authorities to assist them to manage these risks.'

What are the top skills/attributes you feel you needed to successfully lead a transformation project?

JM 'Transformation projects must include a clear vision of what your 'future state' looks like, so you can tailor a plan to achieve your end goal. In this project, collaboration between our two agencies was essential. We established a Memorandum of Understanding and a clear set of operating principles that guides our common understanding of minor and serious misconduct.'

MW 'Clear and consistent communication is key to any good change management process. As John points out, that is important between us, but also in our communication with public authorities. Together, we created a number of user-friendly resources to guide authorities through the decision making process and, where possible, have engaged with the sector collaboratively to ensure the messages around misconduct are getting out.'

JM 'Our aim is to ensure that reporting misconduct is as practical as possible for public authorities, public officers and the WA community. Our agencies use a range of information, data and intelligence to minimise integrity risks and corrupt behaviour in the sector.'

What are the key things you learned from the project?

JM 'The CCC's ability to redirect our attention to shifting priorities, remain professional, and share our learnings along the way was a key highlight for me. This year's annual report reflects our journey.'

MW 'Surround yourself with a strong team. I also think having a robust culture of questioning is critical. It's important to feel comfortable to ask 'why' because if you're asking, it's guaranteed someone else will be too. Most transformation projects challenge our thinking and, by virtue of that, we ask questions. Don't be afraid to speak up. It's all part of the process.'

IN FOCUS

Minor misconduct

On 1 July 2015, the Commission assumed responsibility for the oversight of minor misconduct by public officers and misconduct prevention and education. This enabled the CCC to focus on the oversight of serious misconduct by public officers, and all police misconduct. Previously all misconduct was reported to the CCC.

What has been the impact of this change?

Notification requirements for public authorities have been more closely aligned with the legislative definitions around what misconduct is. Public authorities must now make an informed judgement on whether the conduct-related matter before them is **serious**, **minor** or **not** misconduct for purposes of the CCM Act, and notify either the CCC or the Commission as required. Many low-level behavioural and human resource matters can now be most appropriately dealt with at the local level, with notification occurring annually through the Commission's survey program.

How has the Commission supported these changes?

The Commission has worked collaboratively with the CCC on communicating clearly and consistently with public authorities about the changes to the Western Australian integrity landscape. New information products, resources and training sessions were also developed and released, and a comprehensive stakeholder and community engagement program was progressed.

How does the Commission manage a minor misconduct matter?

The Commission is required to assess all notifications it receives from public authorities and reports it receives from individuals. Matters may also be referred to the Commission from the CCC. The Commission aims to assess matters as quickly as possible. Public authorities can assist by providing detailed notifications that reference all available evidence.
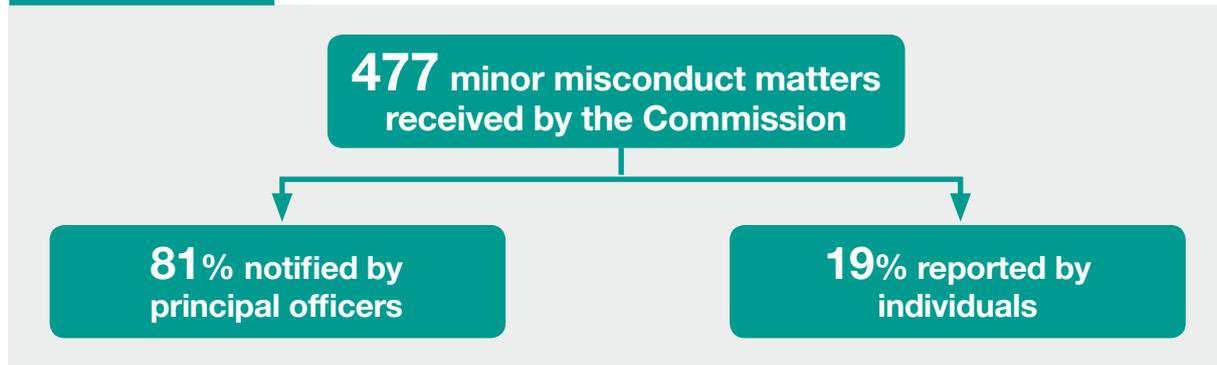
An assessment officer carries out the initial assessment of matters and takes it through a daily triage process. Triage involves senior members of the Commission team undertaking an official assessment of the matter, and making a decision on further action. The Commissioner personally reads most matters received.

