**Making and Handling Public Interest Disclosure**

Procedures

1 January 2020

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**QUICK REFERENCE GUIDE TO PUBLIC INTEREST DISCLOSURES**

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| **Who can make a disclosure?** | Any individual or group of individuals can make a disclosure.A disclosure cannot be made by a business or company. |
| **How do I make a disclosure?** | Verbally or in writing (but not by fax) in accordance with specific procedures. A public interest disclosure must be made in private, so it is important that only the person to whom you are making the disclosure to can hear or receive your disclosure. For example, if you make your disclosure by email, your disclosure should be sent to the email address of the person to whom you are making the disclosure to, rather than a group email. You are not precluded from making a joint disclosure with a group of individuals at the same time.You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated, and you will not be notified of the outcome of any investigation. |
| **What can I make a disclosure about?** | You may make a public interest disclosure about the information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that:(a) a person, public officer or public body(b) is engaging in, or proposing to engage in,(c) 'improper conduct' and/or 'detrimental action'.This means improper conduct engaged in, and/or detrimental action taken by, public bodies or public officers performing public functions.This includes the department and/or its officers and agencies as well as statutory authorities which fall within the portfolio of the department. |
| **What is improper conduct?** | Improper conduct includes (but not trivial conduct):* Corrupt conduct
* Criminal offence
* Serious professional misconduct
* Dishonest performance of public functions
* Intentional or reckless breach of trust or misuse of information
* Substantial mismanagement of public resources
* A substantial risk to (a) health or safety of one or more persons or (b) the environment
* Conduct of any person that adversely affects the honest performance of a public officer or public body’s functions or is intended to affect the performance and obtain an advantage for that person.
 |
| **Who can I make a disclosure to?** | If you wish to make a **public interest disclosure** about Zoos Victoria or any of its employees and/or officers, you may contact: |
| The Independent Broad-based Anti-corruption Commission (IBAC)Level 1, North Tower459 Collins StreetMelbourne Vic 3000GPO Box 24234, Melbourne, VIC 3001Telephone: 1300 735 135Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au) |
| If you wish to make a public interest disclosure about any other public bodies or agencies, you must make your disclosure to IBAC. |

# Background and purpose

The Public Interest Disclosures Act 2012 (Vic) (the Act) ensures that people who report improper conduct and corruption in the Victorian public sector (whistleblowers) can do so in the knowledge that they will be protected.

Protections include keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals, including bullying, harassment or legal action.

Zoos Victoria is **not** a public body able to receive public interest disclosures under the PID Act.

Not all government agencies are able to receive public interest disclosures. The agencies that can accept public interest disclosures are listed in ***Section 15***. Any agency not in this list is unable to receive public interest disclosures. Disclosures about these agencies should be made directly to the Independent Broad-based Anti-corruption Commission (IBAC.).

# Who can I seek advice from Zoos Victoria?

Before deciding the course of action regarding the complaint, you can seek advice from:

|  |  |
| --- | --- |
| **Disclosure Co-ordinator** | * Will provides general advice about the Public Interest Disclosure.
* Is responsible for ensuring that Zoos Victoria carries out its responsibilities under the PID Act and the IBAC Guidelines
* liaise with IBAC in regard to the Act
* where necessary, arrange for appropriate welfare support for a person suspected of making a public interest disclosure
* Ensures confidentiality of information
* take all necessary steps to ensure the identity of a person suspected of making a public interest disclosure and the identity of a person who is the subject of the disclosure are kept confidential.
 |
| **Contact** | The Director of Human ResourcesSwitchboard: 03-92859300 (You do not have to provide details to identify yourself)Email: disclosure-coordinator@zoo.org.au |
| **‘STOP LINE’** | * provide another avenue for employees or contractors of Zoos Victoria to discuss any matters that could be referred to IBAC as a public interest disclosure matter.
* matters must concerns actions by a manager, employee or contractor of Zoos Vicotria.
* provides clear advice on what constitutes reportable wrongdoings.
* Provides clear advice on how to report wrongdoings.
* Investigate any matters or provide support if requested by Zoos victoria
 |
| **Contact** | Toll-Free: 1300-304-550Email: zoo@stopline.com.auLocked Bag Mail: Zoos Victoria, c/o Stopline, Locked Bag 8, Hawthorn Vic 3122 |

# Who can make a disclosure?

Any person or group of people can make a disclosure to IBAC. They can be an employee of the public body, a contractor or tenderer, a client or a member of the public.

