

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED HEARINGS

Melbourne — 24 October 2016

Members

Mr Kim Wells — Chair

Ms 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: Dr S. James

Administrative Officer: Ms G. Bourke

Witnesses

Mr S. O'Bryan QC, Commissioner,

Mr A. Maclean, Chief Executive Officer, and

Ms C. Howlett, Director Prevention and Communication, Independent Broad-based Anti-corruption Commission

The CHAIR—We welcome Stephen O'Bryan, Commissioner for IBAC. We also welcome Alistair and Christine. This will be in two parts. The first part will be about the IBAC annual report and the second part will be about the Protected Disclosure Act. We have sent you a list of the questions, Stephen, so we were wondering whether you could step us through this. I have in particular an addition to question No. 8 and it results from us being overseas and other bodies doing surveys on the awareness of people in the Northern Ireland community or the Hong Kong community about what happens if there is an issue, who do they go to, and we would be keen to know what your plans are or what you have done in regard to the community's awareness of what you do. Stephen, if I could hand over to you.

Mr O'BRYAN—Good morning. If it is convenient, I can do what I did last time and—

The CHAIR—Sorry. I have a statement to do, which we did not do overseas; I have not done this for a while. Welcome to the closed hearing of the IBACC, the Independent Broad-based Anti-corruption Committee. All evidence taken in 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, provisions of reciprocal legislation in other Australian states and territories. This hearing is closed to the public; however, it will be transcribed by Hansard and the transcript will be published when the committee tables its report in parliament. 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 O'BRYAN—Yes.

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 *Hansard* transcript at the earliest opportunity so you can correct it as appropriate. I would now like to invite you to make a verbal submission and we will ask you questions after that. Take 2!

Mr O'BRYAN—Thank you, Mr Chairman. Good morning, members of the committee. If it is convenient, I can do what I did last time and quickly read the questions and provide the answers for the transcript. The first question is re our annual report. Our annual report 2015-16 notes that since 1 July this year, following changes to IBAC's governing legislation, IBAC's ability to detect and investigate public sector corruption and misconduct has improved.

I am asked to elaborate on some of these improvements. Key changes that commenced on 1 July 2016 include the introduction of 'misconduct in public office', broader definition of corruption and lower threshold to investigate corrupt conduct, and introduction of preliminary inquiries such that IBAC now has formal power to conduct a preliminary inquiry to determine whether to dismiss, refer or investigate a complaint. Further, from 1 December 2016, heads of public sector bodies will be obligated to notify IBAC if they suspect corruption is occurring.

These changes mean we can now investigate a much broader range of corruption allegations. We no longer need to limit our investigations to only those that would be proved beyond reasonable doubt at trial. We now have a lower threshold to investigate corrupt conduct—we now have the discretion to investigate 'corrupt conduct' rather than 'serious corrupt conduct' as required under the original legislation.

The changes should enable IBAC to investigate a broader range of allegations, as well as gain a greater understanding of corruption and misconduct trends and patterns across the Victorian public sector, which we consider will assist in informing prevention efforts.

The second question is as follows: in the report I expressed the need for IBAC's governing legislation to be less prescriptive. I am asked to elaborate on this, and how it compares with interstate experience. As I said in the annual report, as a start-up body such as IBAC matures, it is appropriate that it is able to operate with a sufficient degree of flexibility in order to allocate resources where they can be most effectively utilised,

as well as to reduce risks associated with legislation that is unduly prescriptive, such as ineffective process driven activity and court challenges.

In our special report on IBAC's first year of operation, tabled in April 2014, I outlined a number of examples of what I would describe as prescriptive legislation, including elements of our governing legislation that restricted the performance of our investigative functions. I reflected that we were taking a practical approach to the implementation of new and complex legislation. Most of the issues in that report were subsequently addressed in the Stronger System Act.

Outstanding concerns include the operation of the Protected Disclosure Act 2012, which apparently excludes persons from consideration for protected disclosure status where they first make a disclosure to another public sector entity and where IBAC is not notified under the Protected Disclosure Act by an entity that is prescribed for the purpose of receiving such a disclosure. Regarding interstate counterpart legislation, and as I read it, it is generally less prescriptive around matters that can be investigated.