The Commission has a number of options available to progress or finalise a matter. This ranges from taking no further action, referring the matter back to the public authority for it to manage, or investigating the matter itself (the Commission conducted one minor misconduct investigation during the year). In many cases the Commission refers the matter back to the public authority and requests advice of the final outcome.
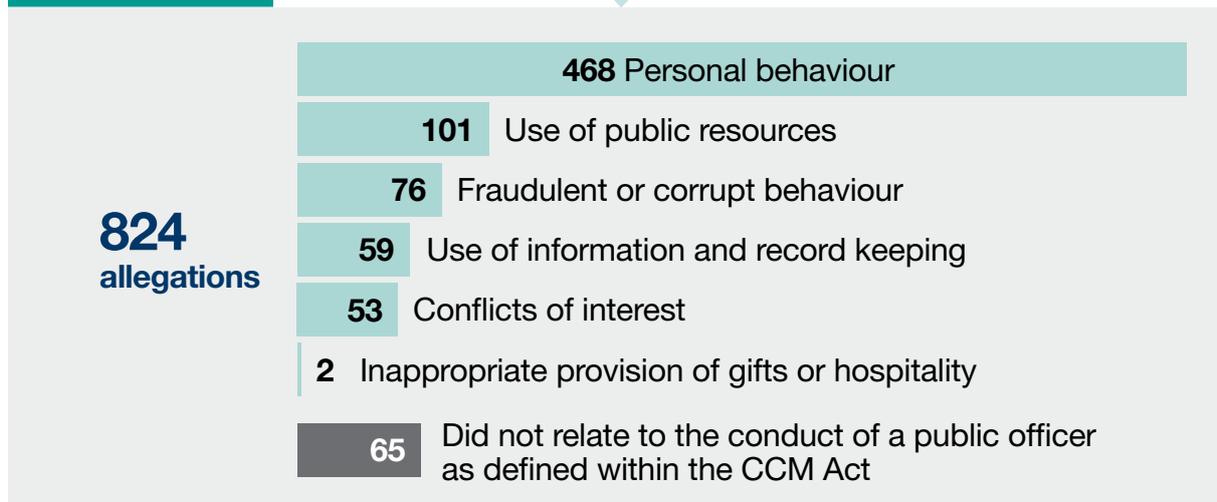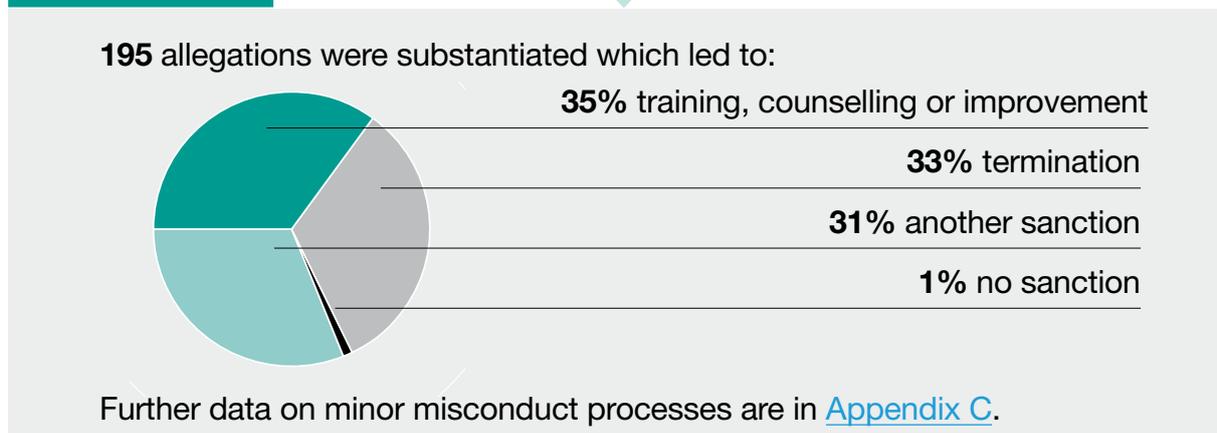
MINOR MISCONDUCT
AT A GLANCE

SOURCE

477 minor misconduct matters received by the Commission

81% notified by principal officers

19% reported by individuals

TYPE

824 allegations

468 Personal behaviour

101 Use of public resources

76 Fraudulent or corrupt behaviour

59 Use of information and record keeping

53 Conflicts of interest

2 Inappropriate provision of gifts or hospitality

65 Did not relate to the conduct of a public officer as defined within the CCM Act

OUTCOME

195 allegations were substantiated which led to:

35% training, counselling or improvement

33% termination

31% another sanction

1% no sanction

Further data on minor misconduct processes are in Appendix C.

EVALUATIONS ACROSS THE SECTORS

Arrangements to manage misconduct and notify minor misconduct

Why is this important?

The CCM Act requires public authorities to manage and notify misconduct. Misconduct that satisfies the definitions in the CCM Act must be appropriately notified to the CCC (serious misconduct) or to the Commission (minor misconduct). Notification processes in public authorities will be effective where:

- expected standards of conduct are clear
- avenues for reporting misconduct are available, known and trusted
- integrity performance and misconduct risks are acted on by the executive
- there is a consistent and proper assessment and tracking of matters dealt with by the public authority.

Why was the work undertaken?

After a year of operation under the revised notification and reporting arrangements, the Commissioner considered it appropriate to evaluate aspects of the culture, leadership, systems and processes used within public authorities to manage misconduct. An evaluation was undertaken by the Commission to build an understanding about the nature and maturity of controls. The evaluation includes suggested improvements to increase the capacity of public authorities to prevent and respond to misconduct.

What aspects of managing misconduct were considered?

The Commission's evaluation had three key focus areas.

1. Leadership and culture
    - CEO and senior leadership oversight of integrity and conduct
    - accountability and responsibility for reporting misconduct
    - training and awareness raising for employees
    - experience and training of officers undertaking relevant misconduct functions.

2. Systems and processes

- policy and procedures relating to misconduct management
- risk management of misconduct
- managing misconduct information.

3. Assessments of misconduct

- consistency of assessment processes
- appropriateness of minor misconduct notifications.

Which public authorities participated?

Public sector bodies	Local governments	Other public authorities
• Department of Corrective Services • Department of Fisheries • Main Roads WA	• City of Bunbury • City of Greater Geraldton • City of Perth • City of Stirling	• Curtin University • Racing and Wagering WA • Synergy • University of Western Australia • Western Power

What were the key observations?

- Generally minor misconduct notifications, where required, were undertaken appropriately. However, examples were noted of some conduct matters which were considered to meet the elements of minor misconduct, that were not notified to the Commission.

- Improvements are necessary in regard to public authorities having clear policies and procedures, and consistent and transparent processes to manage misconduct and ensure appropriate notifications of minor misconduct are made to the Commission.

- Information and policies for recognising, reporting and dealing with misconduct could be made more accessible to staff.

- Curtin University and the City of Stirling were overall the highest rating authorities, with Curtin University having the most consistently high ratings across all the criteria considered.

- Authorities with higher per employee notification rates were more likely to have well developed policies, procedures and misconduct assessment processes and controls.

