



**NGV PUBLIC INTEREST DISCLOSURES
PROCEDURES**

Approved
22 August 2022

Public Interest Disclosures Procedures

National Gallery of Victoria



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Information about this document

These procedures have been published by the National Gallery of Victoria in compliance with section 58 of the *Public Interest Disclosures Act 2012*, the *Public Interest Disclosures Regulations 2019* and the Guidelines published by the Independent Broad-based Anti-corruption Commission on 20 December 2019.



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Abbreviations and key terms used in these procedures

The following abbreviations and key terms are used in these procedures:

Act	<i>Public Interest Disclosures Act 2012</i>
discloser	A person who makes a disclosure that may be a PID
disclosure	Any complaint, concern, matter, allegation or disclosure (however described) that may be a PID
Guidelines	The Guidelines published by the IBAC under s 57 of the Act as at January 2020 ¹
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
investigating entity	Any one of the 8 bodies authorised to investigate a PIC, being the IBAC, the VO, the Chief Commissioner of Police, the VI, the Judicial Commission, the Chief Municipal Inspector; the Racing Integrity Commissioner and the Information Commissioner.
NGV	Council of Trustees of the National Gallery of Victoria, as established by the <i>National Gallery of Victoria Act 1966</i> .
Procedures	This version of the procedures of the NGV, as established under s 58 of the Act
Public Interest Disclosure (“ PID ”)	Any complaint, concern, matter, allegation or disclosure (however described) made in accordance with Part 2 of the Act
Public Interest Complaint (“ PIC ”)	A PID which has been determined and assessed by the IBAC to be a public interest complaint under ss 26, 31 or 31B of the Act
Regulations	<i>Public Interest Disclosures Regulations 2019</i>
VI	Victorian Inspectorate
VO	Victorian Ombudsman

¹ <http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures> (last accessed on 17 February 2020); <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management> (last accessed 17 February 2020).



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Quick reference guide to public interest disclosures

Who can make a disclosure?	<p>Any individual or group of individuals.</p> <p>A disclosure cannot be made by a business or company. (refer to Part 2 of these procedures for more information)</p>
How do I make a disclosure?	<p>Verbally or in writing (but not by fax) in accordance with Part 2 of the Act. (refer to Part 2 of these procedures for more information)</p>
What can I make a disclosure about?	<p>Information that shows, or tends to show:</p> <ul style="list-style-type: none">• improper conduct of public bodies or public officers; and/or• detrimental action taken by public bodies or public officers in reprisal against a person for making a PID. <p>This includes the NGV and/or its staff. (refer to Part 2 of these procedures for more information)</p>
Who can I make a disclosure to?	<p>Public Interest Disclosures about the NGV or any of its staff may be made to the IBAC, the VO or the VI:</p> <p>IBAC Level 1, North Tower 459 Collins Street Melbourne VIC 3000 GPO Box 24234, Melbourne, VIC 3001</p> <p>The IBAC also offers an online form available at: https://www.ibac.vic.gov.au/reporting-corruption/report</p> <p>Victorian Ombudsman Level 2, 570 Bourke Street Melbourne VIC 3000</p> <p>The VO also offers an online form, available at: https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint#</p> <p>Victorian Inspectorate PO Box 617 Collins Street West Melbourne VIC 8007</p> <p>The VI also offers an online form, available at: https://www.vicinspectorate.vic.gov.au/make-public-interest-disclosure-victorian-inspectorate</p> <p>The Act does not permit the NGV to receive PIDs. (refer to Part 1 of these procedures for more information).</p>



