

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED PROCEEDINGS

Brisbane — 17 November 2015

Members

Hon. Kim Wells — Chair

Hon. Marsha Thomson — Deputy Chair

Mr Sam Hibbins

Mr Danny O'Brien

Mr Simon Ramsay

Mr Tim Richardson

Ms Jaclyn Symes

Staff

Executive Officer: Ms. S. Cook

Research Officer: Ms Kirstie Twigg

Witnesses

Mr Paul Favell, Parliamentary Crime and Misconduct Commissioner, Parliament of Queensland.

Mr Mitchell Kunde, Principal Legal Officer, Office of the Parliamentary Crime and Corruption Commissioner.

The CHAIR — Okay. I declare open this closed hearing of the IBAC committee of the Parliament of Victoria. I welcome Paul Favell and Mitchell Kunde. All evidence taken at this hearing is protected by parliamentary privilege in accordance with reciprocal provisions in the defamation statutes in Australian jurisdictions as if you were giving evidence in Victoria and as provided by the Victorian Defamation Act 2005, section 27, the Constitution Act 1975 and the Parliamentary Committees Act 2003. Any comments you make outside the hearing may not be afforded such privilege. Any reporting of these proceedings enjoys qualified privilege for fair and accurate reporting as if the proceedings were in Victoria. All evidence given today is being recorded. The witness will be provided with approved version of the transcript in the next few weeks. I ask you, Paul, if you would like to begin with a presentation and then we will go to questions from the committee. So thanks very much for your time.

Mr FAVELL — Thank you, Mr Chairman. As you know, a request came through for someone from our office, myself and Mitchell, to speak to you by letter of 11 November 2015. Accompanying it were a series of questions. What I've done is — or what we've done is prepared a short dissertation, if I could call it that, of the functions of the office and what we do, and I will go through that in a moment.

The CHAIR — Yes.

Mr FAVELL — And I've also prepared some questions — some answers or dot point responses to the questions, and I've also provided that to you. So can I just set the scene by saying that last year, commencing at the end of July, a Bill was passed to change the Crime and Misconduct legislation and it resulted in the current CCC Act. What it did was extend the powers of the office to allow some own motion investigations. But to understand that, if I could just take you through what the powers were beforehand. Section 314 of the Act provides for the functions of the parliamentary commissioner, and what it is the functions provided under that Act or in any other Act. There are some other Acts that require me to carry out audits and other features, particularly the Police Powers and Responsibilities Act of 2000. That requires me to carry out regular inspections of the CMC surveillance device warrants, to record the extent of compliance, and the police intelligence to determine the extent of compliance. So we have a good working relationship with the CMC. We've got our own passes. We go there. We can go wherever we like, and we do so. And the same, we make the arrangements with the police and we audit — and we're given access to all of their intelligence records, and we go through it methodically.

We compiled a number of electronic means of recording what we find, but that is for our purposes so that we can report. And it then gets locked away in secure premises under this building. I'm also required to carry out six-monthly inspections of the CMC's telecommunication and interception records under the Telecommunications Interception Act 2009, advise of the results of that, including to the Attorney-General, about the inspections under section 23 at the end of the financial year. I also provide an annual report to the Attorney-General, as mentioned by section 63 of the Commonwealth Act. By that — in addition to the CCC chairman and the parliamentary committee that I report to from time to time.

The other functions, as I said, are under the Crime and Misconduct Act which is now the Crime and Corruption Act. We do six-monthly audits. And where it refers to the Crime and Misconduct Act in this document, it's now the CC Act. But we carry out six-monthly audits of the CCCs records for assumed identities. We report to the CCC chairperson of the results of those audits. We provide the CCC always with the opportunity to comment on what we are reporting. Or if we find that there is some difficulty or some non-compliance, we give them the change to comment on that. That doesn't mean to say that changes our report but it gives them the opportunity to deal with whatever problems we find and then work towards it not happening again. All that — —

The CHAIR — Is that part of legislation?

Mr FAVELL — No, that's something that we just introduced as part and parcel of trying to get — in trying to ensure that the audits are properly carried out and make our job easier, if you like. What we've done is, we've been through every piece of legislation that puts on us an obligation to carry out an audit or to do something, and we've compiled a series of questions which are in the computers that we take with us, and we methodically work through each file answering those questions. So it's like a pathway, if you like, until we get to a satisfactory result or not; and if not, what is the reason. And we record that and then use it for our purposes for reporting. Not all — everything we see is reported, of course, but the results are either satisfactory or not, and that's why we deal with the CCC in that regard. But we report that to the committee. There doesn't seem to have been any difficulty in that sense, and it has given rise to a cooperative relationship between us and those who we audit.