Companies or businesses cannot make disclosures. The PID Act only provides for ‘a natural person’ to make a disclosure. Any disclosure needs to be made by an officer or employee of the company or business.

# Who do I make my disclosure to?

Zoos Victoria is not a public body able to receive disclosures under the PID Act. All allegations of improper conduct, as defined in the PID Act, cannot be reported to a Zoos Victoria. If the person who wishes to make the complaint desires protection from detrimental action, the complaint must be direct to **IBAC**.

|  |  |
| --- | --- |
| **IBAC** | IBAC accepts Public Interest disclosure or complaints about Victorian public sector officers or bodies allegedly:* Taking or offering brides
* Dishonestly using influence
* Committing fraud, theft or embezzlement
* Misusing information or material acquired at work
* Conspiring or attempting to engage in the above corrupt activity

Undertake investigationsSee ***Section 5*** for what can be reported to IBAC. |
| **Contact** | Telephone: 1300-735-135Provide information about public sector corruption or police misconduct to IBAC via our secure online form. Website: <https://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint> |

Go to IBAC website [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au) for more information.

# What disclosure can I make to IBAC?

You may make a public interest disclosure about the information that shows or tends to show, or that you believe on **reasonable grounds** shows or tends to show, that:

(a) a person, public officer or public body

(b) is engaging in, or proposing to engage in,

(c) 'improper conduct' and/or 'detrimental action'.

Disclosure is a report about **improper conduct** of public bodies or public officers and **detrimental action** by a public officer or public body in reprisal for a disclosure to IBAC or organisation that can receive public interest disclosures.

IBAC can’t investigate all complaints. You should contact the agency for the sort of complaint as listed below, Check the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)) for other information.

| Type of complaints | Whom you should complain to | See Website for more information |
| --- | --- | --- |
| Administrative Actions of Victorian Government Agencies. | Victorian Ombudsman. | [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  |
| Privacy concerns | Office of the Victorian Information Commissioner.  | [www.ovic.vic.gov.au](http://www.ovic.vic.gov.au) |
| Worker’s compensation | Accident Compensation Conciliation Services. | [www.conciliation.vic.gov.au](http://www.conciliation.vic.gov.au) |
| Workplace discrimination and human rights issues | Victorian Equal Opportunity and Human Rights Commission | [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au) |
| Workplace bullying and conditions of employment | Fairwork Commission | [www.fwc.gov.au](http://www.fwc.gov.au) |
| Workplace safety | WorkSafe Victoria | [www.fwc.gov.au](http://www.fwc.gov.au) |

# What do reasonable grounds mean?

Your belief that improper conduct or detrimental action has occurred or is occurring or will occur does not have to be based on actual proof. It is enough if you believe (as opposed to knowing) that improper conduct or detrimental action has occurred, is occurring or will occur. However, you must have reasonable grounds for your belief.

A mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be protected by the Act. For example, it is not enough to say 'I know X is corrupt'. You must have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

# Definition of improper conduct

Improper conduct includes (but not trivial conduct):

* Corrupt conduct
* Criminal offence
* Serious professional misconduct
* Dishonest performance of public functions
* Intentional or reckless breach of trust or misuse of information
* Substantial mismanagement of public resources
* A substantial risk to (a) health or safety of one or more persons or (b) the environment
* Conduct of any person that adversely affects the honest performance of a public officer or public body’s functions or is intended to affect the performance and obtain an advantage for that person.

