

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED PROCEEDINGS

Melbourne — 14 December 2015

Members

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Mr Robin Brett, QC, Inspector, Victorian Inspectorate.

The CHAIR — Welcome to the public hearings of the Independent Broad-based Anti-corruption Commission Committee.

All evidence at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and where applicable the provisions of reciprocal legislation in other Australian states and territories. However, it is important that you note that any comments you make outside the hearing, including effective repetition of what you have said in evidence, may not be afforded such privilege.

Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

Mr BRETT — I have.

The CHAIR — It is also important to note that any action which seeks to impede or hinder a witness or threaten a witness for the evidence they would give or have given may constitute and be punishable as contempt of Parliament. We are recording the evidence and will provide a proof version of the transcript at the earliest opportunity so that you can correct it as appropriate.

I invite you make a verbal submission, and we will ask questions as appropriate.

Mr BRETT — Thank you, Mr Chairman. The first thing I would like to say is thank you for the opportunity to comment on the draft legislation. In fact I have a number of compliments to deliver first. The first is to note that I was provided with the draft legislation well in advance of it being introduced and therefore I had plenty of time to consider it, which was greatly appreciated. Prior to that, I had had a number of consultations with the responsible minister, Mr Jennings, and also with the team within his department who were responsible for drafting the legislation.

I made comments and those comments were received, listened to and largely taken into account. I am very grateful for the consultative nature of the process which has led to the introduction of the bill. The good news is that I am therefore able to say that, although the amending bill does not contain provisions which deal with everything that I had raised beforehand, it deals with the two major matters and it deals with them in a way which I and the inspectorate find satisfactory.

I have received from the committee two letters relating to matters that this committee wants to hear about. What I will do, if I may, is basically go through those.

The CHAIR — Yes, that would be great.

Mr BRETT — Then at the end of that if you have any questions, I will be only too happy to answer them, but I hope I will have forestalled most of them. The first thing that I was told was that the committee would appreciate it if I could outline each concern which I have regarding the current legislation pertaining to the function and operation of the inspectorate in relation to its oversight of IBAC.

There were a number of matters which I have expressed concerns about in the current form of the legislation. The first is in relation to the function that the inspectorate has in general of monitoring the performance of the IBAC. Under section 11 of the current legislation we are given a number of functions, expressed in fairly general terms. One of them is to monitor the general performance of IBAC with the IBAC act and other legislation; another is to oversee its functions in relation to the Protected Disclosure Act and protected disclosures; and there are a couple of others that are in similarly broad terms.

I raised two matters concerning those functions. The major one was the absence in the current legislation of powers to back up those functions. Under the current legislation the inspectorate has very extensive powers when it is conducting an investigation, but if it is not actually conducting an investigation, its powers are much more limited. So I expressed a desire to have those powers broadened, and what I am able to say is that the bill does contain provisions doing exactly that. They are in proposed section 12A of the inspectorate act as it will be after the act is amended. I am also able to say that the form of those

provisions is satisfactory to us. We did have some quite detailed discussions with the department about the form of those provisions. Initially we had some concerns about them, but those concerns were taken into account and the current bill, as it is, we are happy with it.

I also raised some concerns about the actual form of the provisions giving us these functions, some doubts about terminology — the word ‘assess’ is used at one point, the word ‘monitor’ is used at another point, the word ‘oversee’ is used at another point. I think it would be desirable at some stage for precisely what the differences are between those words to be addressed. That has not been addressed in the current bill, but I am aware that, as was said in the second-reading speech, there is an ongoing review into the legislation, and I am confident that those sorts of matters will be addressed in the course of that review. That was of far less importance to us than actually getting the powers to back the functions as they are currently expressed.

The next matter that I raised was a power to conduct preliminary inquiries. That also has been addressed in the current legislation, and again, the form of it is satisfactory, again after some detailed discussion about the form with the department. Basically under the current legislation we have power to conduct an investigation but we do not have any express power to require a department or require the Ombudsman or the IBAC or any of the other bodies that we deal with to provide us with information regarding a complaint that we have received from a member of the public. As a matter of fact we do and we have been making preliminary inquiries of those bodies, and they have, as a matter of fact, been responding to them. But I think it is desirable — I have always thought it was desirable — for us to have the express power and to place on the bodies the general obligation to assist us in conducting preliminary inquiries, and that has been included in the draft legislation as well. That was the second major matter.

Another matter relating specifically to IBAC that we have raised but has not been addressed concerns a decision by IBAC to hold a hearing in public. Currently under section 117(5) of the IBAC act, IBAC is obliged to notify us of any decision it makes to hold an examination in public and to give us the reasons why it has done so, but it is not required to give us that notice more than seven days prior to the actual holding of the hearing. The problem with that is that it is just not sufficient time to enable us to make any meaningful response to their notice and perhaps suggest that they reconsider their decision or ask questions about it, or whatever. We do have powers to ask those things and do those things, but by having the notice given to us so late, effectively that power is not effective. That has not been addressed. I hope it will be addressed in the future, but considering that IBAC holds only few public hearings, it was not what I would have termed one of the major concerns of ours.

