

PROTECTED DISCLOSURE MANAGEMENT AT ZOOS VICTORIA

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1 Disclosure must be made to IBAC

The Protected Disclosures Act 2012 (the Act) commenced operation on 10 February 2013 and replaced the Whistleblowers Protection Act 2001 (WPA).

The new Act is overseen by the Independent Broad-based Anti-corruption Commission (IBAC) who have published "Guidelines for making and handling Protected Disclosures" (IBAC Guidelines)

The new Act not only expands the definition of improper conduct but also restricts to whom disclosure can be made IBAC Guidelines and also restricts to whom the disclosures can be made about.

Zoos Victoria is **not** a public body able to receive disclosures under Part 2 of the Act. Allegations of improper conduct as defined in the Act, cannot be reported to a Zoos Victoria's employee if the person who wishes to make the report desires protection from detrimental action. Such reports must be made direct to the IBAC by the person concerned.

Please refer IBAC Website for the latest version of the "Guidelines for making and handling protected disclosures." Refer to **Appendix A** for contact details.

2 Who can make a disclosure to IBAC?

Any individual or group of individuals can make a disclosure to IBAC. Disclosure cannot be made by a business or company.

What disclosure can I make to IBAC?

Disclosure is a report about **improper conduct** of public bodies or public officers and **misconduct in public office**, make to IBAC.

Disclosure can also be made about **detrimental action** that a public officer or public body takes against a person in reprisal for them (or another person) having made a protected disclosure or cooperated with the investigation of a protected disclosure.

Improper conduct must, at its lowest threshold level, be either criminal conduct or conduct serious enough to result in a person's dismissal. Under the IBAC Act, corrupt conduct is the conduct of a certain type that would constitute a relevant offence. Relevant offences are:

- indictable offences against an Act
- the common law offences of attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office. Offences punishable by imprisonment for five years or more are presumed to be indictable offences.

The type of conduct that can be corrupt conduct are:

- ▀ conduct that adversely affects the honest performance by a public officer or public body of their functions
- ▀ conduct of a public officer or body that:
 - constitutes or involves the dishonest performance of their official functions
 - constitutes or involves knowingly or recklessly breaching the public trust

- involves misuse of information or material that was obtained in their official capacity
- ▲ conduct that could constitute a conspiracy or an attempt to engage in the above forms of conduct
- ▲ conduct intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the IBAC Act.

The type of behaviours could be misconduct in public office are:

- ▲ deliberately falsifying accounts to conceal or obtain a benefit
- ▲ entering into a secret commission with another person while acting in an official capacity
- ▲ colluding with other public officers to share profits with tender recipients and concealing the over-valuation of tenders
- ▲ using public office to deceive a member of the public to gain a financial advantage
- ▲ misusing power to harm, oppress or disadvantage a person.

4 Why can't Zoos Victoria receive Protected Disclosure?

Part 2 of the PD Act defines who can receive protected disclosure. **A disclosure will not be protected disclosure if it is made to Zoos Victoria.** We cannot receive such disclosure.

You must forward your disclosure to IBAC. Refer to **Appendix A** for contact details.

5 The Whistleblower and Welfare Management Policy and Procedures

5.1 Context

The Whistleblower and Welfare Management Policy and Procedures ensures Zoos Victoria meets its obligations to whistleblowers and provides procedures to facilitate the making of reports of improper conduct, the investigation of such conduct and the protection of whistleblowers from reprisals.

These procedures enable such reports to be made to the Disclosure Coordinator or an independent hotline service, managed by The STOPline Pty Ltd (STOPline).

These procedures are designed to complement normal communication channels between supervisors and employees of Zoos Victoria. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors or managers.

Employees may alternatively disclose improper conduct, detrimental action or misconduct in public office, under the Act in accordance with the IBAC Guidelines **direct to the IBAC**. Refer to **Appendix A** for contact details.

The Disclosure Coordinator or STOPline can provide advice regarding the process for reporting "improper conduct" to IBAC.

5.2 Scope

This policy applies to all staff and contractors employed or contracted by Zoos Victoria.

5.3 Principles

The Whistleblower and Welfare Management Policy and Procedures is committed to and guided by the principles of:

- Fairness, transparency and accountability in administrative and management practices;
- The provision of a working environment free of improper or corrupt conduct; and
- The provision of protection to those who disclose mismanagement and corruption.