Serious professional misconduct is not defined in legislation. IBAC defines serious professional misconduct as “a serious failure to exhibit the skills and experience required to perform the functions of the office, as well as a serious breach of professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and the workplace.” This is best illustrated by the following principles:

| **Serious professional misconduct** |  |
| --- | --- |
| Factors that may inform skills, expectations and responsibilities | Factors that may inform seriousness |
| * position descriptions and comparison to peers
* specific empowering legislation
* generally applicable pieces of legislation
* generally applicable codes of conduct such as those for Victorian public sector employees
* specific professional codes of conduct
* employment contracts, internal policy or guideline documents.
 | * persistent or repeated behaviour
* premeditation or consciousness of wrongdoing
* risks to others and the consequences of the behaviour
* the amount of money involved in the wrongdoing
* the level of public trust and responsibility attached to the public office
* how the conduct is perceived by the person’s peers or any codes of conduct
* whether the conduct would result in significant disciplinary or potentially criminal penalties.
 |

IBAC provided examples of improper conduct from various cases below:

* A complaint that an employee has disclosed confidential information without consent.
* A complaint that an employee has an undeclared conflict of interest in a planning application process.
* A complaint that an employee repeatedly refuses to obtain three quotes in breach of an agency’s procurement rules.

# Definition of detrimental action

Detrimental action means action taken against a person who has made a public interest disclosure which:

* Causes injury, loss or damage or loss; or
* intimidation or harassment; or
* discrimination, disadvantage or adverse treatment in relation to employment; career, profession, trade or business (including disciplinary action).

Detrimental action is not: Legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

Zoos Victoria is **not** a public body able to receive disclosures under the PID Act.

Examples of detrimental action are outlined below:

1. When a public body demotes, transfers or isolates in the workplace or changes the duties of a person who has made a disclosure or due to the making of a disclosure.
2. When threats, abuse or any other forms of harassment are directly or indirectly made against the person who makes a disclosure including to his or her family or friends.
3. The person who makes a public interest disclosure (including his or her family or associates) is discriminated by the public body through subsequent applications for jobs, permits or tenders.

# What will happen after I make a disclosure to IBAC?

Disclosures made to IBAC will be handled in accordance with IBAC’s guidelines and processes outlined here.

**NO FURTHER ACTION**

IBAC will take no further action.

IBAC determines if what you have reported is a public interest disclosure

Yes, it is a public interest disclosure

No, it is not a public interest disclosure

**INVESTIGATE**

IBAC may investigate the complaint

**REFER**

IBAC may refer the complaint to one of these agencies to investigate:

* Victorian Ombudsman
* With the consent of the Complainant, may refer the complaint to another public body to deal with.

**NO FURTHER ACTION**

IBAC may close or dismiss a complaint for a number of reasons, for example if it:

* Lacks substance or credibility
* Is vexatious or trival
* Is about a matter that neither IBAC or a body specified in the IBAC Act 2011 may investigate.

**REFER**

IBAC may refer the disclosure to another agency (e.g. Victorian Ombudsman) or the enity named in the complaint.

Regardless of whether IBAC determines your disclosure is a public interest disclosure or not, you will still receive the protections under the PID Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

However, if IBAC determines that your disclosure is not a public interest disclosure, the confidentiality requirements set out in ***Section12*** of these procedures no longer apply in relation to your disclosure.

# What protection will I receive?

The PID Act sets out the protections provided to persons who make a disclosure in accordance with the PID Act. These include:

1. immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
2. immunity from committing an offence under the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
3. immunity from breaching any other obligation (made by oath or the rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
4. protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if IBAC determines that the disclosure is not a 'public interest disclosure'.

The protections in the PID Act do not apply if you provide false or misleading information or claim that a matter is the subject of a public interest disclosure knowing that claim to be false.

The protections will apply to further information relating to a public interest disclosure that you provide to IBAC.

In addition to these protections, Zoos Victoria recognises that the welfare and protection from detrimental action of persons making genuinely public interest disclosures are essential for the effective implementation of the PID Act and is relevant to Zoos Victoria's obligation to create a safe working environment under the Occupational Health and Safety Act 2004, the Charter of Human Rights and Responsibilities Act 2006 and the common law.

# Welfare management

Zoos Victoria will provide welfare support to a discloser or a witness in an investigation as the circumstances require.