Figure 8.   Distribution of ratings by focus area
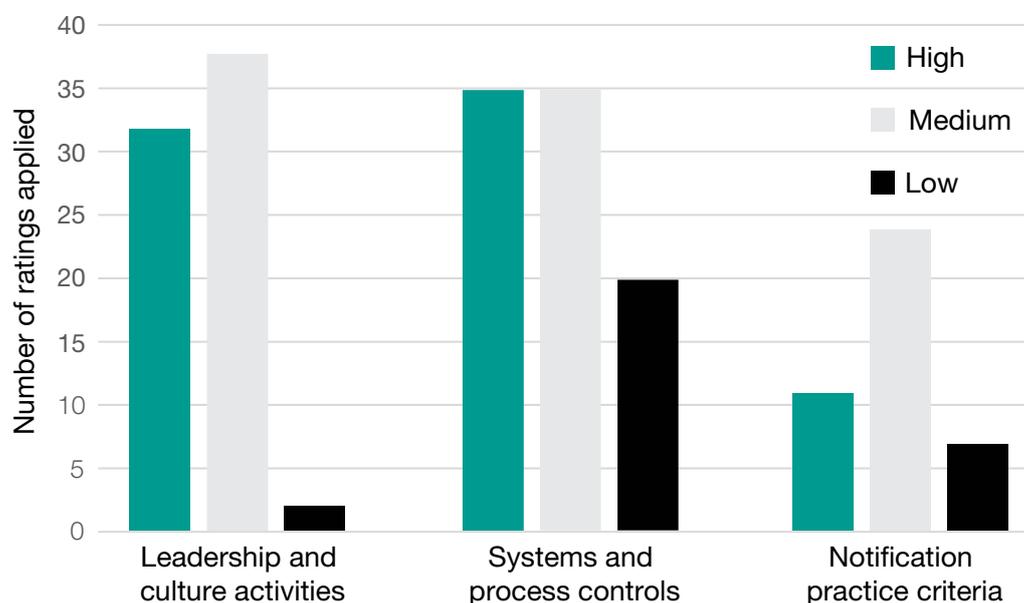
What improvements are suggested?

Public authorities should improve the management of misconduct and notification of minor misconduct.

1. Reinforce the prevention, identification and reporting of misconduct as a key aspect of integrity leadership by:
   - regularly communicating the standards of conduct, and the expectation that concerns about misconduct are appropriately raised
   - making information about the definition of misconduct and how to report it available through internal and external platforms.

2. Ensure internal policies and procedures state what misconduct is, how misconduct matters are dealt with, and who is responsible by:
   - having a policy and procedures on managing misconduct
   - reviewing misconduct data and assessing the organisational culture.

3. Ensure decisions on misconduct matters are transparent and capable of review by:
   - documenting decisions made at the authority level as they relate to s.4(d) minor misconduct, and whether notification about that matter is required
   - maintaining relevant registers.

The full report is on the Commission's website.

How do we prevent unethical behaviour?

The Commission and leaders play a vital role in promoting integrity in the sector and therefore preventing unethical behaviour. Public authorities reported implementing a range of strategies to prevent misconduct, including the following:

- having strong messages about conduct, and misconduct, in authority-specific codes of conduct and ethical training

- having strong oversight of misconduct issues through ethical standards branches, human resource units, audit committees and at the corporate executive level

- maintaining regular communication, both face-to-face and electronically, with employees from CEOs and management about misconduct risks and ethical behaviour

- having strong systems, policies and frameworks around ethical behaviour, particularly in relation to procurement, credit card use, conflicts of interest and the offer and acceptance of gifts, benefits and hospitality.

The Commission continues to offer a range of integrity promotion training sessions, information resources and advisory services to assist with building ethical public authorities. The Commission's extensive stakeholder and community engagement program, commenced 18 months ago in metropolitan and regional Western Australia, supports the delivery of these messages.

Public authorities should consider using data and trends highlighted in internal reports to strengthen governance and inform prevention and education activities. All incidents of unethical behaviour should be used as a rich source of information around how culture, governance and capability can be built and strengthened.

A number of public authorities indicated that outcomes of misconduct management processes are considered in the development and review of misconduct prevention and education strategies. Initiatives included:

- developing targeted ethical training and education sessions

- commencing targeted internal audit reviews to assure issues are not systemic

- using information to inform business improvement actions in relevant work areas

- reporting data and trends through to the corporate executive through human resources reporting.

The work of integrity and central government agencies and peak industry bodies can also support this effort. Outcomes and recommendations from reviews, investigations and audits—such as the evaluations and examinations throughout this report—in many cases serve as 'early warning signs' for public authorities to take action on strengthening governance processes.

STORIES FROM THE SECTORS

Building the capability of public officers who occupy positions of trust enhances the sectors' ability to act, and be seen to act, ethically and with integrity.

Building chief human resource officer (CHRO) capability

To increase the professionalism of the human resources function, the Australian and New Zealand public service commissioners collaborated to develop a joint success profile. As stewards of organisational culture, building the capability of this group is essential in addressing workforce issues and promoting ethical behaviour.

Building information and communication technology (ICT) practitioner capability

In collaboration with the Government Chief Information Officer, the Commission developed the ICT capability framework. The framework maps capability requirements for ICT practitioners, including emphasising the appropriate and ethical management of contracts and infrastructure that are large-scale, high-value and high-risk.

Building chief finance officer (CFO) capability

In their frontline role to prevent financial misconduct and fraud, developing a common understanding of expectations, accountabilities and experiences essential to CFO performance is crucial. In partnership with the Department of Treasury, the Commission has developed a CFO success profile and associated measurement guidelines.

Building chief executive officer (CEO) capability

The Commission has commenced work on a CEO success profile and associated measurement guidelines with a key focus on how CEOs can change the shape of an organisation by leading ethically and by example.

Building the capability of investigators

A major part of the Commission's misconduct prevention and education role has been the development of investigators capability. It provided the *Certificate IV in Government (Investigation)* to 114 public officers, and an additional 21 officers with responsibility for oversight of investigations are completing their *Diploma in Government (Investigation)*.

Ethical codes

As public officers, we demonstrate accountability to our role and authority by complying with ethical codes. The code of ethics covers all public sector employees as described in the PSM Act. The code of ethics outlines the principles of personal integrity, relationships with others and accountability.

In the main, all public authorities develop and promote an authority-specific code of conduct to more clearly define appropriate behaviour. In 2015/16, all public sector agencies indicated they had a code of conduct that aligned with the code of ethics.

Of public sector employees surveyed, 93% indicated they are familiar with the code of ethics and 96% said they were familiar with their agency code of conduct. In 2011, 60% of employees were familiar with the public sector code of ethics and 73% were familiar with agency codes of conduct.

