

# **TRANSCRIPT**

## **INTEGRITY AND OVERSIGHT COMMITTEE**

### **Performance of the Victorian Integrity Agencies 2021/22**

Melbourne – Monday 14 August 2023

#### **MEMBERS**

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Paul Mercurio

Rachel Payne

Jackson Taylor

Belinda Wilson

**WITNESSES**

Eamonn Moran PSM KC, Inspector,

Cathy Cato, Chief Executive Officer and General Counsel, and

Alison Lister, General Manager, Integrity Operations and Policy, Victorian Inspectorate.

**The CHAIR:** We resume this public hearing for the Integrity and Oversight Committee's review of the performance of the Victorian integrity agencies 2021/22. I welcome back the public gallery and those watching the broadcast. Let us quickly go through and introduce ourselves, starting with Ms Wilson.

**Belinda WILSON:** Hi, I am Belinda Wilson, the Member for Narre Warren North. Nice to see you all again.

**Paul MERCURIO:** Paul Mercurio, the Member for Hastings.

**Ryan BATCHELOR:** Ryan Batchelor, Member for the Southern Metropolitan Region.

**The CHAIR:** Tim Read, MP for Brunswick and Committee Chair.

**Kim WELLS:** Kim Wells, Deputy Chair and Member for Rowville.

**Jade BENHAM:** Jade Benham, Member for Mildura.

**The CHAIR:** And online –

**Jackson TAYLOR:** Jackson Taylor, Member for Bayswater.

**The CHAIR:** And Ms Rachel Payne MLC is an apology for today. Inspector, thank you for coming. I would like to welcome Cathy Cato, CEO and General Counsel; Mr Eamonn Moran, Inspector; and Ms Alison Lister, General Manager, Integrity Operations and Policy. Thank you all very much for coming. Before you give evidence there are some formal things I have to cover, so please bear with me.

Evidence taken by this committee is generally protected by parliamentary privilege. You will be protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, these comments will not be protected by privilege. Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check once it is available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

Mr Moran, do you have an opening statement?

**Eamonn MORAN:** Yes, thank you, Chair; just a reasonably short one, if I can. While the focus of this hearing is on the performance in 2021/22, that was a very different year from the year that has just finished. Gone now is the COVID landscape that so impacted our performance in 2021/22, and gone now too is the undesirable situation of having 50 per cent of our staff on fixed-term contracts, which was the case in that year. The performance audit was commenced in 2021/22. That audit was completed last year, and we are well advanced in implementing its recommendations. We are also well advanced in implementing all the recommendations made by this committee last year to enhance our already strong focus on witness welfare.

The overview of the year 2021/22 is in our annual report, so I will not use up time highlighting that, but there is one statistic I would like to highlight: in that year we received 860 notifications. These are notifications of the exercise of coercive power by the various agencies that we oversight. We actually reviewed 33 per cent of those notifications, and we decide what to review on a risk-based triage approach. So these are notifications, as I mentioned, about the exercise of coercive powers. These are decisions that impact the human rights of individuals – they are not just ordinary administrative decisions – and we only raise an issue with an agency if we detect a compliance issue. We believe that these notifications need to be dealt with in real time as they

impact the rights of individuals in ongoing investigations in a number of cases. And my experience tells me that it is less time-consuming for an agency if the agency is open to responding and not pushing back and questioning, ‘Well, why are you asking for that?’, and also if the agency can readily access the information or the documents that we are seeking. Our hope is that as we progress through the systemic thematic issues that we are raising that we will see improvements across the integrity system and therefore that the number of compliance issues will reduce and the burden on us and on the overseeing agency will accordingly reduce. But look, in the interest of time I will stop there, and with the rest of our team we would be very happy to answer your questions.

**The CHAIR:** Thanks, Inspector. I might start with the very final point you made. We have heard from witnesses today that the compulsory notification of the use of coercive powers generates a considerable amount of workload for the agencies. It is not so much, I think, the notification but then responding to queries and questions from your agency. Do you believe that it is essential that they notify all uses of coercive powers, or do you think that there might be some work that is sufficiently routine that could be triaged out that would not need to be notified?