Since Zoos Victoria cannot receive public interest disclosures or may not know when a person has made a public interest disclosure, this information may be provided to the Zoos Victoria by IBAC who is assessing whether a disclosure is a public interest disclosure complaint, or by an investigating entity that is investigating a public interest disclosure complaint. Having been made aware of the identity of a discloser, and/or the contents of their disclosure, Zoos Victoria will:

1. be required to keep that information confidential; and/or
2. will also consider appointing a welfare manager when a person has made a public interest disclosure or is co-operating, or intending to co-operate, with an investigation of the public interest disclosure.

In determining whether to appoint a welfare manager in any particular case, Zoos Victoria will consider:

* whether the disclosure has proceeded, or is likely to proceed, to an investigation;
* whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
* whether Zoos Victoria can provide effective support to the persons involved, including keeping them informed of the progress of the public interest disclosure; and
* whether it is within Zoos Victoria 's power to protect the person/s involved from suffering repercussions.

Zoos Victoria may appoint an internal person as welfare manager or engage a contractor to provide welfare services. Zoos Victoria will also consider referring an employee to its Employee Assistance Program.

If a Welfare Manager is appointed, he or she will:

|  |  |
| --- | --- |
| **Inform** | At a minimum, provide:* the legislative or administrative protections available to the person to make the complaint
* description of the action proposed to be taken
* if an action has been taken, details about results of the action (if the matter was referred by IBAC)
 |
| **Provide active support** | * acknowledge the person for having come forward
* provide the person with an assurance that they have done the right thing,and the organisation appreciates it
* make a clear offer of support
* assure them that all reasonable steps will be taken to protect them
* give them an undertaking to keep them informed
 |
| **Manage expectations** | Have an early discussion with them:* what outcome do they want?
* are their expectations realistic?
* what will the organisation be able to deliver?
 |
| **Maintain confidentiality** | The identity of the discloser and the subject matter of their disclosure need to be kept confidential:* make sure that other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive
* remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser
* make sure that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures and persons affected by them in your organisation
 |
| **Assess the risks of detrimental action being taken in reprisal** | be proactive and do not wait for a complaint of victimisation, but actively monitor the workplace, anticipate problems and deal with them before they develop. |
| **Protect the discloser** | * examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment
* listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions
* assess whether the concerns the person may have about harassment,intimidation or victimisation might be due to other causes other than those related to a public interest disclosure
 |
| **Manage the impact of any investigation** | * prevent the spread of gossip and rumours about an investigation into the disclosure
 |
| **Keep records** | * keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action
 |

A welfare manager must not divulge any details relating to the disclosed matter to any person other than the Disclosure co-ordinator, or the principal officer of the public body. All meetings between the welfare manager and the person must be conducted discreetly to protect the person from being identified as being involved in the disclosure.

If a welfare manager is appointed to look after a discloser or witness, the welfare manager will only be required to provide reasonable support and should discuss the reasonable expectations with the person(s) they are supporting.

# Dealing with detrimental action

Any person aware of or suspect another person who has made a disclosure has suffered a reprisal or detrimental action for making the disclosure, should:

* Report an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of a disclosure.
* Record details of the incident.
* Advise the Disclosure Coordinator (if not previously advised) or the Chief Executive Officer of Zoos Victoria or STOPline.
* Where detrimental action is of a serious nature, give consideration to the reporting of the matter to the police.

If any report of an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal is received, the welfare manager or the Disclosure co-ordinator must record details of the incident and advise the person of their rights under the PID Act to make a disclosure to IBAC.

In such circumstances, a public body must be careful about making preliminary enquiries or gathering information concerning such an allegation of serious detrimental action so it does not compromise the integrity of any evidence that might be later relied upon in criminal prosecution.

The taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct to IBAC.

# Dealing with the person making the disclosure is implicated in the improper conduct or detrimental action that is subject of the disclosure.

Where a person who makes a disclosure is implicated in misconduct, the Disclosure Coordinator and the Chief Executive Officer will decide whether disciplinary or other action should be taken against the whistleblower, after seeking appropriate legal advice or advice from IBAC.