'Over a five year period, employee awareness of ethical codes increased markedly'

For all other public authorities, the requirement to develop and implement ethical codes will most likely be in legislation. In local governments for example, there is a requirement under the *Local Government Act 1995* to prepare and adopt a code of conduct for elected members, committee members and employees. During the year, the Commission published *Developing a code of conduct: Guide for local government* to assist them to develop or review codes using a good practice approach. In the past year, just over nine in ten of all other public authorities reported having a code of conduct, which is an improvement from previous years.
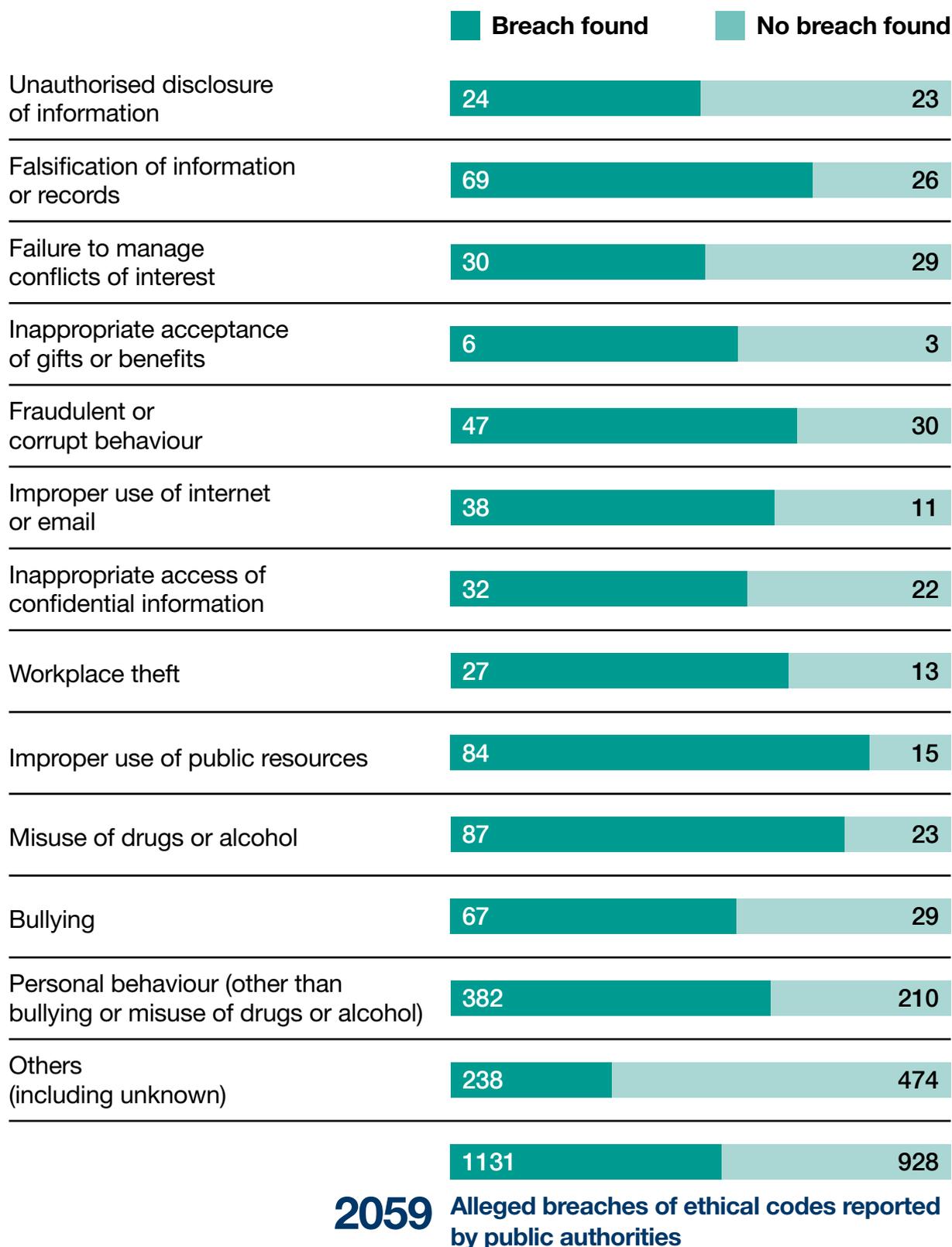
Alleged breaches of ethical codes

When an alleged breach of ethical codes is reported, a formal discipline process may be commenced. In 2015/16 there were 2059 discipline processes commenced in public authorities, with 1131 determined to be a breach of discipline.

Figure 9.   **Flowchart of alleged breaches of ethical codes**

2059 alleged breaches of ethical codes → 1131 determined to be a breach → 11% resulted in termination
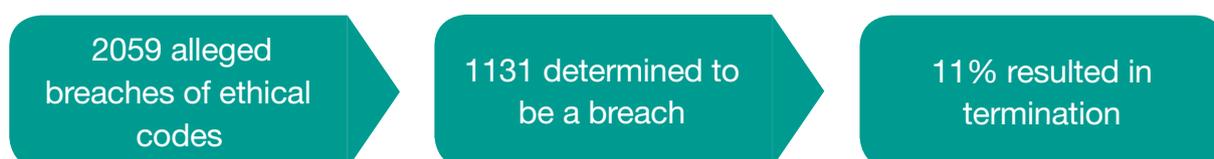
Some alleged breaches of ethical codes and subsequent discipline processes, reported by public authorities, may have also been notified to the Commission or the CCC in their role to provide oversight of misconduct. This should be considered when reading this section.

Figure 10. Alleged breaches of ethical codes reported by public authorities

	Breach found	No breach found
Unauthorised disclosure of information	24	23
Falsification of information or records	69	26
Failure to manage conflicts of interest	30	29
Inappropriate acceptance of gifts or benefits	6	3
Fraudulent or corrupt behaviour	47	30
Improper use of internet or email	38	11
Inappropriate access of confidential information	32	22
Workplace theft	27	13
Improper use of public resources	84	15
Misuse of drugs or alcohol	87	23
Bullying	67	29
Personal behaviour (other than bullying or misuse of drugs or alcohol)	382	210
Others (including unknown)	238	474
	1131	928

2059 **Alleged breaches of ethical codes reported by public authorities**

Outcomes of discipline processes

Of the 1131 determined to be a breach of discipline, public authorities recorded 1491 outcomes. Each case may have more than one outcome recorded.