**Eamonn MORAN:** Well, I mean, looking at the category of notifications that we get, they are about summonses that are issued by agencies requiring someone to come and attend and give evidence. They are recordings and transcripts of hearings that have happened. They are confidentiality notices, which of course impact the rights of people to say things and make comment and therefore infringe their rights under the Charter of Human Rights. So these are all important restrictions and powers that are being exercised.

As I mentioned, there are quite a lot that come in each year, and we do have to decide which ones we are going to review. Our legislation says that if we decide to review, there are a number of questions we have to ask, which are: ‘Was it a reasonable exercise of power? Did the exercise of power seem directed to the purpose of the investigation?’ Those are the questions we have, and we only raise compliance issues when we see compliance issues. And we believe that with the passage of time we can see improvements because you are raising issues, the point is taken on board and changes can be made. But I recognise that it can be burdensome; it is burdensome for us too. And I guess all I can do is encourage agencies to work with us, to work at improving the systems and the way they deal with the exercise of these powers, and it will be less burdensome for all of us.

**The CHAIR:** Thank you. Can I just clarify: I think you said 33 per cent of those notifications is what you review. So does that mean then that for two-thirds of those notifications there is no particular work generated for the agencies, that they just have to tell you and life moves on? And for the third that you do, your initial questions are, ‘What was the purpose?’ and ‘Was it related to the purpose?’ – not, I would have thought, particularly challenging questions.

**Eamonn MORAN:** Well, the thing will be that for an agency to decide to exercise the power to issue a confidentiality notice or issue a summons, there should be some background documents within the agency that say, ‘Well, this is why we are summoning that particular witness. This is why we want to use a confidentiality notice.’ So it is really just a matter, if we ask a question about that, of moving across that information to us. There is an initial report that we do get, which explains what they are doing. Some of them are more detailed than others. But yes, I think because our resources improved the following year, we reviewed a higher number of 53 per cent or something in the next year, but it is certainly not 100 per cent. And with the ones that we do not review, yes, there is no further impact on the agency, unless of course we receive a complaint about a particular matter, and then we would have to go back and look at it in any event.

**The CHAIR:** Yes. And on that last point, do you have any discretion about whether you investigate a complaint or not? My memory serves me that perhaps you do not, but perhaps you could explain.

**Eamonn MORAN:** Yes. If it is a public interest disclosure, if we get a public interest disclosure and it is reviewed and assessed as a public interest complaint, we have no discretion. We have to investigate. I mean, we get a large volume of complaints; the vast majority of those we do not formally investigate. There would be liaison with the complainant and there would be going back to the agency to get hold of some information, but it does not lead to an investigation. But the vast majority, if not all, of our investigations in the last couple of years have been public interest complaints and with no discretion.

**The CHAIR:** Okay. Thank you very much. Let us cross then to Mr Taylor online.

**Jackson TAYLOR:** Thank you very much, Chair, and thank you, everyone, for coming in today. My first question was: Inspector, I was just hoping you might be able to confirm, in the 2022/23 budget, the State Budget, which I know you have detailed to an extent in your annual report during the relevant period, just what was the funding increase provided to the Inspectorate?

**Eamonn MORAN:** In terms of percentage, it was – well, they gave us funding so that we were able to convert fixed-term appointments into ongoing appointments. Cathy, our CEO, may remember better than me the actual figure. We also had funding in 2022/23, some additional funding, for our oversight of the Office of the Special Investigator, which has not continued into this year. But perhaps we could ask Cathy.

**Cathy CATO:** Yes. Thanks for the question. I do not have the precise figure. We can take that on notice for you. But, yes, it was to enable us to convert staff to ongoing roles, and it was at least in part reflective of the base review that had been conducted to explain how much funding we needed across various areas.

**Jackson TAYLOR:** Thank you. And then just a follow-up question: Can I ask what difference this increase in funding has made to the work of the Inspectorate?