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1. Objectives

- 1.1 These Procedures are established and published under s 58 of the Act and in accordance with the Guidelines of the IBAC published under s 57 of the Act.
- 1.2 These Procedures are a resource for any individual who wants to find out how the NGV will manage their welfare if they make a disclosure, whether that person is an NGV staff member,² or an external member of the public. In addition, these procedures cover how the NGV will protect other people connected to a PID from detrimental action being taken against them in reprisal for a discloser making a PID. Such persons can include individuals who are the subject of PIDs and PICs; and others who are connected to disclosures, such as witnesses or persons cooperating with an investigation into a PIC.
- 1.3 These Procedures form an essential part of the NGV's commitment to the aims and objectives of the Act. It does not tolerate improper conduct by the NGV or its staff, or reprisals against those who come forward to disclose such conduct.
- 1.4 The NGV recognises the value of transparency and accountability in its administrative and management practices. It is committed to leading from the top to demonstrate a workplace culture that proactively detects risks of corruption and supports individuals, including staff, making disclosures that reveal improper conduct. The NGV expressly encourages persons considering making a disclosure to come forward and is committed to taking all reasonable steps to protect people who make such disclosures from suffering detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person or body who is the subject of the disclosure and ensure as far as is possible that the confidentiality obligations protecting the identity and other information about disclosers and the subject of disclosures as set out in the Act are strictly complied with.
- 1.5 The NGV **cannot** receive PIDs under the Act. . Therefore, if you wish to make a disclosure about the NGV or one of its staff, please make that disclosure to the IBAC in accordance with its procedures and Guidelines (see the Quick Guide for contact details). The Act also allows PIDs about the NGV and its staff to be made to the VO and the VI.

2. Making a disclosure

What is a disclosure and who can make a disclosure?

- 2.1 Any individual or a group of individuals³ are encouraged to make disclosures about information that shows, or tends to show one or more of the following:

² In these Procedures, references to NGV staff mean employees, officers and members of the Council of Trustees of the National Gallery of Victoria.

³ If a group of individuals are making a PID you should note that only the individual who makes the PID on behalf of all the others will receive the full protection of the Act in relation to that PID. The protection the others in the group will receive is limited to confidentiality about their identity and any role they play in providing information, as well as against detrimental action if any is taken against them in reprisal for the disclosure that has been made.



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- (a) Improper conduct of public bodies (including the NGV) or public officers (including NGV staff); and
- (b) detrimental action taken by public bodies (including the NGV) or public officers (including NGV staff) in reprisal against a person for the making of a PID.

- 2.2 You can choose to make a disclosure anonymously under the Act and you do not have to refer to the Act or the protections in it for your disclosure to be treated as a PID or a PIC.
- 2.3 To receive the protections under the Act, PIDs may not be made by a company or business.

How can a disclosure be made?

- 2.4 A PID must be made in accordance with Part 2 of the Act.
- 2.5 Part 2 of the Act permits disclosures to be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about.
- 2.6 The Act does **not** permit the NGV to receive PIDs. If you wish to make a disclosure about the NGV or any of its staff, please make that disclosure directly to the IBAC, the VO or the VI.
- 2.7 The IBAC can be contacted in writing at:

IBAC
GPO Box 24234 **or**
Level 1, North Tower 459 Collins Street
Melbourne Vic 3000

The IBAC also offers an online form available at:
<https://www.ibac.vic.gov.au/reporting-corruption/report>.

- 2.8 The VO can be contacted in writing at:

Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

The VO also offers an online form, available at:
<https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint#>.

- 2.9 The VI can be contacted in writing at:

Victorian Inspectorate
PO Box 617
Collins Street West
Melbourne VIC 8007

The VI also offers an online form, available at:
<https://www.vicinspectorate.vic.gov.au/make-public-interest-disclosure-victorian-inspectorate>

What can a disclosure be made about?

2.10 A PID can be made about:

- (a) the **improper conduct** of public bodies or public officers; and/or
- (b) **detrimental action** taken in reprisal against a discloser for having made a PID or having cooperated with the investigation of a PID.

Improper conduct

2.11 Improper conduct is defined in the Act to mean conduct:

- (a) of any person that:
 - (i) adversely affects the honest performance by a public officer or public body of his or her functions as a public officer or public body;
 - (ii) is intended to adversely affect the effective performance or exercise of functions or powers by a public officer or public body and results in that person (or their associate⁴) obtaining a gain, benefit or entitlement they would not have otherwise obtained, irrespective of whether the public officer or public body engages in any corrupt conduct or other misconduct; or
- (b) of a public officer or public body that:
 - (i) constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
 - (ii) constitutes or involves knowingly or recklessly breaching public trust;
 - (iii) 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;
 - (iv) is engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes any of the following:
 - (a) a criminal offence;

⁴ Defined in s 4(2B) of the Act.