5.4 Zoos Victoria's Statement of Support

Zoos Victoria does not tolerate improper conduct by its managers, employees or contractors and does not support the taking of reprisals against those who come forward to disclose such conduct.

Zoos Victoria recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal corrupt conduct, a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment. For the purposes of this policy, improper conduct also includes conduct that breaches Zoos Victoria's Code of Conduct or published policy or procedures

Zoos Victoria will take reasonable steps to protect people who make such disclosures, in good faith, from any detrimental action or reprisal for reporting the conduct. Additionally, Zoos Victoria is conscious of the rights of persons against whom allegations are made. When and if required, a Welfare Manager will be appointed for whistleblowers who have made a protected disclosure to IBAC and where advice of that disclosure has been received either from the Ombudsman or the IBAC; or if necessary, when any other disclosure of misconduct is made under this policy.

5.5 Natural Justice

The principles of natural justice will be followed in any investigation of any reported misconduct. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

Zoos Victoria will have regard to the following issues in ensuring procedural fairness:

- The person who is the subject of the report is entitled to know the allegations made against him or her and must be given the right to respond. This does not mean the person must be advised of the allegation as soon the disclosure is received, or the investigation is commenced;
- All relevant parties to a matter should be heard, and all submissions should be considered;
- A decision should not be made until all reasonable inquiries have been made;
- The investigator or any decision maker should not have a personal or direct interest in the matter being investigated;
- All proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process;

- The investigator must remain impartial in assessing the credibility of the whistleblowers and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

5.6 Reporting Misconduct

A report of misconduct may be made to Zoos Victoria's Disclosure Coordinator, through an employee's supervisor or manager or to Zoos Victoria's independent hotline service provider, STOPline:

- in person
- in writing
- by telephone
- electronically

The report may be made anonymously, however, note that if a person making a totally anonymous disclosure including failing to provide a contact email or telephone number to STOPline, it will be difficult to provide feedback regarding steps taken within this policy or the outcome of any subsequent investigation.

All correspondence, phone calls and emails from internal or external whistleblowers where it is obvious anonymity is being sought or where the whistleblower is not comfortable to report the misconduct through their own chain of command, should be referred to the Disclosure Coordinator or STOPline.

Any person seeking anonymity from Zoos Victoria and who reveals their identity to STOPline will have their request to remain anonymous respected. Each caller is provided with a secure code and unique reference to allow feedback and obtaining of further and better particulars if required.

5.6.1 Contacting STOPline

STOPline is an independent, impartial hotline service with trained interviewers to document reported misconduct. STOPline have several methods of receiving reports although a telephone call is preferred so that sufficient information can be obtained to enable the conduct of a thorough investigation. STOPline do not have incoming or outgoing caller ID. Refer to **Appendix A** for contact details.

For the disclosure to fall within the scope of this policy, it must concern actions by a manager, employee, or contractor of Zoos Victoria conducted in their capacity as a manager, employee or contractor of Zoos Victoria.

5.7 Roles and responsibilities

5.7.1 Officers, employees and contractors

All staff and contractors or members of the public are encouraged to report known or suspected incidents of improper conduct or detrimental action to the Disclosure Coordinator or via STOPline in accordance with this policy.

All employees have an important role to play in supporting those who have made a disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure.

Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure. In addition to any criminal penalties that may apply under any Act, deliberate failure to comply with the requirements of this policy by Zoos Victoria's employees may constitute misconduct and result in disciplinary action being taken.

5.7.2 Disclosure Coordinator

The Disclosure Coordinator has a central role in the internal reporting system and will:

- Receive disclosures referred by complainants or from STOPLine.
- Assess whether the matter should be dealt with under this Policy or any other Zoos Victoria's policies and procedures.
- Provide advice to a whistleblower regarding reporting improper conduct to the IBAC.
- If required, seek professional advice to assist with decisions and functions.
- Impartially assess each disclosure to determine the most appropriate method to deal with the matter.
- Be responsible for carrying out, or appointing an investigator to carry out an investigation.
- Be responsible for overseeing and coordinating an investigation where an investigator has been appointed.
- Advise the whistleblower of the progress of an investigation into the disclosed matter.
- Establish and manage a confidential filing system.
- Collate statistics on disclosures made.
- Take all reasonably necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential.
- Liaise with the CEO or the Chair of the Zoological Parks and Gardens Board if the matter concerns the CEO.
- If required, be responsible for the appointment of a welfare manager to a whistleblower and if required for the person/persons against whom the allegations are made, including when a matter is referred to Zoos Victoria by the IBAC.