**Eamonn MORAN:** Well, I mean, I think a key difference is that you get a much better field of candidates if you have got an ongoing role that you can offer. We would only offer people six months, 12 months, and that is very limiting of the market. Not so many people want to walk away from what they are doing with no guarantee of continuity. We have found now that we have got ongoing that we can get a better field of candidates. We feel that we are now well set up, particularly in our complaints area, where we were very much operating with fixed-term appointees. We have now got a fixed structure of a manager of the complaints area, a senior complaints person and two complaints officers – so still a small team, only four, but very committed to the task.

**Jackson TAYLOR:** Thank you, Inspector.

**Cathy CATO:** I would just add to that, just very briefly, knowing how much funding we have moving forward outside of the money we have for employees has enabled us to do things like engaging independent experts to help with the welfare review and those expert consultants that are required on occasions.

**Jackson TAYLOR:** Thank you very much for that. And just one last question from me, which is two questions: What is IBAC's policy harmonisation project, and what, if any, engagement has the VI [Victorian Inspectorate] had with IBAC regarding this project?

**Eamonn MORAN:** Can I ask Cathy to respond?

**Cathy CATO:** Sure. My understanding of IBAC's policy harmonisation project is it was a project that they were working on in that 2021/22 financial year. It was working towards ensuring that the policies across their legal and their operational areas were harmonised so that they were more integrated, and they were working towards that. We have continued to engage with them throughout the last 12 months to get updates, and they have provided regular updates on progress and the various issues that have prevented them completing that project. I understand those policies are now sitting beneath a series of frameworks which they are working on, so those two, I understand, go hand in hand.

**Jackson TAYLOR:** Thank you. That is all from me, Chair. Thank you very much.

**The CHAIR:** Thank you. We will cross to Ms Benham.

**Jade BENHAM:** Thank you, Chair. Can you update the Committee on the VI's participation in its consultation associated with the Victorian Government's review of police oversight and also with the Royal Commission into the Management of Police Informants, the Lawyer X Royal Commission?

**Eamonn MORAN:** Well, certainly on the review of the police oversight, this has been an ongoing issue for a number of years. We did make a submission in 2022 when the Victorian Government were examining this area but also way before that for the [Victorian Parliament's IBAC] Committee, which Mr Wells was chairing, looking at police oversight. We did make a submission there, and we did appear before that committee. It is

something that we feel strongly about – that there should be adequate police oversight. We recognise all the difficulties involved. We are aware, for example, that IBAC statistics say that there is really only 2 per cent of matters that they can review because of their resourcing. I think I said some years ago when I first appeared before Mr Wells in the committee before this one that there has to be a category of complaint that must be looked at by IBAC and cannot be sent back. Last year of course we published a special report. It raised issues about – when a matter got referred back to police – issues of conflict of interest, which led to a very poor outcome for the complainant. The other one about the management of human sources – we did make a submission. We had talks with the Government when they were developing the legislation. As the legislation has turned out, we have got a very minor role in relation to that, only reviewing if the PIM [Public Interest Monitor] or IBAC exercise a power to direct police to do something. We review that, but I do not think it commences until September next year, so we have not really had the chance to assess how it is working.

**Jade BENHAM:** So with regard to police oversight then, can you enlighten the Committee – a lot of us being new members – on any recommendations moving forward?

**Cathy CATO:** Sure. I can just take you through. There were four recommendations that we made in the special report that we tabled last October, and I am pleased to say that those recommendations are well advanced in terms of implementation by IBAC. Those are across a range of issues. The first is that we recommended that IBAC ensure that it has really clear policies and procedures for giving consideration to its referrals. So it must give consideration to referrals, it must have written reasons when it is referring and it must consider whether or not to withdraw referrals that go to the police – What are the particular circumstances where they might withdraw those as well? But the primary thing that they have done a lot of work on is really when the staff that are doing the review of the complaint about police are recommending to the senior officers at IBAC that it gets referred off to the police, the key thing that they must do now is consider certain factors, and they are the types of factors that we have raised with IBAC that are problems – things like the risk that there may be to the witness or whether or not there might be a systemic corruption issue rather than just a smaller issue, so things like that. So it is really pleasing to see in a more recent complaint that IBAC responded to – it was not the same factual situation as the Emma report but did relate to police misconduct in the domestic violence setting – that they really have taken on board the recommendations and put in place significant changes to make sure that all of those conditions are starting to be put in place.

