

Public interest disclosures oversight report

The *Public Interest Disclosure Act 2010* (PID Act) facilitates disclosure, in the public interest, of information about wrongdoing in the public sector.

The Office of the Queensland Ombudsman is the oversight agency for the PID Act. Under the PID Act, the oversight functions include:

- monitoring the management of PIDs, including collecting statistics and monitoring trends
- reviewing the way public sector agencies deal with PIDs
- performing an educational and advisory role.

This section of the Office's annual report is the annual report on the operations of the PID Act, as required under s 61.

Monitoring PID management

Public sector agencies have obligations under the PID Act to:

- keep proper records of disclosures received or referred to them, including information purporting to be a public interest disclosure
- provide information to the oversight agency, in accordance with a standard made by the oversight agency.

Public Interest Disclosure Standard 3/2019 sets out the information agencies are required to provide, how it is to be submitted, and the timeframes in which the data should be reported and updated. Engagement initiatives have focused on assisting agencies to understand their reporting responsibilities.

In 2020–21, 1,766 PIDs were reported, an increase of 1.3% compared with the previous year. PIDs of corrupt conduct continued to be the most commonly reported type of wrongdoing (87.9%). The number of PIDs about maladministration increased and there was a slight increase in reports of 'substantial and specific danger to the health or safety of a person with a disability'.

As in previous years, the majority of PIDs were reported by state departments, followed by hospital and health services. The number of PIDs

reported by local councils increased and this may reflect training and engagement activities to build awareness of the PID Act within local councils, as well as publicity from Crime and Corruption Commission investigations.

On 26 June 2020, the relevant shareholding Ministers notified the boards of all government owned corporations (GOCs), except Queensland Investment Corporation, that they were now required to comply with the PID Standards.

GOCs are now subject to both the PID Act and Part 9.4AAA 'Protection for whistleblowers' of the *Corporations Act 2001* Cth (by virtue of s 5E(1) of the *Corporations Act* which provides that the 'Corporations legislation is not intended to exclude or limit the concurrent operation of any law of a State or Territory'). In practice, the *Corporations Act* and the PID Act both protect the disclosure of some kinds of wrongdoing that could amount to 'corrupt conduct' under the PID Act, and the PID Act also provides for certain disclosures by members of the public, for example, about environmental harm.

Disclosers

While all persons providing information assessed as a PID are entitled to the same protections under the PID Act, agencies are required to provide data on the 'type of discloser' to assist in monitoring and reporting trends. The number of PIDs reported by officers to their own agency declined by 9.6% compared to the previous financial year. PIDs reported by managers or supervisors to their own agency also declined by 9.4%.

For the third year in a row PIDs reported by 'role reporters' increased significantly (2019–20: 375; 2020–21: 521). In part, this demonstrates awareness by agencies that officers who identify wrongdoing in the course of the performance of their duties (e.g., human resources officers, auditors, inspectors and investigators) should have the disclosures dealt with under the PID Act. Anecdotally, it also reflects an increase in proactive auditing activities by agencies designed to identify wrongdoing, for example, inappropriate access to confidential information.

Finalisations

A total of 1,675 PIDs were reported as finalised. This represents the highest number of finalised PIDs since the Office became the oversight agency in 2013. It is considered that this is, in part, a consequence of the gazettal of Public Interest Disclosure Standard 3/2019 (March 2019), which requires agencies to enter and finalise data reports in a timely way.

Of the 1,675 PIDs finalised in 2020–21:

- 381 (22.7%) were closed on the basis that the agency decided that no action was required in accordance with s 30 of the PID Act
- 1,294 (77.3%) were closed following commencement of an investigation.

For the 381 PIDs closed in accordance with s 30 of the PID Act, agencies reported the following grounds for deciding not to investigate or take action:

- 204 (53.5%) were closed under s 30(1)(b) on the basis that the PID should be dealt with by another appropriate process
- 85 (22.3%) were finalised in accordance with s 30(1)(a) because the PID had already been investigated or dealt with by another appropriate process
- 26 (6.8%) were not actioned because the age of the information made it impracticable to investigate as provided at s 30(1)(c)
- 33 (8.7%) were concluded on the basis of both s 30(1)(a) and s 30(1)(c), that there was another appropriate process and because of the age of the information
- the balance of 33 PIDs (8.7%) were closed due to another ground or combination of grounds under s 30.

Investigations

In 2020–21, agencies reported on the outcome of 1,294 PID cases where an investigation had been commenced.

A comparison of data from PIDs reported in 2020–21 and finalised in 2020–21 compared to all cases finalised irrespective of when reported, shows that the rate of substantiation is lower and the proportion of cases not substantiated is higher for cases reported and finalised in the same year.