Apart from the scheduled inspections, the other functions that are given to the parliamentary commissioner are those set out in section 314 of the then Crime and Misconduct Act. It is the same as in the CC Act. So the obligation there is to, as required by the parliamentary committee, to do the various things that I've set out in page 2 and just over on to page 3, including auditing records kept by the Commission and various operational files, being given access to all of the documentation including any sensitive operations. So we're not restricted in that sense. Investigations including accessing operational files of the Commission to which the parliamentary committee is denied, so we do that. And then we compile a report if we find there's any particular concern. We independently investigate allegations of possible unauthorised disclosure of information. We inspect the registers of confidential information kept under section 67. That is to verify the Commission's reasons for withholding information from the parliamentary committee.

We review reports given by the Commission to the parliamentary committee to verify their accuracy and otherwise, and we report and make recommendations to the committee as a result of performing those functions. And as a general catch-all then, we can perform any other functions the parliamentary committee considers necessary or desirable. That was the extent of the powers and obligations up until July 2014. Since then the significant amendment is that section 314 subsection (4) confers an own initiative investigation. I've set out on page 3 that subsection of section 314 which is relevant and you will see that the commissioner has the function to investigate on his or own initiative a matter mentioned in subsection (2)(b) or (c) of the Act — of section 314 or a matter notified to the commissioner under section 329. Section 329 are usually notifications that come from either the CEO, as that position now exists, or the chairman of the — sorry, of the Commission.

It relates specifically to corrupt conduct and on being satisfied of whether the Commission has not adequately dealt with the matter, whether it may not adequately deal with the matter, and it's in the public interest. To do that, I have the power to conduct a preliminary investigation. That preliminary investigation allows me to use all of the powers in the Act, apart from the compulsory requirement to submit to examination. That only occurs if I'm satisfied that we go further, and in that instance I would notify the committee and then conduct the investigation using the compulsory powers. You will see in the middle of the page, pursuant to the new subsection 314 I have the power and function to investigate, on my initiative, a matter mentioned in section 314(2)(b) or (c) and they are set out: complaints made against or concerns expressed about the conduct or the activities of the CCC or CCC officer, and allegations of possible unauthorised disclosure of information or other material that is confidential under the Act, or a matter notified to me under section 329.

The amendments require the chairman, the deputy chairman or the now CEO to notify me if they've got a suspicion, that is an involvement of improper conduct, a wider definition than corrupt conduct. That previously — those notifications were only made to the committee. Now they're also made to me, and they then trigger usually a preliminary investigation and, if necessary, a further investigation. To date there hasn't been a further investigation. We've conducted quite a few preliminary investigations and reported on them. Since the own initiative investigation function is reactive in nature, we haven't been able to predict an increase in the work load but that is happening. We can see

that.

I've referred to section 314 subsection (5), the parliamentary commissioner may conduct a preliminary assessment of a matter to decide whether section 4(a) and 4(b) is satisfied for the matter. We regularly do that, and that was put in so that there wouldn't be any likely attack on the power to conduct the investigation. Because the way the section was drafted, it required a belief before we went any further. So in order to form a belief, we had to have the power to conduct a preliminary investigation. That's what it's there for. The commissioner is entitled to undertake additional functions being the preliminary assessment in order to assess whether grounds exist to commence an own motion investigation. And as I say, there's some aspect of an investigation itself in doing that.

You will see that further down the page the previous situation was seemingly that the secretariat of the committee carried out such a preliminary investigation. Unless the commissioner was asked to assist in that, there was no role but now that has changed. Pursuant to section 314(6) the parliamentary commissioner may exercise powers under section 317 which is the power to require the production of various things, the power to require help, the power to get access to all of the material, the power to keep documents, the power to copy documents and the power to delegate. But under section 318 I can't use those powers for a preliminary assessment. That's the coercive power. That would only come into play if I formed the view that the preliminary assessment required further investigation. I am required to notify the committee if I commence a preliminary investigation, and that is carried out.