- (b) serious professional misconduct;⁵
- (c) dishonest performance of public functions;
- (d) an intentional or reckless breach of public trust;
- (e) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body;
- (f) a substantial mismanagement of public resources;
- (g) a substantial risk to the health or safety of one or more persons;
- (h) a substantial risk to the environment; or
- (i) that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above.

2.12 Conduct that is trivial will not constitute improper conduct for the purpose of the Act.

Examples of improper conduct

1. The NGV or its staff take a bribe or receives a payment in exchange for the discharge of a public duty.
2. The NGV or its staff sell confidential information.
3. An NGV staff member favours unmeritorious applications for jobs or engagement for goods and services by friends and relatives.

Detrimental action

2.13 It is an offence under the Act for the NGV or any of its staff to take detrimental action against a discloser in reprisal for making a PID, or for cooperating in an investigation into a PID.

Detrimental action

2.14 Detrimental action as defined by the Act includes:

- (a) action causing injury, loss or damage;

⁵ This may be where there has been a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace. For further guidance see the Guidelines, p 11 available at <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures> (last accessed 17 February 2020).



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- (b) intimidation or harassment; and
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

2.15 A person can have taken detrimental action without having taken the action itself, but just by threatening to take such action or inciting or permitting someone else to do so. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a PID, but against any person connected with a PID, such as a person who has cooperated or intends to cooperate with the investigation of the disclosure.

Taken in reprisal for a protected disclosure

2.16 The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the other person or anyone else has:

- (a) made or intends to make the PID; or
- (b) cooperated, or intends to cooperate with an investigation of the PID.

Examples of detrimental action

1. Threats to a person's personal safety or property, such as an NGV staff member intimidating or harassing a discloser or the discloser's family or friends or otherwise causing personal injury or prejudice to the safety of or damaging property of a discloser or the discloser's family or friends.
2. The NGV demotes, transfers, isolates in the workplace or changes the duties of a person due to that person having made a PID.
3. The NGV discriminates or disadvantages a person in their career, profession, trade or business for having made a PID.
4. The NGV discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders resulting in financial loss or reputational damage.

How your disclosure will be handled

2.17 As noted in section 1 of these Procedures, the NGV cannot receive PIDs under the Act. If the NGV receives a complaint, report, or allegation of improper conduct or detrimental action that it views to be a PID, it will advise the discloser to make their disclosure to the IBAC, the VO or the VI.



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- 2.18 For more information about the IBAC and how it handles PIDs and PICs, see <https://www.ibac.vic.gov.au/reporting-corruption/what-happens-to-your-complaint>.⁶ For information about the VO and how it handles PIDs, see <https://www.ombudsman.vic.gov.au/reporting-improper-conduct/>.⁷

3. Internal arrangements for handling welfare management

- 3.1 The NGV supports a workplace culture where the right of any individual to make a PID is taken seriously.
- 3.2 The NGV will:
- (a) ensure these procedures are accessible on its website, in hard copies on request, and easily available to all staff and any individual in the broader community;
 - (b) not tolerate the taking of detrimental action in reprisal against any person for making a PID, and will protect such persons from such action being taken against them;
 - (c) afford natural justice and treat fairly those who are the subject of allegations contained in PIDs;
 - (d) take the appropriate disciplinary and other action against any staff engaged in the taking of detrimental action;
 - (e) remind staff that they can seek advice about PID related matters confidentially and anonymously from the Public Interest Disclosure Coordinator and Officer;
 - (f) ensure that the NGV handles the welfare management of persons connected with PID matters consistently and in accordance with its obligations under the Act, the Regulations, the Guidelines and these Procedures; and
 - (g) be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of PIDs.

NGV Staff

- 3.3 Everyone at the NGV has an important role to play in promoting the purpose and functions of the PID regime. Staff are encouraged to raise matters of concern internally in relation to the NGV, including about any other staff. In particular, staff are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

⁶ Last accessed on 17 February 2020.