The third question is: in the report I referred to IBAC's aim of taking a more strategic, intelligence based approach rather than being a reactive, complaints driven body. I am asked to explain this view more fully. IBAC has been established with powers and functions akin to a standing royal commission. As the committee is aware, our core legislated objects are to expose and prevent corruption and misconduct. While the receipt and assessment of complaints alleging corrupt conduct is an important way of detecting such wrongdoing, given the inherently clandestine nature of corruption, it is equally important that we take a proactive approach to its identification and exposure.

Accordingly, IBAC has focused on developing sound strategic intelligence and research capabilities to build our understanding of systemic corruption and misconduct issues and risks, and to inform our expository and prevention work. We undertake a broad, strategic assessment every 12 to 18 months to identify the most significant or emerging corruption and misconduct risks across our police and public sector jurisdictions. The work draws on information from a range of sources, including a review of relevant literature and papers produced by other agencies, such as the Australian Crime and Intelligence Commission, and other anti-corruption commissions; analysis of complaints and notifications; and consultations with internal and external stakeholders, including the Victorian Ombudsman and the Victorian Auditor-General. From this broad environmental scan and assessment, issues are identified for closer analysis and expository work. For example, from our first strategic assessment, IBAC identified that organised crime groups are grooming

Victorian public servants to access information, decision-making processes and systems. We subsequently conducted more detailed research on this issue and published a report on organised crime cultivation of public servants in September 2015, along with resources for public sector agencies and employees to alert them to the risks and assist in taking preventative action.

Fourth question: the annual report notes that there is scope for Victorian integrity agencies to work together better. I am asked for my thoughts on how this might be achieved. Some of the amendments contained in the Stronger System Act intend to ensure that IBAC, the Ombudsman and the Auditor-General and other integrity

and accountability bodies work together more effectively—for example, by providing the Ombudsman with greater flexibility in handling protected disclosure complaints referred by IBAC. However, there is greater potential for IBAC, the Auditor-General and the Ombudsman, as the key Victorian integrity agencies, to work more effectively together.

In May this year, we made a joint submission as part of the government's review of Victoria's integrity system. We indicated there were four key areas where a greater degree of consistency between the legislation governing the three agencies would improve the way we work together: there should be a consistent definition of the 'public' sector, to encompass all public bodies, all bodies controlled by the state and all services funded by public money; there should be a consistent set of principles that apply to the three agencies' capacity to gather information, and we should be able to share information consistently and

without unnecessary restrictions; it would be beneficial to ensure consistency in provisions governing the appointment, tenure, immunity, removal and remuneration of our roles; consistent oversight and accountability arrangements should reflect our status as independent officers of parliament.

Fifth question: I am asked whether IBAC focus-tests its website and other information provided for the public.

I can advise that IBAC does focus-test its website and also conducts other focus group testing. Website user acceptance testing was undertaken as part of IBAC's website redevelopment in 2015. IBAC continually monitors user behaviour to understand and improve the way visitors are accessing our information and resources online. We have also worked with a professional translation service to ensure people of culturally and linguistically diverse communities can access information about IBAC, including how to make a complaint.

Question 6: it has been suggested that a whistleblower hotline might be useful in addition to IBAC's current services, both in giving people information about how and where to proceed with their complaint/disclosure, and in getting support such as counselling. One example is the UK's Public Concern at Work hotline, another is Victoria Legal Aid's Law Helpline. I am asked if a whistleblower hotline is something IBAC would consider of value.

We are open to the idea of a hotline service to assist people with queries arising under the Protected Disclosure Act, including: helping people understand their options if they believe they have information which could be the subject of a protected disclosure complaint; providing information about how to make a protected disclosure, including the entities to which disclosures must be made; and advising how IBAC assesses notifications, and the protections applying to people who make disclosures. I can also advise that IBAC has established a role of principal adviser for protected disclosures. This new position will strengthen our ability to support the protected disclosure regime, including how best to support people who want to make a protected disclosure.