There are other reporting obligations since the introduction of the changes in July 2014. I must report on the results of the investigation to a parliamentary committee, give a copy of the report to the Minister, and if the report relates to the conduct of the Commission or otherwise, or the chief executive of the CCC, I can refer a matter to the Director of Public Prosecutions or other appropriate prosecuting authorities, or make a recommendation to the Minister or the committee for the consideration of prosecution proceedings or disciplinary action should it be considered warranted. So you will see that in respect to those matters I've got to make a determination whether or not to refer the matter to the appropriate prosecuting authority or not, or recommend such.

I then deal with the assessment of notifications pursuant to section 329. I've given you a document which is — beg pardon.

Mr KUNDE — I haven't given them the preliminary assessment documents.

Mr FAVELL — Apparently we haven't given you — well, I can tell you that we have a series of documents that follow a timeline and follow a flow path to carry out the assessment, and then make the decisions and the preliminary assessment. I'm quite happy to give you those if you would like them.

The CHAIR — Yes, that would be handy. So you haven't used own motion yet, have you?

Mr FAVELL — I haven't, no. What we've done is carried out the preliminary investigations but there hasn't been the need to go that further step.

The CHAIR — Okay. So when we spoke to the chairman this morning, the CEO mentioned that if there was inappropriate actions by an officer, it would be dealt with by someone else within the organisation to deal with it, or if she felt it was serious enough would get an external person to come in and do an investigation. So where does the own motion role sit in regards to that when the CEO has a belief that she could deal with it with either an internal or an external investigation?

Mr FAVELL — She has still got the obligation to let us know under section 329. When you say the CEO, you're talking about the CEO of the CCC?

The CHAIR — Yes.

Mr FAVELL — Well, I'm a little surprised at that. She does have the obligation to tell us if she forms —

The CHAIR — Yes, I'm not disputing that. No, sorry. But if there is an officer who has acted inappropriately, she would have the reporting role to you. But she would have someone else in the organisation do an investigation into whether it was a minor — the example I gave was the (indistinct) of evidence. If there was mistake with the (indistinct) of evidence and it was trivial, then they would deal with it internally?

Mr FAVELL — Okay. If it —

The CHAIR — If it was more serious, then they might get an external investigator.

Mr FAVELL — She, or the chairperson, the chairman, if they have a — they form a reasonable suspicion of corrupt conduct, then they're obliged to report it.

The CHAIR — Yes.

Mr FAVELL — So there's a series that they go through. Usually they report it anyway and give their conclusion, and then report on the process that they propose to follow. Sometimes we say, well, no, there's more that is required. And sometimes we accept that the process that they're putting into place is appropriate.

The CHAIR — So it gets reported to you, and if you're not happy with the way they've investigated it, then you would come in and ask further questions.

Mr FAVELL — Absolutely, yes.

Mr KUNDE — Because most of the referrals that we will get from them will say, subject to the committee's approval of this process, this is what we propose to do. And that would be for anything that they — that the CEO or the chairperson thought was improper conduct which is a very low threshold. It has been lowered since 1 July 2014. But if it didn't even meet that threshold, it would have to be very low level and then the CEO or the chair could deal with it in house if it didn't even meet that. But as I say, it's a very low threshold before they have to report to the committee and to us.

The CHAIR — Okay. All right.

Mr FAVELL — For our purposes, the relevant sections are 329 which imposes a duty on the persons to notify the parliamentary committee, and the parliamentary commissioner of improper conduct. And it contains the definition of improper conduct which is much wider than corrupt conduct. So there are a number of species of reporting, if I can say that. If the chairman is suspected of improper — sorry, improper conduct, then there's a species that report about that. If the deputy chairman or the chief executive officer are suspected of improper conduct, then there's a species that report about that. Other than that, they've all got the obligation to report improper conduct, both to the committee and to myself.

The CHAIR — Yes.

Mr KUNDE — There's also a protocol as between the committee and the CCC that once they report it, they will take no further action until they get approval from the committee to conduct further inquiries.

The CHAIR — Okay. Good. Thanks for clarifying that. I'm mindful of the time.

Mr FAVELL — Yes.

The CHAIR — We will whizz through this very quickly.

Mr FAVELL — Well, I don't need to speak any more to that if you're prepared —

The CHAIR — All right. Do we have questions? Tim?

Mr RICHARDSON — I'm looking at some of those — just reading through some of those answers, so they cover it off.

The CHAIR — Simon?

Mr RAMSAY — We've spoken — take one on notice. Just come back when you're finished, yes.

