

Public Accounts and Estimates Committee—Inquiry into fraud and corruption control in local government

Findings and recommendations relating to IBAC, the Public Interest Disclosures Consultative Group and the Prevention Education Advisory Group

PAEC recommendations and related findings	IBAC response
Chapter 5 – Transparency and reporting of fraud and corruption	
<p>FINDING 33: An individual who makes a Public Interest Disclosure (PID) is protected from reprisal under Part 6 of the Public Interest Disclosures Act 2012 (Vic) even if it is not determined to be a Public Interest Complaint (PIC). However, prosecution for reprisal against a whistleblower is only possible if the PID is assessed as a PIC, meaning that in practice not all whistleblowers are protected from reprisal, and that is not clearly communicated on the Independent Broad-based Anti-corruption Commission’s webpage about making disclosures.</p>	<p>IBAC agrees that the protections in Part 6 of the <i>Public Interest Disclosures Act 2012</i> (Vic) (PID Act) apply to a person who has made a public interest disclosure, regardless of whether the disclosure is subsequently assessed to be a public interest complaint.</p> <p>However, IBAC considers that the second sentence of Finding 33 does not accurately reflect the effect of s 45 of the PID Act. Section 45 establishes an offence of taking detrimental action in reprisal for making a public interest disclosure, as well as the available defences for that offence.</p> <p>A person may be prosecuted for an offence against s 45(1) of the PID Act, notwithstanding the existence of the defences in ss 45(2) and (3). Whether a defence is relied upon (and subsequently proven) is a matter for a person charged with the offence.</p>
<p>RECOMMENDATION 18: The Independent Broad-based Anti-corruption Commission improve its public-facing information to ensure it clearly outlines to potential whistleblowers the inherent risks of making a disclosure under current legislation and how the protections they receive against reprisal work in practice.</p>	<p>IBAC is committed to ensuring the accuracy and clarity of its communications.</p> <p>IBAC will review its public facing information regarding the public interest disclosure scheme as part of continuously improving its website.</p>
<p>RECOMMENDATION 20: The Victorian Government seek to amend the <i>Public Interest Disclosures Act 2012</i> (Vic) to allow whistleblowers to disclose information to journalists where the relevant authorities are unable or unwilling to resolve a complaint. The Queensland or Western Australian models could be adopted in Victoria.</p>	<p>While Recommendation 20 is directed to the Victorian Government, IBAC notes that s 38A was introduced into the PID Act by the <i>Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019</i> (Vic) to permit certain disclosures outside the integrity system (e.g. to a journalist) in specified circumstances and subject to statutory conditions.</p>

PAEC recommendations and related findings	IBAC response
Chapter 6 – Integrity agencies and investigations	
<p>RECOMMENDATION 21: The Victorian Government consider reviewing and updating the governing legislation of Victorian integrity agencies to increase clarity in the definitions used to determine which agency should handle different types of complaints. They should do this in consultation with the Public Interest Disclosure Consultative Group.</p> <p>FINDING 41: There is a lack of clarity in the governing legislation of Victorian integrity agencies on which agency should handle each type of complaint.</p>	<p>While directed to the Victorian Government, IBAC offers qualified support for Recommendation 21.</p> <p>IBAC supports work aimed at clarifying the roles and responsibilities of Victoria’s integrity agencies, including in relation to the types of complaints managed by different agencies.</p> <p>However, IBAC considers that any such work would be best progressed primarily through direct consultation with the relevant Victorian integrity agencies, followed by engagement with the Public Interest Disclosure Consultative Group (PIDCG).</p> <p>IBAC otherwise acknowledges Finding 41.</p>
<p>RECOMMENDATION 22: The Public Interest Disclosure Consultative Group, led by the Independent Broad-based Anti-corruption Commission, determine a better way to communicate with Councils about the progress and outcomes of Public Interest Disclosures and investigations.</p> <p>FINDING 42: Uncertain timeframes for receiving outcomes of Public Interest Disclosure assessments and investigations by integrity agencies are a source of frustration and risk for Councils, and that can erode trust in the integrity agencies.</p>	<p>The PIDCG acknowledges that delays or limitations in the provision of information can be a source of frustration for councils involved in public interest disclosures and related investigations.</p> <p>In considering Recommendation 22, IBAC and other PIDCG member agencies recognise the importance of clear and timely communication with councils where appropriate and support the underlying intent of improving information-sharing practices. At the same time, any approach to enhanced communication must be carefully balanced against a range of statutory and operational considerations, including the safety of the persons involved, the risk of prejudicing investigations, natural justice obligations and the resource implications for IBAC and other agencies.</p> <p>It is noted that the purpose of the PIDCG is to provide a forum for the identification and resolution of systemic issues and inter-agency practice issues that arise in the operation of the public interest disclosure scheme. A number of PIDCG members do not have direct oversight of, or operational responsibility for, public interest disclosure matters in the local government context. In that regard PIDCG may not be the most appropriate mechanism to progress this recommendation.</p> <p>Notwithstanding this, IBAC acknowledges the intent of the recommendation and supports, in principle, the objective of improving clarity and consistency of communication with councils where it is consistent with statute, and is safe, appropriate and operationally feasible to do so. IBAC will continue to work with relevant PIDCG members to identify practical opportunities to strengthen communication practices.</p> <p>Finding 42 is otherwise noted.</p>