Question 7: the committee understands that in New South Wales, sector specific policies and guidance on whistleblowing are provided to, for example, local councils and Aboriginal land councils. I am asked whether IBAC has any plans to provide sector specific guidance. IBAC currently provides two key guidance materials on protected disclosure management—namely, guidelines for making and handling protected disclosures and guidelines for protected disclosure welfare management. IBAC has also developed other resources, including fact sheets, checklists and podcasts designed to provide guidance to key stakeholders. While there are currently no specific plans in place to provide sector specific guidance, IBAC is continually looking at ways to improve its support to stakeholders who implement the protected disclosure legislation and those who might benefit from its protections.

We run an annual forum for protected disclosure coordinators across state and local government. Earlier this year we canvassed their views on how the level of support could be improved and we are currently implementing a range of activities, including enhancing the range and scope of support resources, including through digital and face-to-face media; establishing a protected disclosure community of practice; reviewing and updating the e-learning module for protected disclosure coordinators.

Mr O'BRIEN—Mr O'Bryan, I am sure the chair would be happy for short questions. Perhaps, apart from anything else, it might give you a short break.

Mr O'BRYAN—Yes.

Mr O'BRIEN—On that question, is there a regular meeting with the ICACs and the like in other states? Do you have any informal or formal interaction with them?

Mr O'BRYAN—I do not think we have regular interstate meetings, but we do have informal interaction. Ms Howlett may be able to expand, Mr O'Brien.

Ms HOWLETT—There is currently a research project being conducted by A. J. Brown and that is being co-funded nationally by—I am not sure if it is all anti-corruption commissions, but certainly the key ones, including New South Wales Ombudsman, and so we have certainly been in regular consultation with them around that research.

Mr O'BRIEN—And I suppose you are looking at what they are doing fairly regularly anyway, to see whether you have got any gaps or—

Mr O'BRYAN—We do. We all keep an eye on each other.

Ms HOWLETT—And we do share resources as well, so certainly where there is an opportunity to leverage others' resources. Likewise, they certainly request copies of publications and materials that we are producing as well.

Mr O'BRYAN—There is an annual meeting of heads, of commissioners. The last one was in May. In fact, I am hosting the next one in Melbourne. In about February next I think we are having it. In fact, we have it about every nine months. There have been meetings of CEOs.

Mr MACLEAN—Really on an as-needs basis.

Mr O'BRYAN—An as-needs basis, and Ms Howlett is often in touch with our interstate counterparts on a range of strategic and prevention and education issues.

Mr MACLEAN—For example, with mandatory notification being introduced on 1 December, we went and talked to Queensland and New South Wales and WA. Those three jurisdictions have mandatory notification.

Mr O'BRIEN—Already have it, yes.

Mr MACLEAN—So we talked about their experience and what to expect and how they have structured it and serviced that kind of reporting obligation and what it meant going from discretionary reporting to mandatory. How big was the additional load? What did it mean for their officers et cetera? So those kinds of conversations are quite common, but it is really on an as-needs, kind of informal basis. We have consciously avoided setting up lots of structures and—

Mr O'BRIEN—Yes. Not necessary. Thank you.

Mr O'BRYAN—Question 8: I am asked how well known in the community are IBAC and its activities; also, if IBAC has carried out any surveys to measure the community's perceptions of its work. Since our establishment, IBAC has undertaken research projects assessing community and public sector perceptions of corruption in Victoria.

In 2013 we published research conducted in our early establishment phase with the Australian National University on community and public sector perceptions of corruption in Victoria. In 2015 we conducted further focused research into community perceptions of corruption which provided baseline measures around public awareness of IBAC. Not surprisingly, it showed limited community awareness of IBAC, as the survey was conducted prior to our Operation Ord public hearings. Earlier this year we also released results of a survey on perceptions of corruption in public procurement amongst suppliers and prospective suppliers to Victorian public sector organisations. Reports on all these projects are available on our website.

IBAC is currently developing a further research project to gauge perceptions of corruption and awareness of IBAC across four key stakeholder groups: community, state government, local government and Victoria Police. We naturally hope to see a shift in awareness levels of IBAC, given our major investigations, research and prevention efforts over the last 18 months. We plan to report on the findings of this research in the first half of 2017.