The CHAIR — Yes. So just getting back to the own motion —

Mr FAVELL — Yes.

The CHAIR — So that was a motion that you particularly pushed in regards to having the legislation changed?

Mr FAVELL — No. I didn't. There was an inquiry called the Callinan and Aroney Inquiry, with Former Justice Callinan and Professor Aroney, who I think you've met.

The CHAIR — Yes, we just had before — yes.

Mr FAVELL — They had produced some recommendations. They asked me for input, and I provided it, but they made their own recommendations and, as a result, that came out of the report. The legislation came out of the report. The other thing I think I specifically pushed for is every time I left the state I didn't have to report to someone, so they did change that.

The CHAIR — Are there any changes —

Mr FAVELL — So every time I went to New South Wales I had to notify the Speaker.

The CHAIR — Okay. Do you foresee any changes that need to take place in regards to your role with the CCC or the Parliamentary Committee?

Mr FAVELL — No. I don't. I mean, a lot of this is the way you manage the obligations of the various agencies involved, I mean, and that's obviously a political call, you know, in a big sense. If you're asking me about do I think the process that we have in place in the limited way I'm involved is successful or needs changing, I think it is successful. I don't think that there's any need for particular changes so far as this office is concerned.

The CHAIR — We noticed that when we had Peter Russo in they were talking about letters — complaint letters that have come in from the — you know, from the constituency —

Mr FAVELL — Yes.

The CHAIR — That they deal with. Do you play any role in regards to overseeing any of the way that complaints are being handled?

Mr FAVELL — If they ask me, I do. But that's the only way. Sometimes I get complaints from individuals and then —

The CHAIR — That have come direct to you?

Mr FAVELL — Come direct to us.

The CHAIR — Yes.

Mr FAVELL — And then I deal with them as — in accordance with my powers and obligations under the Act. And often it's something I don't have the power to deal with, but I report it on.

The CHAIR — Okay.

Mr RICHARDSON — Just a question to the changes that have seen a drop-off in the CCCs taking of inquiries. I just wanted to get your view on that, in terms of its — CCCs operation and whether you've noticed anything being missed in that sense, because people have to now sign a statutory declaration. And I ask that in the framing that we're, in Victoria, going through a review of our proceedings at the moment and thresholds that are set, and also whether there's any concerns from your office in the reduction in those inquiries coming through to the CCC.

Mr FAVELL — Well, that was because of some of the changes in definitions. It's probably best that you ask the committee or the CCC about the numbers, but there have been changes in the numbers. As I said, it comes down to be a definitional matter then as to what you want your crime and corruption body to look at: whether you want it to look at everything, no matter how minor it is, or just to be concerned with organised crime or whatever. But to answer your question, there have been changes. I don't think I'm giving anything away there, but that's because of the changes in the legislation.

Mr RICHARDSON — Has that improved efficiency?

Mr FAVELL — Can I — sorry. Do you mind if I just finish. I'm not sure that those changes in numbers are because people at any stage were required to give statutory declarations. I think, well, it may be because the changes of definitions have been put into place.

Mr RICHARDSON — And given — and we heard this this morning from the Chairman and the CEO that there's a limit on how many investigations that can be undertaken every year. That's the same in Victoria as well. Has that reduction and that improving efficiency led to better outcomes in investigations from — with you at the oversight role that you perform of the CCC?

Mr FAVELL — We see the results of investigations and where they're at. I don't know the figures just offhand about the — what would you call it — success rate of the investigations. But it's rare to see something that is pursued to no avail.

Mr KUNDE — So another point too: we're going to be looking at investigations that are well over that threshold, where they're using their compulsory powers, where they're using telecommunications interception warrants or surveillance — we will be looking at that. So we wouldn't know too much about what lower level complaints aren't being — are or are not being investigated. So it's — we're probably not the best people to ask about that aspect of it.

Mr RICHARDSON — Yes. Does — is there any public hearings conducted throughout the year from the CCC? And I — in term — because we have public hearings in Victoria. Is there any need for public hearings from the CCC?

Mr FAVELL — When you say “public hearings”, do you mean public hearings involving the committee and the CCC, or do you mean public investigations?

Mr RICHARDSON — Public — so open hearings, so similar to — so we’ve had, in Victoria, hearings with the Education Department that have been public hearings, so members of the public can attend, and that’s said to bring more efficiency in, in bringing more evidence forward: people who might not be putting forward evidence who come forward, seeing that that’s public. And is that — in terms of an oversight role and the work of the CCC and its efficiency, is there any — does your office has a view on whether that’s an appropriate — particularly with those coercive powers or those — you know, compulsory powers?

