

PIDs to Ministers, Members of Parliament and journalists

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What this guideline covers

The *Public Interest Disclosures Act 2022* (**PID Act**) recognises that it is in the public interest for public officials to be able to report serious wrongdoing to Members of Parliament (**MPs**) or journalists where other reporting channels have failed to effectively deal with issues in a timely manner.

However, there are additional criteria necessary for a report to an MP (other than a Minister) or journalist to be a public interest disclosure (**PID**).

If a public official makes a disclosure to an MP or journalist that both:

- a) has the usual features of a voluntary PID, and
- b) meets the additional criteria under the PID Act for a PID to be able to be made to an MP or a journalist, they will receive the protections of a voluntary PID maker.

This section explains the process of making a voluntary PID to an MP or journalist, what agencies should do if they become aware that a person has made a disclosure to an MP or journalist and how agencies should deal with these disclosures.

What should Ministers and their staff do if they receive a PID?

Disclosures made to Ministers must have the features of a voluntary PID as set out in section 24 to 27 of the PID Act. The additional criteria that apply to PIDs made to other MPs and journalists do not apply. However, unlike other voluntary PIDs, PIDs to Ministers must be made in writing.¹

A Minister's office is not an agency under the PID Act.² Therefore, they do not have a duty to deal with the voluntary PID other than to communicate the report to an appropriate agency.

If a Minister or a member of their staff receives a voluntary PID or a report about serious wrongdoing by a person who is or appears to be a public official, they must, as soon as reasonably practicable:

- where the report was made in writing – communicate the report to a disclosure officer for an agency that is responsible to the Minister or to an integrity agency, or
- where the report was made orally – direct the maker of the report to a disclosure officer for an agency that is responsible to the Minister or to an integrity agency, so that the report can be re-made as a voluntary PID.³

Important note: A list of integrity agencies can be found in the guideline *Core concepts in the PID Act*.

1. *Public Interest Disclosures Act 2022*, s 24(3)(c).
2. *Public Interest Disclosures Act 2022*, s 16(2).
3. *Public Interest Disclosures Act 2022*, s 52.

When can a voluntary PID be made to an MP (other than a Minister) or journalist?

A PID can only be made to an MP (who is not a Minister) or journalist if it meets the criteria under section 28(1) of the PID Act.

Important note: Disclosures made to MPs who are Ministers will be PIDs provided they have the usual features of a voluntary PID set out in section 24 to 27 of the PID Act. However, unlike other voluntary PIDs, they must be made in writing.⁴

To be considered a voluntary PID to an MP or journalist, the disclosure must meet the below criteria:

Criterion		The disclosure will only be a voluntary PID to an MP (other than a Minister) or journalist if...
1.	The disclosure must have the features of a voluntary PID.	The disclosure complies with sections 25 to 27 of the PID Act. Guidance can be found in the guideline <i>Assessing a report of wrongdoing to see if it is a voluntary PID</i> .
2.	The disclosure must be substantially true.	The disclosure must be substantially true means that the substance of the allegations made must be true in fact. Generally, a disclosure about suspected serious wrongdoing may be a voluntary PID provided the maker honestly believes, on reasonable grounds that serious wrongdoing occurred (section 26(1) of the PID Act). However, for reports to MPs (other than Ministers) or journalists, a report will not be recognised as a voluntary PID unless the allegation is in fact true – that is, only if the serious wrongdoing did in fact occur. If the allegation is not true, then the report to the MP or journalist will not be a PID and the person who made the PID will not be protected under the PID Act (even if the person who made the report honestly believed it was true and even if they had reasonable grounds for that belief).
3.	The maker must have previously made substantially the same voluntary PID to a recipient of PIDs.	The maker of a disclosure to an MP or journalist must have made substantially the same voluntary PID (previous PID) to a person who can receive a PID under section 27(1)(a)-(d) of the PID Act, such as a manager, disclosure officer or head of an agency. If the disclosure made to the MP or journalist contains a new allegation of substantially new information about serious wrongdoing which was not disclosed in the previous PID, it may not be substantially the same.
4.	The previous disclosure must NOT have been anonymous.	When the previous PID was made, the maker must not have remained anonymous. Even if the recipient of a PID knows the identity of the maker, but the maker is not contactable, it may still be considered to be an anonymous PID. Guidance can be found in the guideline <i>Dealing with anonymous voluntary PIDs</i> .

4. *Public Interest Disclosures Act 2022*, s 24(3)(c).