Anything more detailed that you—

The CHAIR—The advantage of Northern Ireland and Hong Kong is that they have been set up for decades, so people are aware of it. You get in the taxi, and a fair comment would be that, if they had an issue about police, they knew exactly where to go: the Police Ombudsman of Northern Ireland. I guess it has been created out of adversity, like Hong Kong, because of the level of corruption there. So we are sort of mindful of a performance indicator that may be looked at as part of our work on a future project. If someone in Victoria was going to report police misconduct or severe or serious corruption, where would they go? It is knowing how many in the community would actually know, 'I go to IBAC.' That is the link that we are trying to establish.

Obviously when you are doing an investigation into Ballarat, awareness is up. When there is no investigation into Ballarat, I suspect that it falls away. So it is that sort of work that we are looking at, to know that awareness in the community of: what do they do? Do they go to IBAC or is there something else on the website that they go to which links back to IBAC to be able to make the report?

Ms HOWLETT—That is something that we are very conscious of. It is important that it is an integrity system in Victoria. So whilst IBAC is naturally the sort of pointiest end of that system, in terms of accessibility of course it is important that people do know they can also complain to their local police. There have got to be different points of entry rather than just knowing that it is all about IBAC, which is of course very important and dear to our hearts and something that we are obviously investing a lot of time and effort into in terms of our research.

We are also working on a campaign. We are proposing to launch the first tranche of it in December and then follow up again next year, which is again really about raising awareness about corruption, the impacts of corruption and why it is important to report it, to take action, to speak up; again not necessarily all about raising awareness of IBAC. Whilst that is a secondary aim and is important, the primary aim is to make sure that people understand what corruption is, what the impacts of it are and why it is important to speak up, whether that is, if you are a public servant, speaking to your manager or someone else that you trust or knowing that IBAC is also there, and it is important to be able to report to us and to feel confident that you know what the protections are. The protected disclosures regime, for example, ensures that if you do make a complaint, it will be taken seriously, it will be assessed, and there are potentially those sorts of protections available. So it is about creating a reporting culture.

Mr RAMSAY—In relation to the campaign, what sort of mediums are you going to be using? I notice that in some of the countries you visited, they use TV and a whole range of mediums; in relation to corruption, not the agency itself.

Ms HOWLETT—We will not be using TV, consistent with government advertising policy in Victoria. TV is not included. However, we will certainly be using radio, as well as digital channels.

Ms SYMES—While you were talking before, I googled 'whistleblower Victoria', and IBAC comes up at No. 3. In a Google sort of world I suspect that that would be a lot of people's entry point. Do you have any idea what people are searching for to find you? I put in 'whistleblower'. Is that your experience of how people are finding you?

Ms HOWLETT—Yes, certainly. That is how most people in this day and age would be accessing information. They would be, as you say, using a search engine. We are really conscious of that as well in terms of our digital strategy; that we have to make sure that we are maximising the hits.

The CHAIR—That is an important point. If Joe Blow is out in Scoresby wanting to report something and he puts in 'whistleblower' and IBAC comes up at No. 3, then you think, 'Okay, the bloke in Scoresby is thinking IBAC is probably not his first port of call.'

Ms SYMES—The other ones are like legislation and stuff, though.

The CHAIR—Yes, okay.

Mr O'BRIEN—A subject of the last meeting in the context of 'protected disclosure' was whether it is the best terminology to be using. When you google 'whistleblower', as you say, I think IBAC was third and fifth and sixth or something, but when you google 'protected disclosure', all you get are the acts. That is another question we might come to later about the terminology.

The CHAIR—Yes, in the second part we will probably need to raise that issue.

Mr O'BRYAN—As a start-up body we have tried to take steady incremental steps in this area. One thing that has pleased me and us a body is that in our first couple of years on media, whenever IBAC was mentioned they had to go on to explain our full name to make it clear to the broader public who the heck they were talking about. Since pretty much after Ord, and Ballarat as well, you often hear on the media 'IBAC' without any explanation, as though the public should know. I think that is an important development in our awareness efforts, but obviously there is a lot more work to be done around all of that.

You have mentioned already, Mr Chairman, Northern Ireland. With its political background to all of that, there was awareness from day one about where you go to complain about the police, with about half the community at the time having no trust in the then Royal Ulster Police.

The CHAIR—Absolutely, yes.

