

## *Protected Disclosure Act 2012*

### STATEMENT OF SUPPORT FOR PERSONS MAKING PROTECTED DISCLOSURES

The Royal Botanic Gardens Victoria is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the Act). The Royal Botanic Gardens Victoria will not tolerate improper conduct by its employees, executives, officers or members nor detrimental action against those who come forward to disclose such conduct.

The Royal Botanic Gardens Victoria recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The Royal Botanic Gardens Victoria is committed to taking all reasonable steps to protect people who make such disclosures from any detrimental action or reprisal for making a disclosure of improper conduct. It will also afford natural justice to the person who is the subject of the disclosure.

The Royal Botanic Gardens Victoria will take appropriate remedial action should the allegation be found proven.

### PROCEDURE

#### 1. Background and Objectives

The objective of the *Protected Disclosure Act 2012* (the Act) is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection for persons who make disclosures in accordance with the Act and establishes a system for the matters disclosed to be investigated by the Independent Broad-based Anti-corruption Commission (IBAC) and for rectifying action to be taken.

The purpose of this Procedure is to facilitate the protection of persons making disclosures from detrimental actions by the Royal Botanic Gardens Victoria or any officer, member or employee of the Royal Botanic Gardens Victoria. The Royal Botanic Gardens Victoria is required by the Act to establish protected disclosure procedures and to make available a copy of those procedures to each employee, officer and member.

#### 2. Definitions

Key terms include protected disclosure, improper conduct, detrimental action, and reasonable grounds for belief.

A “**protected disclosure**” is a disclosure about improper conduct or detrimental action made to IBAC. It may be made orally, in writing, electronically or anonymously. It must be made by an individual and must relate to the conduct of a public body or public officer acting in their official capacity. It must be either about improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure. The person making the disclosure must have reasonable grounds for believing the alleged conduct has occurred. All of these grounds must be satisfied for the disclosure to be a protected disclosure.

**“Improper conduct”** means:

- corrupt conduct<sup>1</sup> including:
  - conduct of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body
  - conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body
  - conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust
  - conduct of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person, or
  - conduct that could constitute a conspiracy or an attempt to engage in any of the above conduct, being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence
- specified conduct<sup>2</sup> that is not corrupt conduct including:
  - any of the above conduct, that is
    - conduct of any person that adversely affects the honest performance of a public officer’s or public body’s functions
    - conduct of a public officer or public body that constitutes or involves the dishonest performance of a public officer’s or public body’s functions
    - conduct of a public officer, former public officer or a public body that amounts to knowingly or recklessly breaching public trust
    - conduct by a public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions, or
    - a conspiracy or attempt to engage in any of the above conduct, or
  - conduct of a public officer or public body that involves
    - a substantial mismanagement of public resources
    - a substantial risk to public health or safety, or
    - a substantial risk to the environment.

**“Detrimental action”** includes:

- action causing injury, loss or damage
- intimidation or harassment, and
- discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.

The Act creates an offence for a person to take detrimental action against a person who has made a protected disclosure.

*Examples of detrimental action:*

- *A public body demotes, transfers, isolates in the workplace or changes the duties of a person making a disclosure due to the making of a disclosure*
- *A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person making a disclosure, his or her family or friends*
- *A public body discriminates against the person making a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.*

The phrase **“reasonable grounds for belief”** requires more than a suspicion, and the belief must have supporting facts and circumstances. The test is whether a reasonable person, possessed of the same information that the person making the disclosure holds, would believe

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<sup>1</sup> Corrupt conduct has the meaning given by section 4 of the *Independent Broad-based Anti-corruption Commission Act 2011*.

<sup>2</sup> Specified conduct must be serious enough that if proven would constitute a criminal offence or reasonable grounds for dismissal.

that improper conduct has occurred. The existence of evidence is required to show that the reasonable grounds are probable.

### 3. Outline and Detail of Procedure

#### 3.1 Purpose of Procedure

This Procedure establishes a system for reporting disclosures of improper conduct or detrimental action by the Royal Botanic Gardens Victoria or its employees, officers, members or executives. Such disclosures must be made to IBAC. Disclosures may be made by employees or by members of the public.

This Procedure is designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with this Procedure.

#### 3.2 Reporting a Disclosure

Disclosures of improper conduct or detrimental action by the Royal Botanic Gardens Victoria or its employees may be made only to IBAC:

- Address: Level 1, North Tower, 459 Collins Street, Melbourne Victoria 3000
- Mail: IBAC, GPO Box 24234, Melbourne Victoria 3001
- Phone: 1300 735 135
- Internet: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)
- Email: see the website above for the secure email disclosure process, which also provides for anonymous disclosures.