**Jade BENHAM:** Thank you. That is all from me.

**The CHAIR:** All right. Thanks, Ms Benham. Let us go to Mr Mercurio.

**Paul MERCURIO:** Thank you. How does the Inspectorate monitor and record progress in agency implementation of your own recommendations?

**Eamonn MORAN:** Obviously we enter into our case management system the recommendations that we make, but [we are] in the process of putting together a register now to keep a track of them, ones that we think have got some more immediate impact we will prioritise. For example, issues like how you deal with referrals back to the police. Others, if you are looking at a review of policies and procedures, they can take time to put in place, and we recognise that. But we do keep track of them and do liaise with the agencies to make sure that they are implemented. I should also say of course that we do set a target of 75 per cent of recommendations being accepted, so we recognise that on occasion we will make recommendations that agencies are not ready to accept. What we then do is seek to influence over the ensuing period to get acceptance of those recommendations.

**Paul MERCURIO:** Okay. Thank you. My second question: What are the key areas of improvement in how integrity bodies respond to complaints?

**Eamonn MORAN:** Can I ask Alison to deal with that?

**Alison LISTER:** Yes, certainly. You were talking about, just to clarify, complaints we receive about other integrity agencies' handling of complaints?

**Paul MERCURIO:** Yes.

**Alison LISTER:** If I can just build on Cathy's response just a moment ago, we have seen a real shift. The example of the complaint that Cathy was talking about in relation to engagement with the complainant, explaining what steps are going to be taken to address their concerns and, also, in some cases, responding in a way that shows what the agency is prepared to do to prevent the same situation occurring again in the future I think is a stand-out for us as well. I think providing complainants with reasons for decisions is something really helpful that agencies can do, and we certainly do that with our complainants – so really explaining how you got to the decision about your assessment of their complaint.

**Paul MERCURIO:** Excellent. That is enough.

**The CHAIR:** Thanks, Mr Mercurio. Mr Wells.

**Kim WELLS:** Thanks, Chair. Inspector, just following on from where the Chair opened up his questioning – the issue of routine notifications and the impact they may have on other integrity agencies – are you satisfied that the legislation is about right, the way it is operating now?

**Eamonn MORAN:** I mean, like all statutory bodies, we have got to operate within the legislation. But I do believe, as I said at the beginning, these are significant powers that are being exercised, and it is important to understand that this is the exercise of coercive powers, not just an administrative decision that is made within the body. But, yes, I am satisfied that it is about right. It should not be a major burden. When you are already putting together material to justify the exercise of the power, all you are now doing is notifying it to the Victorian Inspectorate. As I say, it is not every one that would be reviewed; it is only ones that we look at and think, 'Let's have a look at this,' because it may be some new investigator is involved or some other factor where we may think, 'Yes, let's have a closer look.'

**Kim WELLS:** So if there is an agency that is struggling to perform your request due to budgeting, then the answer would be that the agency should apply to the government for further budgeting –

**Eamonn MORAN:** Absolutely, yes.

**Kim WELLS:** to be able to fulfil your requirements.

**Eamonn MORAN:** That is my view – either allocating extra resources within the agency, but if they are not there, then certainly seek funding from government.

**Kim WELLS:** We heard from IBAC that the police have now three categories when it comes to police complaints. It has gone from 13 to three. You mentioned in answer to one of the earlier questions that there should be a category where IBAC must investigate. Are you suggesting that maybe there needs to be a fourth category? So it is 1, 2, 3, 4, but, if it is number 1, then IBAC have no choice but to investigate.

**Eamonn MORAN:** I think that is right. If it involves serious police misconduct – and of course that is a term that would need to be defined if we were doing this – then my view would be that IBAC should investigate. If it is a minor issue about police attendance or something to do with just performance, then that certainly should go back to the police. And then in the middle there is a mixed category. But it really all depends. I mean, I very much appreciate IBAC has got limited resources. It is an anti-corruption body as well as a police oversight body; therefore it has really got to balance how it manages that.