Mr O'BRYAN—So it is not surprising that there has been from the word go a very high community perception of where you go and what you do in relation to police. Here it is very different of course, so we have had to steadily get our messages out there. I must say I have been banging on about this for a little while in some public utterances, but we really feel that the occasional public hearing, when it is important, is perhaps our most powerful tool in getting the message out as to who we are and what we are here for.

Question 9: in the annual report it is noted that IBAC 'assesses all police complaints and retains the most serious or systemic matters that we have the capacity to handle for direct investigation'. The report also observes that IBAC found that 36 per cent of police investigations were deficient. With this fact in mind, how many cases would IBAC directly investigate if it had the capacity instead of referring them back to Victoria Police?

As noted in our annual report, IBAC assesses the majority of police complaints as appropriate for investigation by Victoria Police for the following reasons. It is important that police retain responsibility for dealing with most complaints, particularly customer service and behaviour related complaints, as well as many misconduct matters. It is appropriate that police managers address performance issues and lower level misconduct, ideally to contribute to staff development and better performance. Logistically, in conducting complaint investigations, Victoria Police has the advantage of immediate access to information, and an expert and current knowledge of its systems, processes and people. For example, it can access information such as work rosters, emails and running sheets more quickly than IBAC. As highlighted in the annual report, IBAC conducts reviews of selected matters referred to Victoria Police. We conducted 96 such reviews in 2015-16. As the committee's question notes, we found deficiencies in 36 per cent of those reviews, ranging from a failure to comply with policy, to conflicts of interest regarding the choice of investigator. Such matters are nevertheless considered appropriately referred.

In the period between 1 July 2015 and 21 June 2016, Victoria Police recorded a total of 2,023 complaint files. Professional Standards Command referred 91 per cent of these files to its regions, commands and departments for investigation. During the same period, PSC completed 150 complaint files. Noting that PSC focuses on investigating the most serious complaints and allegations, it has a total full-time equivalent staff of approximately 200, about 80 per cent of which are sworn officers, which provides an indication of the resources it requires to investigate complaints.

By referring the majority of complaints to Victoria Police for action, IBAC is able to focus on investigating matters which primarily involve systemic, serious and/or sensitive issues. Since our establishment, IBAC has conducted 71 investigations of which just under half concerned allegations against Victoria Police officers. IBAC's focus on serious and/or systemic matters is an appropriate use of our significant powers, as well as our resources.

Mr O'BRIEN—Chair, could I just ask a question there. When you talk about 36 per cent deficient, so much so that they should have been done again, or are they minor—as you mentioned—policy issues? How serious do you define the deficiencies?

Mr O'BRYAN—Certainly some are minor. Most of them are in the middle range and, as I say, sometimes we have seen that an investigator in the region to which it is referred might be too close to the action that is being investigated and we have raised that as a concern. We cannot force police to act on that. It is our review. We make a recommendation and the recommendation in that sort of case could be that they should be reviewing the investigation to see whether conflict got in the way of an appropriate investigation, rather than just say, 'Do it again.' That is normally what would happen and normally at PSC level we would expect them to review that and have a good look at how it was investigated and whether there were any concerns.

Mr O'BRIEN—Just to clarify, did you add after that that, notwithstanding deficiencies, in most cases it was still appropriate that police did the investigation?

Mr O'BRYAN—Yes. They are all matters that I think were appropriately referred, and benefited from us reviewing them and drawing them to police's attention—to PSC's attention, because these are normally done on behalf of PSC by the regions. That is normally what has happened. Occasionally we will review one that PSC itself does, but more often, because the bulk of PSC's stuff is on-referred, it means the bulk of our reviews will be about on-referred matters. That is a function that we actually feel we have got the resources to increase in the coming couple of financial years and we are hoping to be able to do a significantly larger number of reviews than we did in the last financial year. I do not want to put a figure on it and have an expectation created, but we are looking to do significantly more of them. They are very labour intensive. Some of them take a couple of members of our experienced personnel considerable time, to go over a police file and look at it having regard to about a dozen or so objective considerations. So, we look at it objectively in terms of things like: is there any conflict of interest in those involved in the investigation? That is a typical one. And have they properly looked at human rights charter issues et cetera? Christine?