5.7.3 Chief Executive Officer

Under changes to be implemented on 1 December 2016, principal officers will have to notify IBAC if they suspect corruption is occurring. The Chief Executive Officer is the principal officer for Zoos Victoria.

5.8 Investigator

The appointed investigator will be responsible for carrying out an investigation into a disclosure as nominated by the Disclosure Coordinator, CEO or Chair of the People Culture and Safety Committee or Chair of the Audit, Risk Management, and Compliance Committee. An investigator may be a person from within Zoos Victoria or a consultant engaged for that purpose.

5.9 Welfare Manager

In deciding whether a welfare manager should be appointed the Disclosure Coordinator or Manager responsible for investigating, a disclosure will take into consideration:

- Are there any real risks of detrimental action against the person, taking into account their particular circumstances?
- Can you ensure that you will take the person seriously and treat them with respect?
- Can you ensure that you will give the person effective support, including keeping them informed of the status of their disclosure?
- Can you protect the person from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the person has in fact suffered retribution?
- Should an Employee Assistance Program be used in the circumstances?

The Welfare Manager is appointed by the Disclosure Coordinator or Chief Executive Officer on an as needs basis to best suit the circumstances. The welfare manager is responsible for looking after the general welfare of the whistleblower.

The Welfare Manager will:

- Examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment.
- Advise the whistleblower of the legislative and administrative protections available to him or her.
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure.
- Keep a contemporaneous record of all aspects of the case management of the whistleblower, including all contact and follow-up action.
- Endeavour to ensure the expectations of the whistleblower are realistic.
- Report any concerns or issues to the Disclosure Coordinator.
- Treat all matters in strict confidence and maintain security over all records relating to the matter.
- Ensure any meetings regarding the matter are held discreetly to protect the person from being identified as being involved in the disclosure.
- When required, comply with the IBAC Guidelines for Protected Disclosure Welfare Management.

If appointed, a welfare manager cannot be expected to go beyond what is reasonable for a public body in providing support. The welfare manager should discuss with the recipient the issue of reasonable expectations.

5.10 Confidentiality

Zoos Victoria will treat the disclosure and any information received in the investigation of a disclosed matter in the strictest of confidence. Reasonable steps will be taken to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring that reprisals are not made against a whistleblower.

5.11 Complaints to Ombudsman

Complaints about administrative actions and decisions of Zoos Victoria can be made to the Victorian Ombudsman. Refer to **Appendix A** for contact details.

5.12 Matters already disclosed to Zoos Victoria

If a matter has already been disclosed to Zoos Victoria] and handled under a separate process (such as a HR grievance or under any other relevant policies or procedures), then unless further evidence is identified or disclosed that has not already been taken into account in that separate process that indicates a further disclosure requiring protection under this policy, the matter will not subsequently be dealt with under this policy.

5.13 Procedure Steps

5.13.1 Reporting the disclosure

A person making a disclosure must report the conduct to the relevant manager, supervisor or Disclosure Coordinator of Zoos Victoria or to STOPLine.

Assessing the disclosure

The manager, supervisor or Disclosure Coordinator receiving a disclosure under this policy, will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

To be a protected disclosure, a disclosure must satisfy certain criteria as contained in the IBAC Guidelines. Zoos Victoria is not a public body able to receive disclosures. Advice on the process can be obtained from the IBAC, Zoos Victoria's Disclosure Coordinator or STOPLine.

If the matter is assessed to be a protected disclosure, the person making the disclosure should be advised of the provisions of the Protected Disclosures Act 2012 and referred to IBAC. If the person chooses to report the matter to the IBAC, the IBAC will then handle the matter. Misconduct not meeting the "improper conduct" criteria of the Protected Disclosures Act 2012, should still be reported under the methods described in this policy.

5.13.2 Occurrence of detrimental action

Any person aware of or suspecting 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.

5.13.3 Whistleblowers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the Disclosure Coordinator will decide whether disciplinary or other action should be taken against the whistleblower.

Action will be taken only when the disclosed matter has been dealt with and when the Disclosure Coordinator has 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 document 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 under [ENTITY] Policy.
- Informed as to the substance of the allegations.
- Given the opportunity to answer the allegations before a final decision is made.
- Informed as to the substance of any adverse comment that may be included in any report arising from the investigation.
- Has his or her defence set out fairly in any report?
- Is given appropriate support.