In previous years a trend had been evident of higher rates of discontinuation of investigations for cases reported and finalised in the same year, but this was not reflected in the 2020–21 data, as the rate of discontinuation for this group of cases dropped compared to the previous year (2019–20: 12%; 2020–21: 7.3%).

For all 1,294 finalised cases reported in 2020–21 where investigation had been commenced, the rate of matters where the PID was substantiated increased compared to the previous year (2019–20: 46%; 2020–21: 47.5%). However, the rate at which PIDs were partially substantiated declined (2019–20: 18.9%; 2020–21: 15.9%).

Overall, when discontinued investigations are excluded, 69.5% of finalised PIDs were either totally or partially substantiated, which is consistent with the previous year's result (2019–20: 70.4%).

Reviewing how agencies deal with PIDs

This year, the Office implemented the first PID self assessment audit, to:

- enable agencies to self assess their compliance with the PID Act and PID Standards
- collect data on compliance with the PID Act and PID Standards in accordance with the Office's monitoring and review functions
- identify training needs, support and resource gaps which the Office may address in accordance with its educational and advisory role.

The self assessment audit tool captures data about compliance with key elements of the three PID Standards. The existing public interest disclosure reporting database, RaPID, used by all agencies to report PIDs, was enhanced to enable agencies to respond to the audit online.

In August 2020, the Ombudsman wrote to all chief executive officers, advising of the Office’s intention to place more emphasis on monitoring compliance with the PID Act and PID Standards. Agencies were requested to submit responses by 30 September 2020. The Office undertook significant follow up with agencies to maximise the response. Follow up activity continued until 1 March 2021 and then the self assessment audit was closed.

Voluntary self assessments by agency type

	Audits administered	Responses completed	% Response rate
State departments	21	21	100%
Public universities/ TAFE	8	8	100%
Hospital and health services	16	16	100%
Government owned corporations	10	10	100%
Public service offices	7	7	100%
Statutory authorities	69	66	96%
Local councils	77	71	92%
TOTAL	208	199	95.6%

Self assessment responses show good progress towards compliance requirements:

- 97% of agencies have designated a PID Coordinator
- 94% of agencies reported that they have a PID procedure
- 89% of agencies stated that the PID procedure is published on their external-facing website

- 80% of agencies have reviewed their PID procedure since the PID Standards commenced
- 75% of agencies engage in PID awareness activities for officers at least once a year.

Identified areas for improvement include supporting public sector agencies to develop and implement a PID management program, and to provide PID training to their officers, particularly managers, supervisors and those with responsibility for receiving, assessing and managing PIDs.

The self assessment audit has provided a valuable whole-of-sector picture of the state of compliance with the PID Act and PID Standards. It has also helped the Office to identify areas where additional engagement, advice and resources to support agencies achieve compliance can be focused.

The self assessment audit will be used in 2021-22 to enable the Office to monitor progress, identify trends and assess the impact of engagement activities.

Education and advice

The Office continued to focus on engagement with agencies and the provision of education and advice, despite the challenges presented by public health directions and internal policies aimed at addressing the risks of the COVID-19 pandemic.

The delivery of face-to-face training continued to be impacted periodically throughout 2020-21. Considerable work was done to redesign PID training modules for ‘live online’ delivery using video conferencing software. Generally, these sessions were of shorter duration and for smaller groups than typical face-to-face programs.

Despite these circumstances, in 2020-21:

- 243 people participated in training sessions of 3 hours or longer (14 face-to-face and 3 online)
- 206 people attended sessions of less than 3 hours (5 face-to-face, 12 online and 1 hybrid session – presented face-to-face and online simultaneously).

Engagement with agencies through our quarterly PID Agency Network Training (PIDANT) webinars continued with a total of 403 participants attending the four webinars held in 2020–21, compared to a total of 260 participants in 2019–20 (across four webinars and four face-to-face meetings in Brisbane).

The monthly e-newsletter 'PIDmail' increased to 883 recipients. PIDANT and PIDmail are effective ways to engage with agencies and provide PID information and advice to agency PID Coordinators, and those with responsibility for PID identification, assessment or management.

Topics over the past year have included guidance on interpreting and implementing the PID Act and PID Standards, alerts about legal precedents, reports from other integrity agencies, relevant media articles and updates on training.

An enhanced approach was implemented for recording PID enquiries received from agencies in 2020–21. This allows more detailed analysis of the types of issues being raised when agencies contact the Office for assistance, advice or information. In total, 956 contacts were received in the following categories:

- 287 advice requests (interpretation and application of the Act and standards, PID management advice, support and reprisal risk assessment/prevention/remediation, etc)
- 18 feedback requests (policy/procedure reviews, feedback on templates, etc)
- 506 PID reporting database assistance requests (delete user, add user, delete case, edit case, reset password)
- 98 engagement requests (PIDANT, training, PIDmail, etc)
- 47 other enquiries (not elsewhere categorised).