Mr FAVELL — Well, the coercive power hearings are not public, of course. They're strictly private and there are obligations of secrecy involved with those. There are — the CCC has a number of functions, not just an organised crime function or a corruption function, but also education functions, obtaining — sorry.

Mr KUNDE — They lost their prevention function.

Mr FAVELL — Yes — obtaining information, education, that sort of thing. They don’t carry out hearings in public for the purposes of organised crime or serious corruption. They will form a view and they will make a recommendation to the ODPP or some other body, whoever is appropriate, or they will refer it back to the body that is perhaps involved with it. The — I understand that in some other states that might be changing now. I couldn’t say what's happening here at the moment. Yes. The — Mitchell reminds me that they haven't had public hearings for those functions for a long, long time.

Mr KUNDE — They have had them and they do have the power, and some years ago they — I don’t recall that recently they’ve had public hearings in their corruption side of things. But certainly they do, and for the similar purposes, I would have thought, as the education hearings down in Victoria.

Mr RICHARDSON — Thank you.

Mr FAVELL — We —

The CHAIR — Just a quick one to finish on. Go on.

Mr FAVELL — We — I should say, though, that in respect of some of the conduct of the CCC, there have been public hearings conducted by the committee with the assistance of the commissioner.

The CHAIR — Simon.

Mr RAMSAY — Thank you. Just a quick one. I’m not sure if you're familiar with the Victorian system, but I just was — perhaps just asking your views, and I know we’re not comparing apples with apples, but we have an IBAC and we have a Victorian Inspectorate, which doesn’t have the same relationship that you have as a commissioner to a parliamentary committee. In fact, there's no requirement for reporting.

Mr FAVELL — That’s right.

Mr RAMSAY — It doesn’t have a close relationship, but it does oversight the activities of IBAC. So I’m just wondering given that and given we’re looking at other states and what models they have, do you see or can you identify strengths and weaknesses in your structure as against the Victorian

structure?

Mr FAVELL — Well, the Victorian structure, I suppose, puts the Inspector at arm's length, and probably at the very outset that would mean the — his office is without question independent. Now, that's not to say that structure that is around this office has in any way compromised our independence. I've never experienced interference, political or otherwise, and even if there was interference I doubt whether it would have any effect. Certainly I haven't seen that. So it's very difficult to say which system is the better or whether they're just running in parallel universes.

Mr KUNDE — We noticed when we were discussing before that your Victorian Inspectorate has a wide range of bodies that it oversees, whereas our office only oversees the CCC and touches upon the QPS in the intelligence data review. But — so we can look at every single use of their surveillance device or warrants powers that they would use in a year, every telecommunications interception warrant. So we can be — look at everything very carefully and, as Paul said, we would go through with our checklist and look at every — that they've complied with every aspect of the legislation. That's one advantage of having a dedicated oversight body for your anti-corruption body.

The CHAIR — Just a quick question to finish on. Who should be providing the preventative work and the education to the public service? Should it be CCC or the Public Service Commissioner?

Mr FAVELL — That's again probably a political matter.

The CHAIR — Personal opinion? From where you sit, who would be more effective?

Mr FAVELL — Well, from where I sit, if my view is at all relevant, it would be a mixture, that is, there would be an oversight of the CCC of the relevant public service department, because that would be a proper — a better use of resources, and it would be in itself an oversight of that department. Now, I understand that they do take a particular role in that respect at the moment. That's right, isn't it?

Mr KUNDE — Well, not —

Mr FAVELL — No?

Mr KUNDE — Well, they've lost their prevention role since the legislation, but —

Mr FAVELL — No. That's a different thing, though.

Mr KUNDE — Yes, but education they still try to engage with — in the course of assisting various departments to perform integrity investigations, there's an education aspect of it too, I think, so —

The CHAIR — Paul, Mitchell, can we thank you very much for your time.

Mr FAVELL — You're most welcome.

The CHAIR — We really appreciate you coming and giving your evidence before the committee, and it has been very helpful. Thanks very much.

Mr KUNDE — Thank you.

Mr FAVELL — You're welcome.

The CHAIR — Close the hearing.

Witness withdrew.

Committee adjourned.