The final matters that we raised concerned our functions in relation to the Audit Act and the Auditor-General. I think that is one of the matters that I was told the committee was interested in hearing about. There have not been any changes to our functions in relation to the Auditor-General or under the Audit Act. Basically our concern is that most of our functions as set out in the legislation are not within our normal sphere of operations, and a number of them are, in practical terms, impossible to perform. An examination which we have made of the history of the legislation as it originally passed through Parliament suggests to us that those functions are in there because the sections of the Audit Act in question were very different when the provision was first put into our legislation. The sections in the Audit Act subsequently got changed on the way through the Parliament, but we were left with the same functions, which were no longer appropriate. It is not a matter of pressing concern but it is a matter which we think should be addressed in due course, and again that is something which we hope to see dealt with in the ongoing review of the legislation.

To sum it up, there were five matters that we raised. The two most important of them have been addressed in a manner that we consider to be very satisfactory. The other three have not yet been addressed, but they are of much less pressing concern to us.

The CHAIR — Thank you. Of the three matters that have not been addressed, have you sought an assurance that in the next lot of amendments they will be included?

Mr BRETT — I have not specifically sought such an assurance, nor have I been given one. I have raised them with the minister. My understanding of the review that is going to be conducted is that it will be wideranging; it will be possible for us to raise again anything that we want to raise. But have I had a specific assurance? No, I have not.

Ms SYMES — In relation to your request to have the seven-day notice period extended, in a two-part question, what would be your ultimate time frame, and, secondly, because there have only been a few hearings, are you getting notified prior to the seven days or on the seven days?

Mr BRETT — I will take the second one first, if I could. I think there have been three public hearings commenced and a fourth one recently has been announced. The first two we got plenty of notice. The third one, which related to Operation Ross, which was the one about the Ballarat police station, was what actually prompted us to write to the minister and raise the thing. We only got the notice seven days in advance. To add to that fact, in our view it was not a satisfactory notice; it did not give us reasons as contemplated by the act. We raised that with IBAC and they provided us with much fuller reasons. But that was, as I said, what prompted us to raise the matter. The fourth one we have received notice for well in advance; it has not started yet.

What we would ultimately like to see is, we have proposed 21 days' notice and we have also proposed — and I think this is an important part of it — that we should get that notice prior to any public announcement being made by IBAC that they intend to hold a public hearing, because once it is in the public domain the capacity to affect anything is very limited. Does that answer your question?

Ms SYMES — Yes, it does, thank you.

The CHAIR — In regard to your concerns, one of the matters that has not been addressed is the Audit Act and your work with the Auditor-General. I was of the understanding that it was more an interpretation of the way you were interpreting the clause and the way the Auditor-General was interpreting the clause. Were you seeking that it be made more clear?

Mr BRETT — No, we were actually seeking to have our functions in relation to a number of provisions of the Audit Act that are mentioned in our act at the moment removed altogether, simply on the basis that it is there is effectively no point in what we are doing and, at least in a couple of cases, it is basically impossible for us to do the function that we are given.

I think I wrote to you in September and October and I set out in detail what the concerns were. There are a number of different provisions in question. Each one of them is different, so it is quite a complicated answer as to why we think they are inappropriate if I am going to answer it fully; it is all set out in those letters. But what I can say is that my view that it is inappropriate for us to have those functions is shared by the Auditor-General or the acting Auditor-General.

Ms THOMSON — In the complication that is our parliamentary system of dealing with accountability issues, and given that the Auditor-General is actually a PAEC area of responsibility, do you talk to PAEC at all?

Mr BRETT — Yes, we do.

Ms THOMSON — So PAEC is aware of the issues in relation to this?

Mr BRETT — I have not specifically written to them; I should probably think about doing that.

Mr D. O'BRIEN — I am on PAEC, Marsha, so it is all covered.

Ms THOMSON — I know. We are on the other accountability one, so whichever way we look we are all covered.

Mr BRETT — I should probably think about doing that.

The CHAIR — Any further questions? If not, I will close this hearing. Victorian Inspector Robin Brett, thank you for your time. We invite you to come back to the committee during calendar year 2016 to give us an update on how these changes are affecting your office.

Mr BRETT — I will do that with pleasure. We are getting a lot busier.

Ms THOMSON — That is a good thing. All the best for the season. Merry Christmas.

Mr BRETT — Thank you very much. Same to everybody here.

Witness withdrew.