5.13.4 Conducting the investigation

The Disclosure Coordinator is responsible for the appointment of an investigator and the preparation of terms of reference for an investigation and have them authorised by the Chief Executive Officer.

The appointed investigator will:

- ▲ Prepare an investigation plan and obtain approval from the Disclosure Coordinator.
- ▲ Notify the whistleblower of appointment as investigator.
- ▲ Conduct the investigation by:
 - Making notes of all discussions and phone calls.
 - Where possible, audio recording of interviews.
 - Securely storing all information gathered in an investigation.
 - Conducting interviews in private.
 - Taking all reasonable steps to protect the identity of the whistleblower
 - Warning the whistleblower and his or her Welfare Manager where due to the nature of the allegations disclosure of the identity of the whistleblower cannot be avoided.
 - Using discretion to allow any witness to have legal or other representation or support during an interview.
 - Granting permission if a witness has a special need for legal representation or support.

- Advising witnesses that information about the matter is confidential and that they may be in breach of [ENTITY] policy if they divulge the information to a third party.
- Ensure the whistleblower is kept regularly informed concerning the handling of a protected disclosure and an investigation.
- Report to the Whistleblower Coordinator about the progress of an investigation.
- Where the whistleblower requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request.
- Where, on the advice of the investigator the investigation is being obstructed by a staff member, employee or contractor, by for example refusal to attend interviews or provide documentation, the Disclosure Coordinator will instruct the person to participate in any requested interview.
- At the conclusion of the investigation, submit a written report of findings to the Whistleblower Coordinator.

5.13.5 The Report

The report will contain:

- ▲ The allegations
- ▲ An account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed
- ▲ The conclusions reached and the basis for them
- ▲ Any recommendations arising from the conclusions.

Where it is found that the conduct disclosed by the whistleblower has occurred, recommendations will include:

- ▲ The steps that need to be taken by Zoos Victoria to prevent the conduct from continuing or occurring in the future
- ▲ Any action that should be taken by Zoos Victoria to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct and referring the matter to an appropriate authority for further consideration.

Include with the report:

- ▲ The transcript or other record of any oral evidence taken, including tape recordings where appropriate, taking into account confidentiality offered.
- ▲ All documents, statements or other exhibits received by the investigator and accepted as evidence during the course of the investigation.

Where the investigator's report is to include an adverse comment against any person, that person will be given the opportunity to respond, and his or her defence will be considered before any decision is made as a result of the investigation outcome. The investigator should also ensure that there are no particulars in the report likely to lead to the identification of the whistleblower where anonymity has been requested.

5.13.6 Action to be taken after the investigation

The relevant manager commissioning an investigator or the Disclosure Coordinator must:

- ▶ If satisfied that the investigation has found that the disclosed conduct has occurred, recommend to the CEO any action must be taken to prevent the conduct from continuing or occurring in the future.
- ▶ Recommend action to be taken to remedy any harm or loss arising from the conduct as appropriate.
- ▶ Inform the whistleblower of the findings of the investigation and any steps taken as a result. With due consideration to confidentiality and privacy, only provide the whistleblower with the relevant portions of the investigation report if it is appropriate to do so.

5.14 Who is Zoos Victoria's Disclosure Coordinator?

For the purposes of this policy, the Disclosure Coordinator for Zoos Victoria is the Director Human Resources or anyone acting in that role. Refer to **Appendix A** for contact details.

APPENDIX A – CONTACT INFORMATION

IBAC	
Telephone	1300-735-135
Website	Refer to IBAC Website for instruction how to make a complaint. Independent broad-based anti-corruption commission
Mail	GPO Box 24234, Melbourne Vic 3001
Victorian Ombudsman	
Telephone	03-9613-6222
Website	Refer to IBAC Website for instruction how to make a complaint. Home - Victorian Ombudsman
Mail	570 Bourke Street, Melbourne Vic 3000.
Zoos Victoria Disclosure Coordinator	
Person	Director Human Resources
Telephone	03-9340-2716
Email	disclosure-coordinator@zoo.org.au
The STOPline	
Person	Anyone at STOPline
Telephone	Toll Free – 1300 30 45 50
Email	zoo@stopline.com.au
Locked Bag Mail	Zoos Victoria C/- The STOPline Locked Bag 8 Hawthorn VIC 3122
Facsimile	Zoos Victoria C/- The STOPline (03) 9882 4480