#### 3.3 How to Make a Disclosure

An oral disclosure under the Act to a public body must be made by telephone or in person in private to IBAC. A written disclosure under the Act to IBAC must be made by addressing the disclosure to IBAC, and sending or delivering the disclosure to or leaving the disclosure at the office of IBAC.

A person may make an anonymous disclosure.

#### 3.4 Alternative Contact Persons

The following table sets out where disclosures about persons other than employees of the Royal Botanic Gardens Victoria should be made:

Person who is the subject of the disclosure	Person/body to whom the disclosure must be made
Employee of a public body	IBAC
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative Council)	President of the Legislative Council
Councillor	IBAC
Chief Commissioner of Police	IBAC
Member of the police force	IBAC or Chief Commissioner of Police

### 3.5 Roles and Responsibilities

#### *Employees*

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with this Procedure.

All employees of the Royal Botanic Gardens Victoria have an important role to play in supporting those who have made a legitimate 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.

#### *Protected Disclosure Officers*

Protected Disclosure Officers will:

- give general advice about the making of disclosures under the Act
- take all necessary steps to ensure the identity of a person suspected of making a disclosure and the identity of a person who is the subject of a disclosure are kept confidential.

The Protected Disclosure Officers are:

- Catherine Gallagher  
Protected Disclosure Officer  
Melbourne Gardens  
Royal Botanic Gardens Victoria  
Birdwood Avenue, Melbourne, Victoria, 3004  
Private Bag 2000, South Yarra, Victoria, 3141  
Phone: (03) 9252 2457
- Lynn Klavins  
Protected Disclosure Officer  
Cranbourne Gardens  
Royal Botanic Gardens Victoria  
1000 Ballarto Road, Cranbourne, Victoria, 3977  
Phone: (03) 5990 2243

#### *Protected Disclosure Co-ordinator*

The Protected Disclosure Co-ordinator has a central 'clearinghouse' role in terms of this Procedure. He or she will:

- be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC
- be responsible for ensuring that the public body carries out its responsibilities under the 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 protected disclosure
- establish and manage a confidential filing system
- take all necessary steps to ensure the identity of a person suspected of making a protected disclosure and the identity of a person who is the subject of a disclosure are kept confidential.

The Protected Disclosure Co-ordinator is:

- Professor Tim Entwisle  
Director and Chief Executive  
Royal Botanic Gardens Victoria  
Birdwood Avenue, Melbourne, Victoria, 3004  
Private Bag 2000, South Yarra, Victoria, 3141  
Phone: (03) 9252 2304

### *Welfare Manager*

The Welfare Manager is responsible for monitoring the needs of a person suspected of making a protected disclosure and to provide advice and support. The Welfare Manager will:

- examine the immediate welfare and protection needs of a person suspected of making a protected disclosure and, where that person is an employee, seek to foster a supportive work environment
- advise a person suspected of making a protected disclosure 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 a disclosure
- keep a contemporaneous record of all aspects of the case management of a person suspected of making a protected disclosure, including all contact and follow-up action, and
- endeavour to ensure that the expectations of a person suspected of making a protected disclosure are realistic.

The Royal Botanic Gardens Victoria will appoint a contractor to provide welfare services to a person suspected of making a protected disclosure.

### **3.6 Confidentiality**

The Act requires that the confidentiality of a person making a protected disclosure is protected. This is crucial to ensuring detrimental action is not taken against a person making a disclosure. The Royal Botanic Gardens Victoria will take all reasonable steps to protect the identity of a person suspected of making a disclosure.

The 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 section 52 of the 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.

The Royal Botanic Gardens 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 Protected 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 protected disclosure. All electronic files will be given password protection and/or have limitations on access.

### **3.7 Receiving and Assessing Disclosures**

*A disclosure must be made to the right body and meet the requirements of the Act*

To be a protected disclosure, it must satisfy the following criteria:

- it is made by a natural person (an individual rather than a corporation), and
- it relates to conduct of a public body or public officer acting in their official capacity, and
- the alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure, and
- the person making a disclosure has reasonable grounds for believing the alleged conduct has occurred.

IBAC will make the assessment on the nature of the disclosure and not the intention of the individual making it.

Only 'protected disclosures' made in accordance with the requirements of Part 2 of the Act attract the protections offered to people making disclosures (detailed in Part 6 of the Act).

*A disclosure must be made to the appropriate person*

Disclosures of improper conduct or detrimental action by the Royal Botanic Gardens Victoria or its employees must be made to IBAC. The Royal Botanic Gardens Victoria cannot receive disclosures. However, the table in section 3.4 provides guidance as to the correct person or body to whom a disclosure should be directed.

