

**INQUIRY INTO PROTECTIONS FOR PEOPLE WHO  
MAKE VOLUNTARY DISCLOSURES TO THE  
INDEPENDENT COMMISSION AGAINST  
CORRUPTION**

**Organisation:** Independent Broad-based Anti-corruption Commission Victoria  
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**Position:** Commissioner  
**Date Received:** 31 May 2017

**From the Office of the Commissioner**

Our ref: CD/17/21264

31May 2017

Mr Damien Tudehope MP  
Chair  
Committee on the Independent Commission Against Corruption  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Tudehope

**Inquiry into protections for people who make voluntary disclosures to the ICAC**

Thank you for your correspondence dated 4 May 2017 inviting the Independent Broad-based Anti-corruption Commission (IBAC) to make a submission to the above inquiry.

Under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act), IBAC is responsible for identifying, exposing and preventing corruption across the public sector in Victoria, including members of Parliament, the judiciary, state and local government and Victoria Police. IBAC also has an important role in receiving and assessing disclosures in accordance with the *Protected Disclosure Act 2012* (Vic) (PD Act). Where IBAC determines a potential disclosure is a protected disclosure, IBAC is responsible for deciding whether the matter will be investigated and, if so, which body conducts the investigation.

This submission provides a broad overview of Victoria's protected disclosure arrangements, the protected disclosure regime, and potential areas for reform.

**Victoria's protected disclosure arrangements**

The PD Act, which came into effect in 2013 replacing the *Whistleblowers Protection Act 2001*, enables anyone to make a disclosure about improper conduct by a person, public officer or public body- and protects them when they do.

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Protected disclosures are a specific type of complaint about suspected improper conduct or detrimental action. Categorising a complaint as a protected disclosure helps protect the person making the disclosure from retaliation.

IBAC is the central agency for receiving, assessing and investigating disclosures about improper conduct by a public officer or public body. It also investigates complaints when someone who has made a disclosure is subject to reprisals for having spoken out. IBAC may refer a protected disclosure complaint to another investigating agency, namely the Victorian Ombudsman, Victoria Police or the Victorian Inspectorate.

### *Protections afforded under the PO Act*

The PD Act sets out the protections provided to persons who make a disclosure in accordance with the Act. If a complaint is assessed as a protected disclosure, the following legal protections apply:

- immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure
- immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information
- immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information
- protection from defamation action
- protection from detrimental action taken or threatened in reprisal for making a protected disclosure, where reprisal is a substantial reason for the action.

The protections in the Act do not apply if the discloser provides false or misleading information or claims that a matter is the subject of a protected disclosure knowing that claim to be false.

In 2015-16 IBAC directly received 3,392 allegations for assessment as potential protected disclosures under the PD Act, including 604 assessable allegations notified by Victoria Police and other public sector entities. The number of protected disclosures tripled in 2015-16, mostly due to an increase in the number of disclosures notified to IBAC by Victoria Police.

### **Supporting the protected disclosure regime**

IBAC has worked to support Victoria's protected disclosure regime by releasing Guidelines for making and handling protected disclosures and Guidelines for protected disclosure welfare management. Copies of these guidelines are enclosed, and are also available online at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au).

IBAC has also developed resources including fact sheets, checklists and podcasts designed to provide guidance to key stakeholders. We host annual forums for protected disclosure coordinators (officers within public bodies designated to assist with protected disclosure duties). The most recent forum was held on 16 May 2017 and was well attended by stakeholders.

Further, IBAC has established a role of principal adviser for protected disclosures within our Legal and Compliance division. This new position will strengthen our ability to support the protected disclosure regime, including supporting people who want to make a protected disclosure.

IBAC continues to develop resources and implement initiatives to assist in educating the community and public officials about corrupt conduct and how to report it, particularly within the context of Victoria's protected disclosure arrangements.

### Potential for reform

In February 2016, the Victorian Parliamentary IBAC Committee released its report *Strengthening Victoria's key anti-corruption agencies*. It highlighted that concerns had been raised regarding the coverage of the protected disclosure scheme, its consistency and some 'unintended consequences' associated with its operation (for example, the potential consequences associated with the legislative requirements around confidentiality, preventing complainants from accessing support services). In response to this report, the Victorian Government advised it is committed to a review of the protected disclosure regime.

Your Committee may be aware that following the release of the above report, the IBAC Committee is also conducting an inquiry into the protected disclosure regime. The inquiry's terms of reference include a consideration of what currently works well in the PD Act and what are its challenges. Specific areas of focus include the following:

- Are the provisions relating to assessment and investigation of protected disclosure complaints appropriate, or should alternatives be considered?
- Is the type of conduct that can be disclosed under the PD Act appropriate, or should it be expanded?
- Are the current confidentiality and secrecy provisions effective? What are the advantages and disadvantages?
- Are the protections for individuals from detrimental or retributive action sufficient?
- Should they be changed?

Further information about the inquiry can be found on the IBAC Committee website at <https://www.parliament.vic.gov.au/ibacc/inquiries/inquiry/434>

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I trust this information is of assistance.

Yours sincerely



**Stephen O'Bryan QC**  
Commissioner