**Kim WELLS:** So if there were, hypothetically, a fourth category, where IBAC must investigate if it is number 1 or number 4, that would mean probably the current 2 per cent of IBAC's investigations into police complaints would increase significantly.

**Eamonn MORAN:** I guess it depends how you define serious police misconduct, but yes, I would hope it would increase. Two per cent is extraordinarily low. The complaints that come to us are people who have had an issue with the police, they have gone to IBAC and they have been dissatisfied because IBAC have said, 'We're not investigating that, and we're not referring it,' and therefore they feel there is nowhere else to go, so they come to us. But we understand the resource implications on IBAC, and I would certainly hope it would get above that figure of 2 per cent.

**Kim WELLS:** Does VI have direct access into the police complaints system?

**Eamonn MORAN:** No, we do not. We get, as mentioned, notifications from IBAC, but we do not get any notifications from the police. We have got no access.

**Kim WELLS:** But you can request that by law?

**Eamonn MORAN:** If there was a complaint. If we had a complaint and we were following up with IBAC, they may be able to get something from police in relation to that complaints area. There are other areas with police that we deal with, like inspecting exercise of power about surveillance devices, TI [telecommunication interception] intercepts, et cetera, where we do have power to go and look at registers and ask questions, but no direct dealing otherwise.

**The CHAIR:** Half a minute.

**Kim WELLS:** Half a minute. Last question: If you are investigating an IBAC investigation because there has been a complaint, do you rely on file notes by the IBAC investigators or do you actually interview the IBAC investigators?

**Eamonn MORAN:** In a lot of cases we will just ask for the file if it is a complaint. As I mentioned, in the vast majority of cases it does not lead to an investigation. In a lot of cases we will ask just to review the file, and IBAC will then provide us the file. We look through it. If we have got follow-up questions, we can ask individuals at IBAC, but generally it is really only in our investigation that we would be questioning individual IBAC officers.

**Kim WELLS:** Thanks.

**The CHAIR:** All right. Thanks, Mr Wells. Let us go to Ms Wilson.

**Belinda WILSON:** Thank you. Can you give the Committee an update on the progress and outcome of the review of the *Victorian Inspectorate Regulations 2013*, including the agency's involvement in that review?

**Eamonn MORAN:** Cathy?

**Cathy CATO:** Sure. Yes, no problem. In terms of the regulations, the regulations from 2013 sunsetted in February 2023, so there was a review undertaken. The Department of Justice undertook that on behalf of Government, and they engaged with us in relation to that. The outcome was a new set of regulations in 2023; they commenced on 4 February. A couple of the changes: prescribed support services are now included in the regulations, which is really helpful for people that are subject to a confidentiality notice. They now have a greater group of helplines that they can go to, so they can get crisis support, suicide prevention and mental health and wellbeing support. So that was an important improvement. There was a more technical change which allowed the Victorian Equal Opportunity and Human Rights Commission to be able to consult with the VI to ensure that they, in the work they are doing, did not cut across Victorian Inspectorate investigations. And then there were just continued equivalent provisions in relation to coercive questioning that have gone from one set of regulations to the other. So not big changes, but that one particularly about confidentiality notices was a small change with a big impact for witnesses.

**Belinda WILSON:** Yes, definitely – absolutely. If you receive a pattern of complaints, so if you have received multiple complaints about a specific process or about a specific agency, how does this shape your response back to them?

**Eamonn MORAN:** Alison, would you –

**Alison LISTER:** Yes, certainly. Where we do receive, I guess, consistent themes in complaints, we certainly engage. I have regular meetings with my counterpart at IBAC. We meet fortnightly and we discuss complaints, so where we are seeing the same sorts of things – they might be small things, they might be delays. The agency might talk to me about having a backlog or when they expect that to be addressed. But when we see other things, like we have potentially a run of complaints about maybe the conduct of an officer or lack of procedural fairness, with those sorts of things we can engage in conversations around, 'Well, look, we are seeing this, and can we have a look at your policies?' And often we could even do a monitoring project, which has happened in the past, which really does look at things thematically, and then we can provide observations, feedback and recommendations for changes. Really, I think there are a few examples, even within the annual report for this

reporting period, that demonstrate that there have been thematic things and that as a result policies and procedures have been updated.