PIDs reported by disclosure type

		2018-19	2019-20	2020-21
PID Act s 13	Corrupt conduct ¹	826	1,525	1,552
	Maladministration	82	65	87
	Misuse of public resources	39	47	28
	Public health or safety	36	27	18
	Environment ²	2	2	0
PID Act s 12	Disability	133	58	63
	Environment ²	8	2	3
	Reprisal	15	18	15
Total³		1,141	1,744	1,766

1. Corrupt conduct became a type of PID on 1 July 2014. The definition of corrupt conduct was amended on 1 March 2019 as a consequence of amendments to the *Crime and Corruption Act 2001*.
2. Disclosures of information about substantial and specific danger to the environment can be made by any person under s 12(1)(b) and (c) of the PID Act, and by public officers under s 13(1)(c).
3. A PID may include more than one type of disclosure (e.g., corrupt conduct and maladministration); therefore, the number of PIDs by disclosure type may exceed the number of PIDs reported by agency type.

PIDs reported by agency type

	2018-19	2019-20	2020-21
State departments	577	964	983
Hospital and health services	208	388	398
Local councils	130	129	163
Statutory authorities	98	96	94
University/TAFE	16	37	40
Public service offices	16	9	9
Government owned corporations	6	12	1
Total¹	1,051	1,635	1,688
1. A PID may include more than one type of disclosure (e.g., corrupt conduct and maladministration); therefore, the number of PIDs by disclosure type may exceed the number of PIDs reported by agency type.			

PIDs reported by discloser type

	2018-19	2019-20	2020-21
Employee of agency ¹	626	862	779
Manager/supervisor of agency	85	171	155
Role reporter ²	107	375	521
Employee of another public sector agency	93	103	105
Member of the public	50	25	30
Anonymous	90	99	98
Total³	1,051	1,635	1,688
1. 'Employee of agency' refers to the discloser being an employee of the agency reporting the PID.			
2. 'Role reporter' refers to an officer of an agency, for example an auditor or investigator, who has identified and reported information about wrongdoing in the course of performing their normal duties.			
3. A PID may include more than one type of disclosure (e.g., corrupt conduct and maladministration); therefore, the number of PIDs by disclosure type may exceed the number of PIDs reported by discloser type.			

PIDs finalised in accordance with the PID Act

PID Act	Grounds for decision to take no action	2018-19	2019-20	2020-21
s 30 (1)(a)	The substance of the disclosure has already been investigated or dealt with by another process	75	72	85
s 30 (1)(b)	The disclosure should be dealt with by another appropriate process	34	66	204
s 30 (1)(c)	The age of the information makes it impracticable to investigate	6	4	26
s 30 (1)(d)	The disclosure is too trivial to warrant investigation and dealing with it would substantially and unreasonably divert the resources of the agency	4	3	9
s 30 (1)(e)	Another agency notified that investigation was not warranted	4	27	3
s 30 (1)(a) and s 30 (1)(b)	The substance of the disclosure has already been investigated or dealt with by another process and the disclosure should be dealt with by another appropriate process	-	1	9
s 30 (1)(a) and s 30 (1)(c)	The substance of the disclosure has already been investigated or dealt with by another process and the age of the information makes it impracticable to investigate	-	1	33
	Other combination of two or more grounds including s 30(1)(a)	4	2	5
	Other combination of two or more grounds not including s 30(1)(a)	-	4	7
Total		127	180	381

PIDs investigation outcomes
- reported and closed in same financial year

	2018-19	2019-20	2020-21
Substantiated	111	184	236
Partially substantiated	46	71	95
Not substantiated	100	105	186
Investigation discontinued	34	49	41
Total¹	291	409	558

1. This table reports on the PID matters reported and closed in the same financial year. This will vary from the total number of PIDs reported in that period.

PIDs investigation outcomes
- all closures irrespective of when reported

	2018-19	2019-20	2020-21
Substantiated	256	402	615
Partially substantiated	99	164	206
Not substantiated	224	238	360
Investigation discontinued	48	68	113
Total¹	627	872	1,294

1. This table reports on total PID matters closed in a financial year. This will vary from the total number of PIDs reported in that period.

PIDs totally or partially substantiated

	2018-19	2019-20	2020-21
Total PIDs for which investigation finalised	579	804	1,181
PIDs totally or partially substantiated	355	566	821
% finalised PIDs totally or partially substantiated	61.3%	70.4%	69.5%