⁷ Last accessed on 17 February 2020.



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- 3.4 All staff 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.

Public Interest Disclosure Coordinator & Officer

- 3.5 The NGV's PID Coordinator has a central role in the way the NGV deals with all PID matters, and in particular for ensuring that the welfare of any persons connected with a PID is properly managed.
- 3.6 The PID Coordinator is:
- (a) the contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC;
 - (b) responsible for ensuring that the NGV carries out its responsibilities under the Act, the Regulations and the Guidelines issued by the IBAC;
 - (c) the NGV's chief liaison with the IBAC and any other investigating entities in regard to the Act;
 - (d) to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
 - (e) responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support a person entitled to be protected and to protect that person from any reprisals; and
 - (f) to collate statistics required to be reported by the NGV in its annual reports under the Act.
- 3.7 The PID Coordinator appointed by the NGV is:

Alison Lee
Associate Director, Governance, Policy, Planning and IT
Telephone: 03 8620 2374
Email: pidcoordinator@ngv.vic.gov.au

- 3.8 If you have any concerns about contacting the PID Coordinator of the NGV, or wish to speak to an alternative contact at the NGV about PID matters, you can contact the PID Officer appointed by the NGV:

Yan Lee
Manager, Governance, Policy and Planning
Telephone: 03 8620 2449
Email: pidofficer@ngv.vic.gov.au



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3.9 The PID Officer is also available as an alternative contact to any individual who wishes to obtain more information about PIDs and how the NGV is committed to the aims and objects of the Act. The PID Officer can remain the chosen support person in managing the welfare of staff disclosers, staff who are the subject of a PID, or connected with the making or investigation of a PID.

4. Welfare Management

4.1 The protection from detrimental action of persons who make genuine PIDs is essential for the effective implementation of the Act. The Act also extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a PID (“**cooperators**”). Persons who are the subject of allegations are also entitled to be looked after.

4.2 As the NGV cannot itself receive PIDs, it may not know that a person has made a PID. Confidentiality obligations require that a person who has made a PID is not to discuss the matter with any other person except with an authorised investigating entity. Therefore, the NGV will only be made aware that a person requires protection under the Act if that information has been provided to the NGV by an investigating entity. To ensure that you receive the protections you are entitled to under the Act, the NGV recommends you do not discuss the contents of, or the fact of your PID, except with permission of the investigating entity or in order to seek support or assistance in one of the ways outlined in 5.12 below.

4.3 Once the NGV has been made aware of the identity of a discloser and any other relevant information about the PID, the NGV will keep all information it receives confidential, and will manage the welfare of any relevant persons in accordance with its obligations under the Act.

4.4 The NGV must, where it is aware of the identities of disclosers and cooperators, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the PID.⁸ The NGV will ensure its workplace culture supports disclosers and cooperators. Such support will extend to the relevant persons regardless of whether they are staff, or members of the public. However, different legislative responsibilities (including those external to the Act) apply to NGV staff, versus persons who may be suppliers to or users of NGV’s services. These responsibilities derive from various legislative and administrative obligations to:

- (a) ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004*, and various Victorian Public Sector Codes of Conduct (as relevant); and

⁸ The balance of this section of these procedures assumes that the NGV has been provided with the relevant information from one of the investigative entities such that it is aware of the identity of the persons requiring protection and is therefore able to comply with its requirements to manage the welfare of those persons.

- (b) comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the public body's services.⁹

4.5 Generally, for staff, the NGV will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against them. For external persons, the NGV will take reasonable steps to provide appropriate support. The NGV will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

Support available to disclosers and cooperators¹⁰

4.6 The NGV will support disclosers and co-operators by:

- (a) keeping them informed, by providing:
 - (i) confirmation that the disclosure has been received, if the relevant investigating entity has provided this information to the NGV;
 - (ii) the legislative or administrative protections available to the person;
 - (iii) a description of any action proposed to be taken;
 - (iv) if action has been taken by the NGV, details about results of the action known to the NGV;
- (b) providing active support by:
 - (i) acknowledging the person for having come forward and that it took courage to do so;
 - (ii) assuring the discloser or co-operator that they have done the right thing, and the NGV appreciates it;
 - (iii) making a clear offer of support, including to appoint a support person, where possible, chosen by the discloser or co-operator;
 - (iv) assuring them that all reasonable steps will be taken to protect them;
 - (v) giving them an undertaking to keep them informed as far as the NGV is reasonably able to;
- (c) managing their expectations by undertaking an early discussion with them about:
 - (i) what outcomes they seek;

⁹ Page 6, Guidelines for public interest disclosure welfare management, https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf?sfvrsn=288e6875_16 (last accessed 17 February 2020).