**Belinda WILSON:** Great. Thank you.

**The CHAIR:** Thanks, Ms Wilson. Mr Batchelor.

**Ryan BATCHELOR:** Thank you – last up. I am just going to go briefly back to the start of your presentation, and you talked about these notifications. This has obviously been the subject of a bit of conversation over the course of the day. You mentioned there was a sort of set of risk factors that you use to triage these notifications, so it is not like you are looking at all of them. You are taking a sort of risk-based approach in saying, ‘Well, some clearly are lower risk and others are higher risk.’ What are some of those factors that go into that triage of the oversight?

**Alison LISTER:** Yes, happy to. I think Eamonn did mention a couple of things, like if there were powers being exercised or a role being done by someone who had not done it before at one of the agencies. But also we think about whether there have been any welfare concerns about the witness, and that would mean that that would be a higher risk and we would prioritise that for review. There are other things: whether or not the person is legally represented, and also whether or not there are other issues that might make it difficult if we are talking about examinations – difficult for the witness. So do they have a disability? Do they have a support person? Things like that. So there are a range of factors. Did you want to add to it, Cathy?

**Cathy CATO:** A couple of other risk areas: a key one being if there is a notification of an upcoming public hearing. That is sort of the biggest risk of all to those that are going to be impacted by that. And then other risk factors might include if there is a new agency or a new officer within an agency who is going to be exercising the power, so someone who has not conducted an examination before, like a new Deputy Commissioner, or something like that. It is important that we look at how they go about their role.

**Ryan BATCHELOR:** Can you just unpack for me a little bit the risk that you think is associated with public hearings?

**Cathy CATO:** Would you like me to go? Do you want to go?

**Eamonn MORAN:** Perhaps I could just start. Obviously public hearings have got a real risk for the reputation of anyone who is appearing before those hearings. No matter what the finding is, it can lead to a consequence for them, and we have had complaints from people who have said, ‘I’ve appeared in the public hearing, and this now has happened to me: my bank is refusing to deal with me, my employer is terminating my employment.’ These are consequences. So you have got to be very careful. The legislation provides certain criteria that IBAC must meet to hold a public hearing, and they have to provide a report to the Victorian Inspectorate on those criteria. So it is important for us to look at this issue of: Is it in the public interest? Will there be no unreasonable damage to the reputation of a person or their safety or welfare? Is it really a case of serious corrupt conduct or serious police misconduct? Currently there is also an additional factor of: Are there exceptional circumstances? So there are a range of things that we look at, and we have been dealing with IBAC, talking to them about, ‘We want the material that will make us satisfied that those criteria are met in this case.’ And it can be an exchange. I think we have reported in the current year of that exchange that we will have, and we may seek further additions to the report, because we do recognise that it does have a real human impact.

**Ryan BATCHELOR:** It is obviously a sensitive area that you are very attuned to – to make sure that we get the nature of public examinations right for the protection of people who are involved. Fair enough.

The last question I wanted to reflect on: I asked the Ombudsman a question about overseers and the overseen and the relationship between them and some of the ways that that relationship can be a productive one. I just wondered if you had any reflections, in your experience, on what the best attitude to oversight is for bodies who are being oversighted.

**Eamonn MORAN:** I think obviously the best way about it is trying to put it in a cooperative way: to work with an agency to point out issues that are troubling you and your review of it and to listen to their explanations for it. So it really is a bit of give and take. But you find that on occasions – I guess no-one likes oversight. Of



course the bodies that we deal with are themselves oversight bodies, and therefore they have experience, whether it is the Ombudsman dealing with departments. She will have experience in dealing with them and how they feel about her oversight, and of course the Ombudsman, I am sure, wants those agencies to cooperate just as much. So we really just want the bodies that we are overseeing to treat us in the same way as they would want to be treated by others.

**Ryan BATCHELOR:** Thanks very much.

**The CHAIR:** Perfect timing. On that note I would like to thank Ms Cato, Mr Moran and Ms Lister for appearing and answering all our questions. Thank you very much. I declare the public hearing closed.

**Committee adjourned.**