PAEC recommendations and related findings	IBAC response
<p>RECOMMENDATION 23: The Public Interest Disclosure Consultative Group and Prevention Education Advisory Group develop and deliver a tailored education program to Councils about complaint handling processes. That education should build Council understanding about expected timeframes for communication of Public Interest Disclosure and investigation outcomes, as well [as] detailed information on whistleblower protections. It should be made available to all Councillors and Council staff before the next local government election cycle.</p>	<p>While directed to the PIDCG, IBAC accepts the recommendation in principle, noting the intent to strengthen awareness and understanding of complaint handling processes within local government. However, implementation of a Victoria-wide education program would require additional resourcing and capability due to IBAC’s funding constraints. It is anticipated that this would likely need to be the subject of a budget bid to support any expanded function or delivery model.</p> <p>The observations made above in response to Recommendation 22 in relation to PIDCG membership and scope are also relevant here, particularly in terms of the differing roles and responsibilities of participating agencies.</p> <p>In relation to the Prevention Education Advisory Group agencies, while this group provides a valuable forum for the coordination of prevention and education initiatives across agencies, Recommendation 23 contemplates a broader and more sustained education program focused on complaint handling processes at the local government level. While the Victorian Ombudsman has undertaken significant work developing resources to support complaint handling in local government, delivery of such a program would extend beyond existing collaborative functions and would require dedicated and appropriately funded resourcing (in both agencies) to be effective and sustainable.</p> <p>Notwithstanding these constraints, IBAC supports the underlying intent of the recommendation and remains open to contributing to discussions on how existing frameworks may be leveraged to improve local government understanding of the public interest disclosure process.</p>
<p>FINDING 43: Most complaints about Councils received by the Independent Broad-based Anti-corruption Commission are referred elsewhere for investigation, going in roughly equal proportions to the Local Government Inspectorate, the Victorian Ombudsman and the Council itself.</p>	<p>To clarify the data provided by IBAC which underpins Finding 43, approximately 59% of complaints relating to councils were dismissed.</p> <p>This was largely because the allegations concerning local government either lacked substance or credibility (34%) or otherwise did not warrant investigation under the <i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic) (IBAC Act)</i>—e.g. where the matters concerned alleged mismanagement or poor governance rather than corruption or misconduct (25%).</p> <p>Of the approximately 28% of complaints relating to councils that were referred to another agency by IBAC, it is correct that they were referred in roughly equal proportions to the Local Government Inspectorate, the Victorian Ombudsman and to the relevant council itself.</p>

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<p>FINDING 48: The Independent Broad-based Anti-corruption Commission can only publicly report on the outcomes of investigations through Special Reports to Parliament, meaning the outcomes of some investigations are not made public. Publicly reporting outcomes of all investigations would improve transparency and help expose corruption in Councils.</p>	<p>Currently, recommendations arising from investigations may only be published through special reports tabled in Parliament under the IBAC Act, which is often a long and complex process.</p> <p>As noted in its submission, IBAC considers there would be significant value in being able to publish recommendations arising from investigations more broadly, where appropriate. To enable this, legislative change would be required. IBAC considers that public confidence in the integrity system would be strengthened if it were expressly permitted to communicate outcomes and recommendations, outside of a special report.</p> <p>IBAC made a submission to the Integrity and Oversight Committee (IOC) which included areas for reform that would increase transparency of IBAC's outcomes, findings and recommendations. The IOC's report and the government's response respectively recommended and agreed in principle with some reforms.</p>
<p>RECOMMENDATION 29: The Victorian Government seek to amend the relevant legislation to enable the Independent Broad-based Anti-corruption Commission to report fraud or corruption directly to the Minister for Local Government, enabling faster action and serving as a stronger deterrent.</p> <p>FINDING 50: The Independent Broad-based Anti-corruption Commission cannot promptly inform the Minister for Local Government about identified fraud or corruption, delaying necessary actions.</p>	<p>While not directed at IBAC, IBAC offers qualified support for Recommendation 29.</p> <p>IBAC already has the ability to make a recommendation at any time. IBAC notes that a legislated requirement enabling direct reporting to the Minister for Local Government on matters of fraud and corruption may have implications for its discretion as to the timing and manner of such reports. IBAC considers it important to retain flexibility in determining when and how matters are reported in each case, having regard to the status of any ongoing investigation, the sensitivity of the information, witness wellbeing and safety and the risk of prejudice to investigative processes and related proceedings.</p> <p>IBAC considers it appropriate to report directly to the Minister only where there is a sufficient connection to the Minister's statutory functions and responsibilities under the <i>Local Government Act 2020 (Vic)</i> (LG Act), or their broader obligations as Minister of the local government portfolio. Where another person or body, such as the Chief Executive Officer of the relevant council, the Chief Municipal Inspector, or a Municipal Monitor, is better placed to address the matter, IBAC would ordinarily refer it to that person or body.</p> <p>Consideration could also be given to expanding the operation of s 41 of the IBAC Act to expressly enable disclosure to the Minister of Local Government in relation to matters relevant to their functions and powers under the LG Act. This would preserve IBAC's discretion to provide information relating to fraud and corruption where it is assessed to be relevant to the Minister's responsibilities.</p> <p>IBAC otherwise acknowledges Finding 50.</p>