Public authorities recorded 'not applicable – no breach' 22 times. These were removed from the data set as they were not considered to be findings under a discipline process. Public authorities recorded 'information not available' 19 times. These were removed from the data set as they could not effectively be categorised. Of the 1450 remaining discipline outcomes, these have been grouped into four categories as shown below.

Figure 11.   Outcomes of completed discipline processes

11% termination

10% no sanction

29% other sanctions

50% improvement action
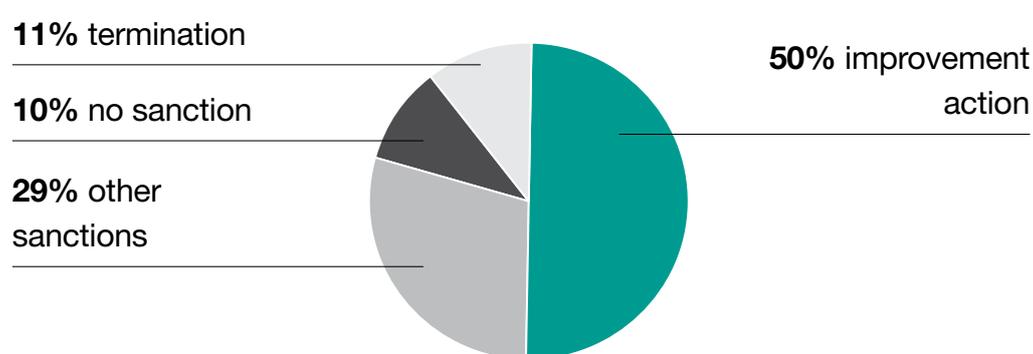
For more detailed information on outcomes of completed discipline processes see Appendix C.

Ideally, discipline processes will be resolved at the local level in a timely, effective and confidential manner. Of the 54% of public sector agencies that reported they had completed disciplinary processes, 42% of these reported completing the process within six months.

EVALUATIONS ACROSS THE SECTORS

Personal use of publicly-funded facilities by public officers

Data and information from the first year of operation of the new minor misconduct reporting arrangements led the Commission to examine the way public authorities manage the integrity risks around personal use of public facilities by public officers. A particular area of interest was publicly-funded workshops and recreational venues – as personal use would generally be perceived by the community to constitute a private benefit to a public officer.

What is the risk?

The management of publicly-funded facilities carries a range of risks. Not least, is the integrity risk associated with public officers and, by extension, their families or friends having personal access to such resources. Uncontrolled access may create a potential for inappropriate use of a public facility for a private commercial gain, such as running a sports coaching business on the side or using a workshop to repair and sell vehicles.

Examples of misuse of public facilities by public officers in the past include:

• providing free membership of the local recreation centre to a family member

• driving a sanitation truck to a public officer's residence to load rubbish

• using a workshop and welding resources to construct a pot belly stove

• using workshop resources to produce commercial signage.

The key risk is that personal access to public facilities may lead to a perceived, potential or actual conflict of interest. The problem occurs where the public officer's personal interest and their public duty to ensure a facility is available for its intended purpose, comes into conflict.

Which public authorities participated?

Public sector bodies	Local governments	Other public authorities
• Department of Parks and Wildlife • Perth Theatre Trust • Public Transport Authority • South Metropolitan TAFE	• City of Armadale • Town of Cambridge • Shire of Bridgetown-Greenbushes • Shire of Gingin	• Edith Cowan University • Murdoch University • Southern Ports Authority • WA Institute of Sport

Twelve public authorities were chosen to participate in the evaluation, not due to any suspected control weakness or suspicion of misconduct, but in order to have a diverse sample.

What practices and controls were considered?

Practices and controls used to manage personal use of facilities were evaluated to provide advice to public authorities and to build sector-wide capability. The evaluation focused on four preconditions for making ethical decisions: the right culture, strong capability, good governance and a robust decision making framework.

The evaluation applied a maturity scale to assess controls and practices used by public authorities. These were considered in relation to the broad organisational context and, more specifically, to a single public facility managed by each public authority.

Embedded	Practices and controls form a comprehensive and joined-up approach to integrity risk management. All roles carry key responsibilities and there is ongoing monitoring of the effectiveness of controls by the executive/governing body that informs any systems improvement.
Managed	Practices and controls to manage integrity risk are largely reactive and compliance-oriented. Particular roles carry key responsibilities and there is some tracking of controls related to systems improvement.
Informal	There is some awareness and recognition of the need to manage integrity risk but observed practices and controls are best described as ad-hoc. Key responsibilities are limited to single or scattered roles within the organisational structure and there is minimal monitoring of the effectiveness of any controls. Systems improvement activities are random or uncoordinated.

What were the key observations?

- Strong leadership commitment to promoting a high integrity culture was evident in all public authorities, although this was not always emphasised in human resources and line management policies and practices. Authorities often did not seek staff feedback on integrity matters.

- There was a good level of general awareness of the integrity risks associated with uncontrolled access to publicly-funded facilities but this risk was often not specifically considered within broader risk management frameworks.

- Codes of conduct typically referenced the requirement to be scrupulous in the use of resources in general terms but appropriate use of workshop and recreational facilities was not often expressed as clearly in policies as use was for other resources, such as corporate vehicles, computers and mobile phones.

- While the coverage of related risks varied across employee induction and training programs, training and awareness sessions had often not been consistently or periodically delivered to the workforce. Public authorities that had developed programs based on the Commission's 'Accountable and ethical decision making training' framework were able to demonstrate higher levels of maturity in this focus area.

- While there were many examples of good access and security controls applied at a local level, there was less monitoring or auditing of staff use of access permissions for facilities.

- A range of localised protocols and controls were observed during site visits that demonstrated simple and effective controls. However, these were not always formally documented or described.

The distribution of systems maturity levels across the 12 participating authorities is illustrated on the next page.