A person who is contemplating making a disclosure should be encouraged to make their disclosure to IBAC.

Employees who are consulted by a person who wishes to make a disclosure should direct that person to IBAC.

It is important to follow this Procedure to ensure that the disclosure is a protected disclosure and that the protections offered to a person who makes a protected disclosure apply.

### **3.8 Investigations**

IBAC will undertake any required investigation regarding a protected disclosure complaint.

The objectives of an investigation are to:

- collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment
- consider the information collected and to draw conclusions objectively and impartially
- maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure, and
- make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

The principles of procedural fairness must be followed in any investigation and ensure that a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances confidence in the process.

IBAC must provide the discloser with information about the results of its investigation. This will include any action taken by IBAC and any recommendation by IBAC that action

or further action be taken. The exception to this is if IBAC considers that providing this information might result in possible adverse outcomes as specified in the IBAC Act.

### **3.9 Managing the Welfare of the Person Making the Disclosure**

The Royal Botanic Gardens Victoria is committed to the protection of genuine persons suspected of making protected disclosures from detrimental action taken in reprisal for the making of that disclosure. The Protected Disclosure Co-ordinator is responsible for ensuring persons suspected of making disclosures are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Protected Disclosure Co-ordinator will appoint a Welfare Manager for any persons suspected of making a protected disclosure.

The Welfare Manager must foster a supportive work environment and respond to any reports of intimidation or harassment.

### **3.10 Keeping the Person Making the Disclosure Informed**

The Protected Disclosure Co-ordinator will ensure the person making a disclosure is kept informed of action taken in relation to his or her disclosure, and the timeframes that apply. The person making a disclosure will be informed of the steps taken by the Royal Botanic Gardens Victoria to address any improper conduct that has been found by IBAC to have occurred. All communication with the person making a disclosure will be in plain English (or other language as appropriate).

### **3.11 Occurrence of Detrimental Action**

If a person making a disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of a disclosure, the Welfare Manager or Protected Disclosure Co-ordinator will:

- record details of the incident, and
- advise the person making the protected disclosure of his or her rights under the Act.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence under the Act, as well as grounds for making a further disclosure. Where such detrimental action is reported, the allegation will be referred to IBAC.

### **3.12 Consequences for Persons Making Disclosures Implicated in Improper Conduct, or Disciplinary Matters**

Where a person who makes a disclosure is implicated in misconduct, the Royal Botanic Gardens Victoria will protect the person making the disclosure from reprisals in accordance with the Act.

The Royal Botanic Gardens Victoria acknowledges that the act of making a protected disclosure should not shield the person making the disclosure from the reasonable consequences flowing from any involvement in improper conduct. Section 42 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The Director and Chief Executive will make the final decision as to whether disciplinary or other action will be taken against a person suspected of making a protected disclosure. Where disciplinary or other action relates to conduct that is the subject of the person's

protected disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with by IBAC.

In all cases where disciplinary or other action is being contemplated against a person suspected of making a protected disclosure in relation to a disclosure, the Director and Chief Executive must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of a disclosure (as opposed to the content of a disclosure or other available information)
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances, and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Protected Disclosure Co-ordinator will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the suspected making of a disclosure. The Protected Disclosure Co-ordinator will advise the person suspected of making a protected disclosure in writing of the proposed action to be taken, and of any mitigating factors that have been taken into account.

### **3.13 Management of the Person Against Whom a Disclosure Has Been Made**

The Royal Botanic Gardens Victoria recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The Royal Botanic Gardens Victoria will take all reasonable steps to ensure the confidentiality of a person who is the subject of a disclosure during the assessment and investigation process.

The Royal Botanic Gardens Victoria will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Director and Chief Executive will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

### **3.14 Criminal Offences**

The Royal Botanic Gardens Victoria will ensure all employees are aware of the following criminal offences created by the Act:

#### *Detrimental action*

- It is an offence for a person to take or threaten action in reprisal when:
  - a protected disclosure has been made
  - a person believes a protected disclosure has been made
  - a person believes that another person intends to make a protected disclosure.

#### *Breach of confidentiality*

- It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority.

#### *Provision of false information*

- It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a protected disclosure.

#### *Civil Action*

A person who takes detrimental action against a person in reprisal for a protected disclosure may be found liable in damages to that person. The public body may also be found to be vicariously liable.

### **3.15 Collating and Publishing Statistics**

The Royal Botanic Gardens Victoria's annual report will include information about how to access this Procedure.

The annual report will not include any information which may identify a person making a protected disclosure.

## **4. Review**

This Procedure will be reviewed three years after the approval of the Executive Team to ensure it meets the objectives of the Act and accords with the Independent Broad-based Anti-corruption Commission's guidelines.