Action will be taken only when the disclosed matter has been dealt with and when the Disclosure Coordinator and the Chief Executive Officer have decided to proceed with disciplinary action, and it is clearly demonstrated that:

* The intention is not causally connected to the making of the disclosure (as opposed to other available information).
* There are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances.
* There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The process should be documented, including the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure.

The whistleblower should be advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

The management of the person against whom a disclosure has been made must be considered and that they are:

* Given adequate information as to their rights and obligations.
* Be Informed as to the substance of the allegations.
* Allow the opportunity to answer the allegations before a final decision is made.
* Be Informed as to the substance of any adverse comment that may be included in any report arising from the investigation.
* The principles of natural justice will be followed in any investigation of any reported misconduct.
* The report must be fair and transparency for his or her defence.
* Provide with the appropriate support.

# Confidentiality

The PID Act prohibits the disclosure of information received due to the handling or investigation of an assessable disclosure except in certain limited circumstances. Disclosure of information in breach of the PID Act constitutes a criminal offence.

It is the responsibility of all staff to maintain confidentiality in accordance with the Act. It is also the responsibility of a person making a disclosure and in their own interests to keep their disclosure confidential by only discussing related matters with officers of IBAC’s office or other persons authorised by law.

Zoos Victoria will ensure that all files, whether paper or electronic, are secure and can only be accessed by authorised officers. All printed material will be kept in files that are clearly marked as a Public Interest Disclosure matter, and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a public interest disclosure. All electronic files will have limitations on access.

If you repeat your disclosure to someone other than IBAC, you may lose the protections provided for in the PID Act. For example, if a disclosure, is repeated to the media and the media reports on it, you may not be protected from defamation action. You may also breach your confidentiality obligations. If you are considering disclosing information about your disclosure, you may wish to speak to IBAC or obtain legal advice first.

# Criminal offences

There are a number of offences set out in the PID Act relating to breaches of the requirements of the Act. The key offences to be aware of are:

1. it is an offence to take detrimental action against another person in reprisal for a public interest disclosure;
2. it is an offence to disclose the content, or information about the content, of a disclosure that has been notified by IBAC to Zoos Victoria which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act;
3. it is an offence for any person to:
4. provide false or misleading information or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure;
5. claim that a matter is the subject of a public interest disclosure knowing the claim to be false; and
6. falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint; and
7. it is an offence for any person to:
8. disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act; and
9. disclose that a disclosure has been determined to be a public interest disclosure complaint unless permitted to do so by the Act.

# Alternatives to making a ‘public interest disclosure.’

These procedures are designed to complement usual methods of submitting complaints to Zoos Victoria.

Members of the public are encouraged to use Zoos Victoria’s feedback process to communicate complaints or concerns with the services provided by Zoos Victoria. Get in touch with us by email to contact@zoo.org.au or by Facebook  or by Twitter .

Employees are encouraged to raise matters with their supervisors and managers at any time.

# Matters already disclosed to Zoos Victoria

If a matter has already been disclosed to Zoos Victoria] and handled under a separate process, for example, a grievance or complaint dealt with by the Human Resources Department under the relevant internal HR Policies or Procedures, the matter will not be dealt with by this Public Interest Disclosure Procedures.

# Entities that can receive public interest disclosures

List as at 1 January 2020

State government departments:

• Department of Premier and Cabinet

• Department of Education and Training

• Department of Health and Human Services

• Department of Treasury and Finance

• Department of Environment, Land, Water and Planning

• Department of Jobs, Precincts and Regions

• Department of Justice and Community Safety

• Department of Transport.

Administrative offices:

• Family Safety Victoria

• Latrobe Valley Authority

• Local Government Inspectorate

• Major Transport Infrastructure Authority

• Office of Projects Victoria

• Office of the Chief Parliamentary Counsel

• Office of the Governor

• Office of the Victorian Government Architect

• Public Record Office Victoria

• Safer Care Victoria

• Service Victoria

• Victorian Agency for Health Information

• Victorian Government Solicitors Office.

All local councils

Victorian Public Sector Commission

Visit the IBAC website at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au) for any updates.