Figure 12. System maturity levels by focus area across sample authorities
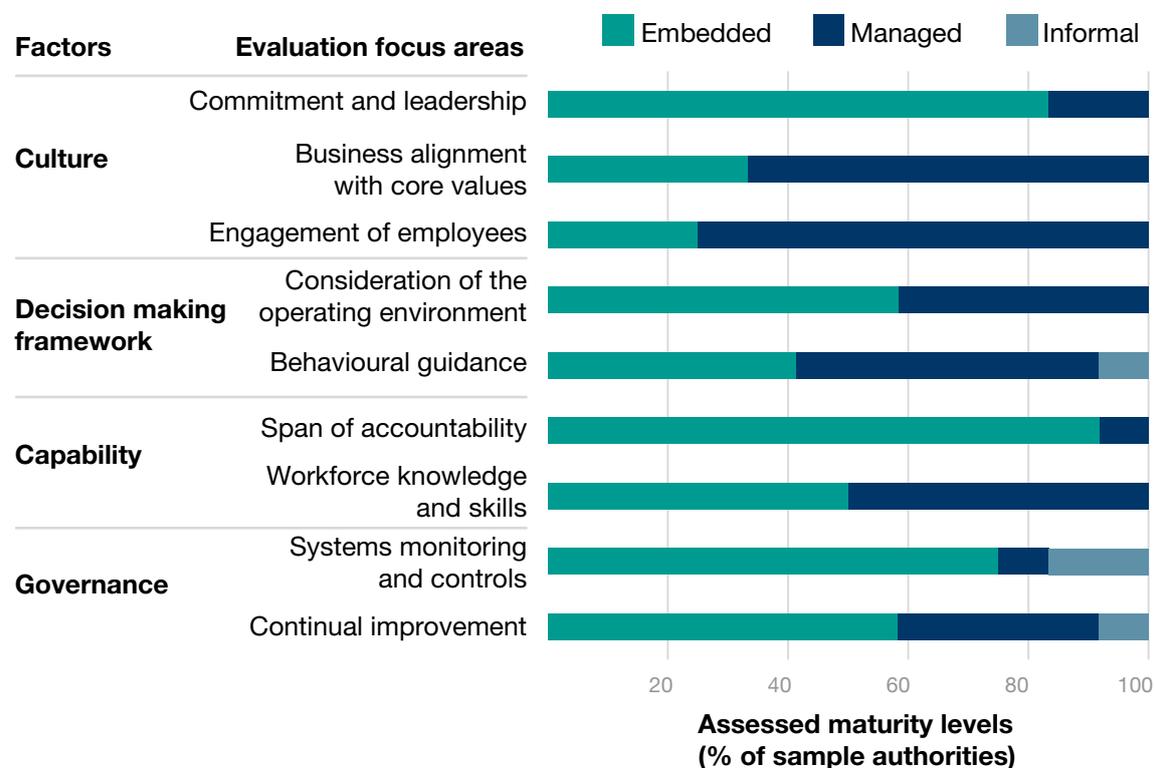
What suggestions were made?

Key suggestions arising from the evaluation that may help strengthen public authority controls include:

- regularly engaging with staff, for example, through internal surveys, to better assess and respond to the ethical climate

- better aligning human resources policies and practices with ethical values

- formalising any local-level policies for appropriate use of public facilities, such as recreational centres and maintenance workshops, and their associated resources

- regularly offering ethical training to staff across all types of employment

- embedding the consideration of misconduct risk within risk management frameworks

- extending corporate monitoring and audit systems to all public facilities under a public authority's control.

The full report is on the Commission's website.

Public interest disclosures

The *Public Interest Disclosure Act 2003* (PID Act) allows any person to make a disclosure about wrongdoing in public authorities without fear of reprisal. The legislation aims to ensure openness and accountability in government by encouraging people to speak up about wrongdoing and protecting them when they do. The Commissioner's role is to monitor compliance with the PID Act and assist public authorities and public officers to comply with the legislation and PID Officer's code of conduct and integrity.

In 2015/16, a total of 45 disclosures were received by public authorities, with 20 disclosures assessed as appropriate for the purposes of the PID Act. This is compared to 53 disclosures received, with 14 assessed as appropriate in the previous year. This continues to represent a small proportion of all matters considered by public authorities.

Of the 20 appropriate disclosures received, 34 matters were raised across the types of public interest information contained in the PID Act, as shown below.

Figure 13. Public interest information contained in disclosures

Type	
Improper conduct	11
Offence under State law	7
Substantial irregular or unauthorised use of public resources	6
Substantial mismanagement of public resources	5
Act or omission that involves a substantial and specific risk of injury to public health; prejudice to public safety; harm to environment	3
Matters covered by the Ombudsman	2
Total	**34**

Compliance with the PID Act

Public authorities reported no allegations of non-compliance with their obligations under the PID Act, and only one allegation of non-compliance with the PID Officers code of conduct and integrity.

Organisational strategies to support disclosures

Legislative requirements and appropriate internal governance around public interest disclosures require a public authority to have internal PID procedures in place. Sixty per cent of public authorities reported publishing internal procedures, slightly less than the 63% reported last year. This year, 89% of authorities reported designating a specific officer, generally referred to as a PID officer, to receive disclosures. This compared with 91% last year.

During the year, the Commission reviewed and refreshed its suite of public interest disclosure materials and resources to encourage disclosers to speak out about wrongdoing and assist authorities to appropriately manage disclosures. Authorities are encouraged to consider using the materials and resources provided to review their governance around disclosures.

In addition to the legislative and governance requirements around public interest disclosures, authorities should promote the benefits of reporting using the PID Act, including certain legal protections available to disclosers.

Authorities reported using a range of measures to ensure compliance with, and promotion of, the PID Act, including:

- 59% published the names of the authority's PID officers
- 32% ensured their PID officer/s attended the Commission's PID information session
- 43% published the Commission's PID advice and referral line number.

Disclosure across the jurisdictions

All Australian jurisdictions now have public interest disclosure—or 'whistleblowing'— legislation at various stages of maturity. Western Australia's PID Act is now in its second iteration.