¹⁰ This section is adapted from resources of the Queensland Government as cited and drawn from the IBAC's Guidelines for public interest disclosure welfare management, p 7, Ibid.



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- (ii) whether their expectations are realistic;
 - (iii) what the NGV will be able to deliver;
- (d) maintaining confidentiality by:
 - (i) ensuring as far as is possible that other people cannot infer the identity of the discloser or co-operator;
 - (ii) reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator;
 - (iii) ensuring the security of all hardcopy and electronic records relating to the PID (see further below at 5.3).
- (e) proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint to be made by the discloser or co-operator). That is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible, including by preparing a risk management plan and ensuring that the discloser or co-operator is involved and kept informed of the plan;
- (f) further protecting the discloser or co-operator by:
 - (i) examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
 - (ii) listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
 - (iii) assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the PID;
- (g) preventing the spread of gossip and rumours about any investigation into the PID where the NGV is aware of any investigation being undertaken or about to be undertaken; and
- (h) keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action, and ensuring the person is able to access such information as contained in the records as far as confidentiality obligations permit the NGV to provide such information to the person.

Appointment of a Welfare Manager

- 4.7 In appropriate circumstances, the NGV will appoint a suitable welfare manager to protect a discloser or a co-operator. In most circumstances, a welfare manager will be more likely to be appointed:



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- (a) where the NGV considers there to be a real risk of detrimental action being taken against the discloser or co-operator, taking into account their particular circumstances; or
- (b) if the discloser or co-operator believes on reasonable grounds that there are risks the NGV cannot otherwise appropriately protect the person from, and that a welfare manager is required to ensure their wellbeing; or
- (c) a PID proceeds to being investigated as a PIC.

4.8 Each instance of a PID known by the NGV will be assessed on its own merits.

4.9 If appointed, the Welfare Manager will, in addition to providing the general support set out above under 'Support available to disclosers and cooperators':

- (a) provide practical advice about the protections available to a discloser or a co-operator;
- (b) respond quickly and appropriately to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- (c) not divulge any details relating to the PID to any person other than the PID Coordinator or the PID Officer as the case may be;
- (d) ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the PID; and
- (e) refer or offer to refer internal disclosers and co-operators to the NGV's Employee Assistance Program ("EAP") for further support and welfare assistance.

Welfare management of persons who are the subjects of public interest disclosures

4.10 The NGV will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a PIC is resolved, the disclosure about the person is only an allegation.

4.11 The NGV will make a decision about whether or when the subject of a disclosure will be informed about a PID involving an allegation made against him or her. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a PIC, or if a decision is made to dismiss the disclosure. This may also depend on the stage at which the relevant investigating entity actually informs the NGV of the identity of the subject of a disclosure.

4.12 The Act limits the disclosure of information about the content of an PID and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The NGV may give information about the PID to the subject of the PID if it is directed or authorised to do so by the authorised entity investigating the PIC, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.



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- 4.13 Investigating entities may also inform the subject of a PIC in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

Welfare services

- 4.14 A person the subject of a PID who is made aware of their status as such may have a welfare manager appointed by the NGV, or be referred to the NGV's EAP for welfare assistance. Alternatively, the PID Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, these procedures, and any other relevant law or code of conduct. The NGV will consider each matter on a case by case basis, taking into account the information it has been provided by the investigating entity and the person's particular circumstances.