5.	The maker of the previous disclosure must <i>not</i> have waived their right, in writing, to receive information under section 59 of the PID Act.	The maker of the PID cannot have written to the agency saying that they <i>waive</i> their right to receive information which the PID Act states must be provided to the makers of PIDs under section 59 of the PID Act. Guidance can be found in <i>Updating makers of voluntary PIDs and providing supports</i> .
And one of the following must occur:		
6A.	The maker was notified that the agency would <i>not</i> investigate nor refer the disclosure or would <i>cease</i> investigating without referring the disclosure.	<p>At any stage after making the PID:</p> <ul style="list-style-type: none"> • notice of the agency’s decision to not investigate the relevant serious wrongdoing nor refer the disclosure, or • to cease investigating the relevant serious wrongdoing without completing the investigation or referring the disclosure.
6B.	At the end of the investigation period, the maker <i>had not been notified</i> of the required information	<p>At the end of the investigation period:</p> <ul style="list-style-type: none"> • notice of the agency’s decision to investigate the disclosure of serious wrongdoing, and • a description of the results of the investigation (that is, the findings made), and • details of the corrective action taken, proposed, or recommended as a result of the investigation. <p>The investigation period is:</p> <ul style="list-style-type: none"> • <i>6 months</i> after the previous disclosure was made, or • <i>12 months</i> from the making of the previous PID if the maker applied for an internal review within 6 months after the PID was made.

What should MPs do once they have received a PID?

If an MP (other than a Minister) receives a report of wrongdoing by a public official, they should consider whether the report may be a PID.

If it appears to the MP that the disclosure is a voluntary PID, it is appropriate for the MP to refer it to the agency to which it relates or to an integrity agency. The maker of the disclosure should be consulted before the disclosure is referred.

The PID Act provides that nothing in it affects the rights and privileges of Parliament in relation to an MP's freedom of speech and Parliamentary debates and proceedings.⁵ However, MPs might wish to consider the likelihood that the identity of the maker will remain confidential, the status of any ongoing investigation, the wishes of the maker of the PID and any possible damage to the reputation of the subjects of the report (especially if findings have not yet been made) before raising information contained in a PID in Parliament.

If the PID was previously made to the agency and not dealt with appropriately or in a way that was acceptable to the PID maker, they may be hesitant to have the agency handle the matter. If this is the case, it may be more appropriate to refer the PID to an integrity agency, such as the Ombudsman or the Independent Commission Against Corruption, for investigation.

Important note: A list of integrity agencies can be found within guideline Core concepts in the PID Act. Information on the categories of serious wrongdoing and the integrity agency that generally investigates certain serious wrongdoing can be found in the guideline *What is serious wrongdoing?*

5. *Public Interest Disclosures Act 2022*, s 87.

Agency obligations when a PID is made to MPs or journalists

If an agency becomes aware that a public official has reported serious wrongdoing to an MP or journalist, the agency must consider what action needs to be taken in response to the allegations.

To properly assess and investigate a disclosure, the agency may need to speak to the maker of the disclosure. The MP's office or the journalist may need to be contacted to facilitate communication with the maker of the disclosure, taking into account any sensitivities relating to the subject matter of the disclosure and what contact the agency has previously had with the maker. If the maker has previously dealt with the agency in relation to the PID, it may be appropriate for a different disclosure officer to speak to the maker or for the matter to be escalated internally so that the handling of the PID can be considered.

Public officials who have made a PID to an MP or journalist are covered by the protections under the PID Act, including confidentiality and protection against detrimental action. Information on the protections in the PID Act can be found in the guideline *Protections in the PID Act*.

Agencies' obligation to assess and manage risk

An agency should either commence a risk assessment or continue to assess and manage the risk of detrimental action occurring for both the maker and subject(s) of the PID if:

- an agency becomes aware that a person has made a PID to a MP or journalist and the disclosure relates to the agency or
- the maker of the PID to the MP or journalist is a public official associated with the agency. Guidance about the term 'associated with' be found in the guideline *Core concepts in the PID Act*.

This may be difficult in circumstances where the maker is unwilling to engage with the agency. Nevertheless, agencies should consider any previous risk assessments, the workplace environment, whether there has been threats and what measures could be put in place to prevent detrimental action from occurring.

When assessing the wrongdoing and related risks, agencies should contact the maker of the PID to obtain further information in order to properly understand the risks. The agency should also offer to appoint a support person to assist the maker of the PID in the workplace.

Agencies should continue to communicate with the maker of the PID by:

- providing them with written advice about any action that has been taken or will be taken in response to the PID
- keeping them regularly informed about the progress of any investigation, at intervals of no more than 3 months – agencies may want to consider increasing the contact/updates with the maker in circumstances where they have made a PID outside the agency
- providing the maker with details of a referral of the matter to another agency if a referral occurs
- providing them with a description of the results of any investigation conducted, and any corrective action or organisational reform taken in response to the findings of the investigation, and
- updating them on other matters required to be communicated to the maker under the agency's PID policy.⁶

Further guidance can be found in the guideline *Updating makers of voluntary PIDs and providing supports*.

6. *Public Interest Disclosures Act 2022*, s 59(2).