The Commission is leading the public sector's contribution to the world's leading research into whistleblowing, being driven by researchers from Griffith University's Centre for Governance and Public Policy, Queensland. *Whistling while they work 2: Improving managerial responses to whistleblowing in private and public sector organisations* is the first research project to systematically compare the levels, responses and outcomes of whistleblowing in multiple organisations across Australia and New Zealand. The project builds on the Australian Research Council's original project, *Whistling while they work 1: Enhancing the theory and practice of internal witness management in public sector organisations,* by examining the adequacy of organisational responses to whistleblowing.

Public sector standards in human resource management

Under the PSM Act, *Public sector standards in human resource management* are established to ensure fair and accountable human resource management within public sector agencies. The standards relate to six human resource transactions—employment, grievance resolution, performance management, redeployment, termination and discipline.

Public sector employees, or prospective employees, who perceive a human resource process has not been carried out appropriately by the agency—and this has in some way adversely affected them—can lodge a breach of standard claim. Agencies must first try to resolve a claimant's concerns internally. If an appropriate resolution cannot be reached, the Commissioner will review the claim and determine whether a standard was breached.

Figure 14. Flowchart of alleged breaches of standards

186 alleged breaches of standards → 47% referred to Commission → 4% of breaches upheld
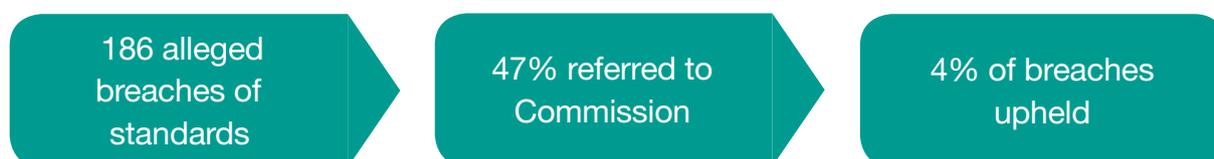
In 2015/16, 53% of claims were dealt with and resolved at agency level. Of the 47% (88) that were referred to the Commissioner, only 4% of these were considered to be a breach. Two employment standard breaches, three grievance resolution breaches and two redeployment breaches were upheld. Overall, as in previous years, this continues to represent a small number of allegations of standards being breached.
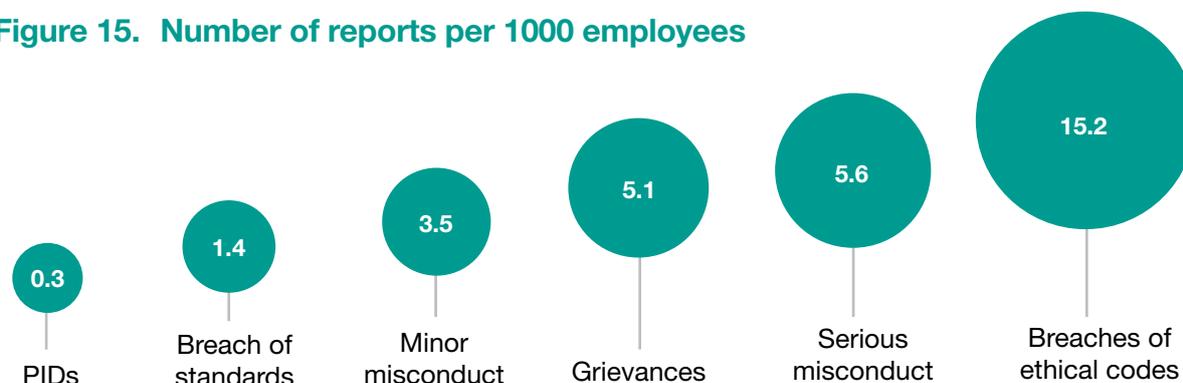
Grievance resolution

Some less serious matters—usually with an aspect of interpersonal conflict—can be managed within public authorities as a grievance. Grievance resolution is another human resource process guided by an authority-specific policy and procedure, where the parties discuss a solution. Authorities may have an informal grievance process, which is escalated to a formal grievance if a solution cannot be reached. Some grievances may include conduct-related matters.

In 2015/16 there were 213 grievances recorded in public sector agencies, compared with 231 the previous year. All other public authorities recorded 480 grievances. Public authorities' reported grievances typically involved allegations of low-level interpersonal conflict, bullying or other inappropriate behaviour.

Reporting across the public sector

There are many pathways public officers and members of the public may use to report conduct-related matters when they arise. As shown in the figure below, some pathways are used to report conduct-related matters more frequently than others.

Figure 15. Number of reports per 1000 employees

| 0.3 | 1.4 | 3.5 | 5.1 | 5.6 | 15.2 |
| PIDs | Breach of standards | Minor misconduct | Grievances | Serious misconduct | Breaches of ethical codes |

An ethical public sector has a strong culture of reporting poor conduct

Confidence in reporting

Despite most public authorities reporting having the required governance in place, there appears to be varying levels of confidence in public officers reporting wrongdoing.

While 86% of public sector employees surveyed indicated they knew how to report unethical behavior—of those that said they had witnessed unethical behaviour— only 27% said they reported every instance they saw. Further, only 46% of public sector employees surveyed were aware of the PID Act or how to make a disclosure. Of these, less than half said they would use the PID Act to make a disclosure.

Leaders need to do more to encourage a culture and environment where employees feel comfortable to question systems and processes, and to report unethical conduct. Good governance, strong leadership and ethical cultures are all necessary conditions to encourage ethical behaviour.

How do we encourage ethical behaviour?

Maintaining a workplace culture with strong ethics and integrity underpins a solid governance framework, and is fundamental to good organisational performance.[17] There are three areas of consideration for ethical behaviour and good decision making to occur within an organisation— culture, governance and capability.

Culture

The culture of a public authority defines 'the way things are done around here'. It is an essential ingredient in encouraging ethical behaviour. A strong culture is one with shared values focused on meeting community expectations and standards.

Senior leaders must set the tone for upholding the highest standards of ethical behaviour and modelling the authorities' values. Commitment to ethical behaviour should be stated publicly, as this reassures the government of the day, the community and employees, that ethical issues are taken seriously and will be dealt with appropriately. The culture should also be one where it is acceptable to challenge the 'status quo', and where people are supported to report wrongdoing without fear of victimisation.