Confidentiality

- 4.15 Consistently with the NGV's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, any information received from the IBAC or another investigating entity and the identities of persons involved will not be divulged.
- 4.16 The NGV will take all reasonable steps to ensure the confidentiality of the subject of a disclosure at all times. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person who is the subject of the disclosure (to the extent that the NGV has been provided that information by an investigative entity) will still be kept confidential by the NGV.
- 4.17 For further information about the confidentiality obligations of the NGV and persons connected to a PID, also see section 5 'Confidentiality', below.

Natural justice

- 4.18 The NGV will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigating entity, then that entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. The IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this person has the right to:
- (a) be informed about the substance of the allegations against them;
 - (b) be given the opportunity to answer the allegations before a final decision is made;
 - (c) be informed about the substance of any adverse comment that may be included in any report arising from an investigation; and
 - (d) have their defence set out fairly in any report.

If the allegations are wrong or unsubstantiated



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- 4.19 The NGV will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, the NGV will ensure that there are no adverse consequences for this person arising out of the PID having been made. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across the NGV and the subject is staff of the NGV.
- 4.20 Further, if the matter has been publicly disclosed by the NGV, the Director will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

If detrimental action is reported

- 4.21 If any person reports an incident that may amount to detrimental action apparently taken in reprisal for being the subject of a PID, the Welfare Manager or PID Coordinator must record details of the incident and advise the person of their rights under the Act to make a new PID about that detrimental action to the IBAC, the VO or the VI.
- 4.22 All persons **are reminded it is a criminal offence to take detrimental action against another person in reprisal for a PID under the Act.** The penalty for committing such an offence in contravention of the Act is a maximum fine of 240 penalty units (\$39,652.80) from 1 July 2019,¹¹ two years imprisonment **or both.**
- 4.23 A discloser of a PID who suffers detrimental action as defined in the Act may also:
- (a) take civil action against the person who took detrimental action against them and seek damages;
 - (b) take civil action against the NGV jointly and severally to seek damages if the person who took detrimental action against them took that action as staff of, or while acting as an agent of the NGV; and
 - (c) apply for an order or an injunction from the Supreme Court.
- 4.24 Disclosers who launch legal proceedings to claim compensation for injury, loss or damage suffered in reprisal for having made a PID will *not* have costs awarded against them, unless their claim for compensation was vexatious, or the discloser did not conduct the litigation reasonably.

Protections for persons making a PID

Part 6 protections available to disclosers

- 4.25 The Act protects disclosers of a PID by stating that in making the PID, the discloser:
- (a) is not subject to any civil or criminal liability;

¹¹ Usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*.



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- (b) is not subject to any administrative action (including disciplinary action) for making the PID;
- (c) is not committing an offence against the *Constitution Act 1975* or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- (d) is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality; and
- (e) cannot be held liable for defamation in relation to information included in a PID made by him or her.

4.26 The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if the authorised investigating entity has determined that the disclosure is not a PIC.

4.27 The protections also apply to further information relating to a PID made by the original discloser, if the further information has been provided, verbally or in writing, to any investigating entity investigating the PID.

4.28 Sections 52 and 53 of the Act prohibits persons, including bodies and persons receiving information connected with an assessable disclosure from disclosing information connected with, or leading to the identification of a discloser.

Transfer of employees

4.29 An employee of the NGV who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment.

4.30 After making a disclosure an employee can be transferred internally to another part of the NGV, or to *another* public service body or public entity on similar terms and conditions of employment.¹² This can only happen if they request, or consent to, a transfer and the following other conditions apply:

- (a) the head of the NGV has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee;
- (b) the head of the NGV considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- (c) if transfer to another public body is proposed, the head of that other public body consents to the transfer.

¹² The terms “public service body” and “public entity” are as defined by ss 4(1) and 5 respectively, *Public Administration Act 2004* (Vic). The NGV is a “public entity” pursuant to s 5(2) of the *National Gallery of Victoria Act 1966* (Vic) by virtue of s 5(1) of the *Public Administration Act 2004* (Vic).



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- 4.31 The transfer can be temporary or permanent, and if the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.

Actions of the discloser constituting offences and leading to protections being lost

- 4.32 A discloser is not protected by the provisions of the Act if they commit an offence under the Act, as follows:

Offence	Maximum Penalty Applicable
Provide false or misleading information, or further information that relates to a PID that the person knows to be false or misleading, intending that the information be acted on as a PID.	A fine of 120 penalty units (\$19,826.40 from 1 July 2019), ¹³ and/or 12 months' imprisonment.
Claim that a matter is the subject of a PID knowing the claim to be false.	A fine of 120 penalty units and/or 12 months' imprisonment.
Falsely claim that a matter is the subject of a disclosure that the IBAC has determined to be a PIC.	A fine of 120 penalty units and/or 12 months' imprisonment.
Disclosing information received from the IBAC such as set out in s 184, IBAC Act,	A fine of 60 penalty units and/or 6 months' imprisonment

Other limitations on protections afforded to disclosers

- 4.33 A discloser is not protected against legitimate management action being taken by the NGV in accordance with the Act.
- 4.34 In addition, although the discloser of a PID is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a PID.

If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure

- 4.35 Where a discloser is implicated in improper conduct, and an investigating entity has provided the necessary information to the NGV, the NGV will protect the discloser from reprisals in accordance with the Act, the Guidelines and these procedures. The NGV acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

¹³ Usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*.



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- 4.36 Taking disciplinary or other action against a person who has made a PID invariably creates the perception that it is being taken in reprisal for the disclosure. The Director of the NGV will make the final decision on the advice of the PID Coordinator, PID Officer or Welfare Manager as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the NGV ensuring that:
- (a) the fact that a person has made a PID is not a reason for the NGV taking the action against the employee;
 - (b) there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
 - (c) there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.
- 4.37 The NGV will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the PID, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.
- 4.38 The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

5. Confidentiality

General obligation of confidentiality on the NGV and all individuals

- 5.1 The NGV will take all reasonable steps to protect the identity of the person making the disclosure and the matters they disclose. Maintaining confidentiality in relation to PID matters is crucial, among other things, in ensuring reprisals are not made against a discloser.
- 5.2 Disclosers should consider whether it is in their best interests not to discuss any related matters other than with officers of the IBAC, another investigating entity, or other persons authorised by law.

Steps taken by the NGV to ensure confidentiality

Information management



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- 5.3 The NGV will ensure all files, whether paper or electronic, are kept securely in accordance with recordkeeping standards issued by the Public Records Office of Victoria¹⁴ and the Victorian Protective Data Security Framework¹⁵ and incorporated Standards.¹⁶ To ensure protection and security, files will be accessible only by the PID Coordinator or PID Officer involved in a particular matter. Where necessary, a Welfare Manager may be able to gain access (where appropriate) to related welfare matters if one has been appointed in any particular instance.
- 5.4 The Welfare Manager will not divulge any details of the disclosed matter to any person other than the PID Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between relevant persons will be conducted discreetly to protect the confidentiality of the person making a PID.
- 5.5 All printed material will be kept in files that are clearly marked as PID Act matters, and warn of the criminal penalties that apply to any unauthorised access, use or divulging of information concerning a PID.
- 5.6 All electronic files will be stored in a secured folder, only accessible by the PID Coordinator. Electronic documents in the control of the PID Officer and which relate to concerns or allegations involving the PID Coordinator will be stored in a different secured folder which is only accessible by the PID Officer.
- 5.7 The NGV will not use unsecured email to transmit documents in connection with a disclosure. It will also ensure all telephone calls and meetings in connection to disclosures are conducted privately and in the strictest of confidence. Hard copy documents will not be delivered by internal mail to a generally accessible area and, where possible, will be delivered in person by the PID Coordinator or the PID Officer as appropriate in each case.
- 5.8 The NGV will ensure that its electronic records are audited so that it can be seen by whom, when and for how long any records are accessed and for what purpose. The NGV will proactively implement a risk management plan so that it can detect any unauthorised access or use of its data, including to notify the IBAC or the Office of the Victorian Information Commissioner if required, and any individuals affected by that breach.