> '85% of employees agree their managers act honestly and with integrity'

Strong culture can contribute to an increased confidence in the ethical behaviour of management. Of the public sector employees surveyed, 85% perceived their immediate supervisor demonstrated honesty and integrity in the workplace, with more than two-thirds believing senior managers led by example in regards to ethical behaviour. According to 84% of survey respondents, agencies actively encouraged ethical behaviour of all employees.

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[17] Independent Broad-based Anti-corruption Commission, Victoria, 2014, *A review of integrity frameworks in Victorian public sector agencies*

Governance

Governance in a public sector context has several dimensions. It encapsulates the accountability relationship that exists between ministers and executive management for the delivery of programs and services, as well as accountability of CEOs and boards for transparent and effective management and administration. The examination on page 77 highlights the importance of effective governance mechanisms in this regard.

Public authorities must have strong controls and established systems, policies and processes to guide employees in meeting expected standards of behaviour, and to raise concerns and have them addressed appropriately.

> 'Internal monitoring systems and processes are important in the early detection of misconduct and corruption.'

During the year, public authorities reported using a variety of governance approaches to monitor employee behaviour, including dedicated performance management meetings, analysis of complaints or workplace issues, and reviews and audits. Internal monitoring systems and processes are important in the early detection of misconduct and corruption. A seemingly insignificant conduct-related matter, when reviewed in combination with other data and trends, may also be an indicator of more serious or potentially systemic problems.

Importantly, public authorities should seek to apply internal governance procedures consistently over time. Public sector agencies reported using a range of strategies to ensure consistency in the management of misconduct matters across organisations. These included reviewing misconduct management policies during the year, such as guidelines for managing and assessing misconduct. In many cases, agencies also reported having centralised and dedicated resources, to manage misconduct matters.

A number of other governance and monitoring processes within public sector agencies can assist in identifying integrity risk areas. Notably, 99% of agencies reported they routinely assessed procurement and compliance controls. Ninety-six per cent strongly agreed or agreed that they routinely conducted risk assessments of their activities to manage risks. Ninety-two per cent agreed that information collected as part of governance reporting is shared and considered by the corporate executive.

Capability

Capability not only refers to a public officer's competency level, but also to their being well equipped to act ethically. Once in place, governance frameworks and integrity messages must be reinforced and refreshed regularly.

Strong employee induction processes set the foundation for ethical behaviour. Leaders must ensure ethical standards are outlined clearly early in the employment journey. Eighty-four per cent of all other public authorities indicated they had induction processes to ensure public officers were aware of their ethical obligations.

'Accountable and ethical decision making' is the ethics training program used by public sector agencies and, increasingly, public authorities. Over the past five years, public authorities reported 74 409 employees, and 891 Corporate Executive members completed the training. Importantly, this training should be revisited and updated regularly.

Performance management conversations are another opportunity to reinforce integrity messages and build capability. Of public sector employees who had been employed for more than 12 months, 76% reported having at least one formal performance management process. Of these, only half reported discussing their agency's code of conduct or values as part of this process. Eighty-seven per cent of public sector agencies and 69% of all other public authorities indicated they used performance management meetings as a tool to monitor employee behaviour. Public authorities should make better use of formal performance management processes to discuss conduct and integrity matters and monitor employee behaviour.

> 'Over the past five years, public authorities reported 74 409 employees, and 891 Corporate Executive members completed the training.'

EXAMINATIONS ACROSS THE SECTORS

Relationships between public sector agencies and ministerial offices

The quality of the working relationship between a minister's office and a public sector agency impacts the effective translation of government policy into service delivery, and the proper management of agencies. Minister's offices and agencies work collaboratively to deal with complex policy and service delivery challenges in a dynamic environment. They manage these challenges under high levels of community scrutiny and in an environment of rapid decision making. In this light, working relationships between ministerial officers and public sector employees can experience occasional tensions. This is not unexpected, but needs to be managed appropriately.

Why was the work undertaken?

In July 2016, in response to a request for an inquiry into a specific matter by the Leader of the Opposition, the Commission considered the factors essential to establishing and maintaining effective relationships between ministerial offices and agencies. An examination was undertaken into the arrangements in place within the Department of the Premier and Cabinet (DPC) to promote effective working relationships. While most agency-to-ministerial office relationships operate at arm's length from the DPC, it employs ministerial officers, under delegated authority, and supports administrative functions across ministerial offices.

What factors were considered?

The examination considered ethical decision making frameworks, relevant administrative processes, arrangements for promoting a high integrity culture, and how employee knowledge and capability is developed.

What were the key findings?

The examination concluded that:

- The leadership culture within the DPC demands high ethical standards.
- Ethical decision making frameworks are clear and comprehensive.
- Induction and development processes assist in building knowledge and capability, but could be expanded.

- Governance practices are adequate but could be enhanced, particularly in relation to feedback and performance monitoring arrangements. This applies to establishing and applying communications agreements between agencies and ministerial offices, and to the support services provided by DPC to ministerial offices.

What improvements are recommended?

Although arrangements were considered adequate, enhancements are recommended. This is consistent with the approach adopted in some other jurisdictions. These include providing additional information to ministerial officers about government processes, accountability structures and the roles of key positions.

While principally directed at the DPC the following recommendations are relevant to all public sector agencies and ministerial offices.

Reinforce a high integrity culture

- Undertake 'Accountable and ethical decision making' refresher training that considers the individual ministerial office context and relevant integrity risks.

Re-inform capability development

- Develop 'Success profiles' for key positions in ministerial offices.
- Deliver more information sessions for employees that work at the interface of ministerial offices and agencies to address working relationship dynamics.
- Augment existing development initiatives for staff in ministerial offices on topics such as Westminster principles, government processes and accountability arrangements.

Reinvigorate decision making frameworks and governance practices

- Improve communications agreements developed under s.74 of the PSM Act to include key principles, specific performance objectives and periodic monitoring arrangements.
- Assist ministerial offices and portfolio agencies to achieve clarity about government priorities and performance objectives.
- Extend performance monitoring arrangements to cover practical aspects of the working relationship between ministerial office and agencies.

The full report is on the Commission's website.