Exemption from the Freedom of Information Act 1982 (“FOI Act”)

- 5.9 The FOI Act provides a general right of access for any person to seek documents in the possession of the NGV. However, the Act provides that certain information related to PID as contained in documents in the possession of the NGV will be exempt from the application of the FOI Act.
- 5.10 Such information excluded from the operation of the FOI Act includes:
- (a) any information relating to a disclosure made in accordance with the Act; and

¹⁴ For further information on how the recordkeeping standards apply to PID’s see <https://prov.vic.gov.au/recordkeeping-government/public-interest-disclosures> (last accessed 18 February 2020).

¹⁵ <https://ovic.vic.gov.au/resource/victorian-protective-data-security-framework/> (last accessed 18 February 2020)

¹⁶ <https://ovic.vic.gov.au/data-protection/standards/> (last accessed 18 February 2020)



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- (b) any information that is likely to lead to the identification of a discloser.

Training for all staff

5.11 The NGV will:

- (a) ensure that staff have access to a copy of these procedures in hard or soft copy;
- (b) incorporate into its induction procedures training about the NGV's general obligations under the Act and the rights and obligations of all staff;
- (c) introduce periodic refresher courses for existing staff about their rights and obligations under the Act;
- (d) provide additional training and assistance to:
 - (i) any staff of the NGV with specific responsibilities and functions to handle and manage PIDs under the Act, including the PID Coordinator, the PID Officer and people who may be involved in welfare management; and
 - (ii) any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of the IBAC or other investigating agencies where required in response to a request for access under the FOI Act.

Limited exceptions to confidentiality obligations as permitted by the Act

5.12 The Act makes it a crime to disclose information connected with a PID. However, the Act provides limited exceptions to the general prohibition on disclosures, including in the following circumstances:

- (a) where disclosure is required by the NGV (or one of its officers) in the exercise of functions of the NGV under the Act;
- (b) where necessary for the purpose of the exercise of functions under the Act;
- (c) by an investigating entity for the purpose of exercising that entity's functions under the IBAC Act;
- (d) in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- (e) to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- (f) where the IBAC or the VI has determined that the assessable disclosure is not a PID and the discloser or the NGV subsequently discloses the information;

- (g) when an investigating entity had published a report to Parliament, in accordance with its confidentiality obligations;
- (h) for the purpose of obtaining legal advice in relation to matters specified in the Act;
- (i) in order to enable compliance with the Act:
 - (i) where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
 - (ii) where a person is under 18 years of age, to a parent or guardian;
 - (iii) where a person is suffering a disability and is not able to understand, to an independent person;
- (j) to any of the following for the purpose of the discloser being able to seek advice or support in relation to his or her assessable disclosure:
 - (i) a registered health practitioner;
 - (ii) a trade union of which the discloser is a member;
 - (iii) an EAP;
 - (iv) WorkCover for the purpose of making a workers' compensation claim;
 - (v) applying to the Fair Work Commission.
- (k) in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

5.13 The Act prohibits the inclusion of any details, in any report or recommendation, that is likely to lead to the identification of a discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

Penalties apply for unauthorised disclosure of information

5.14 The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The relevant penalties include imprisonment, financial payments or both.

5.15 The criminal offences set out in the Act relating to confidentiality include:

Offence	Maximum Penalty Applicable
Divulging information obtained in connection or as a result of the handling or investigation of a PID without legislative authority	A fine of 60 penalty units and/or 12 months' imprisonment.
Disclosing that a PID has been notified for assessment	A fine of 60 penalty units and/or 12



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under the Act.	months' imprisonment.
Disclosing that a PID has been assessed by the IBAC or the VI to be a PIC under the Act.	A fine of 60 penalty units <u>and/or</u> 12 months' imprisonment.

6. Collating and publishing statistics

- 6.1 The NGV is required to publish information about how these procedures may be accessed in its annual reports.

7. Review

- 7.1 These procedures will be reviewed every three years or upon significant change to the Act, the Regulations or the Guidelines to ensure they comply with the requirements of the Act.
- 7.2 The NGV welcomes feedback from its staff, members and the general public about the accessibility and effectiveness of these procedures and its integrity framework generally. To provide your comments or complaints, please contact us at pidcoordinator@ngv.vic.gov.au or pidofficer@ngv.vic.gov.au.