Ms HOWLETT—I just wanted to add—

Mr O'BRYAN—About the audit.

Ms HOWLETT—Yes, and the background. Do you want to—go for it, Alistair.

Mr MACLEAN—As a complement, if you like, to reviewing single allegations or incidences of alleged misconduct or investigations of that conduct by the police, we also recently conducted an audit of the manner in which PSC has referred matters to the regions, and the regions' handling of those referrals, so there was a broader audit of some 350 referrals by PSC of matters to the regions and the extent to which the regions adhered, if you like, to a whole range of standards for the conduct of those investigations. This reflected some concerns especially around conflict of interest. That was the biggest issue, where a matter is referred to Moe to handle, for example, and then the potential for conflicts of interest in the assignment of that matter—

Mr O'BRIEN—Is it the practice of PSC or the police force generally, though, to refer an investigation into Moe to someone from Ballarat to look at, or—

Ms HOWLETT—No, that is not the practice in Victoria.

Mr O'BRIEN—So someone from Moe will look at Moe, or that region?

Ms HOWLETT—Potentially. That is right.

The CHAIR—So you do not have the power to say, 'We do not want this particular regional investigator investigating this particular case because of past conflict of interest'?

Ms HOWLETT—We can certainly give that advice.

Mr O'BRYAN—We do and have.

Ms HOWLETT—We do and have, and if that advice is coming from IBAC then you would expect that it is generally accepted, if we become aware of that. So, with the audits, as well as having just completed an audit of handling of complaints at regional level, we are just commencing scoping up two further audits, one looking at the way Victoria Police manages what they refer to as C1-8 files, which are critical incident and oversight files, including deaths in custody, and in addition to that we are also going to conduct an audit of the way PSC has investigated certain files. So, as well as doing those focused reviews on how individual matters have been investigated, we are also doing these broader audits to look at handling and systems overall.

Ms THOMSON—What is the time line of those two audits?

Ms HOWLETT—Calendar year 2017.

Ms SYMES—Did you say that PSC refer category 1 incidents to regional level? No?

Ms HOWLETT—No. So, three audits, but one has been completed, which is how the regions have handled complaints. We published that a couple of months ago, and we are just commencing work on planning two further audits, one on what are called C1-8 files, which are oversight files or critical incidents, how they have been handled, and in addition to that, looking at how PSC has handled a selection of matters.

Ms THOMSON—Have the police responded to the first report which has now been published?

Ms HOWLETT—Yes, positively, and have accepted our findings and recommendations. We will monitor their implementation and we will publish progress reports on that so that it is transparent.

Mr O'BRYAN—Fortunately, in the planning of the audits, Ken Lay, when he was chief commissioner, was very supportive of it and that support has so far carried through with Graham Ashton. It is obviously important that the chief commissioner of the day supports these sorts of things, because we also need to be able to get access and go in and do it in a constructive, positive environment rather than a sort of negative environment. But we did have heading up our first audit Danye Maloney, who is a former assistant commissioner of police, who was, as I understand it, very well regarded in the police force.

Mr MACLEAN—He advised us. He did not head it up.

Mr O'BRYAN—He was on site.

Mr MACLEAN—Yes.

Mr O'BRYAN—He was a consultant.

Ms HOWLETT—He provided expert advice, particularly for my staff conducting those types of audits. Obviously we wanted that real-world perspective, as well, from a very experienced police investigator, to just make sure we were not at risk of being too arm's-length and taking maybe a bit of an ivory tower perspective. But certainly Danye really helped in reality-checking and validating, as well as communicating. We did a lot of consultation with police at regional level, so again it gave it that additional credibility.

Mr O'BRYAN—He was our head consultant.

The CHAIR—I am mindful of the time. So, Commissioner, rather than read the questions, just 'Question 10' and we'll give Hansard a list of the questions, if that is going to assist.

Mr O'BRYAN—Question 10: has IBAC produced any guidelines or a publication explaining in plain language how to make a complaint about police?

IBAC has a dedicated webpage entitled 'What is police misconduct?' which outlines the types of complaints people can make to IBAC in relation to Victoria Police. This is in addition to the main 'How to make a complaint' webpage and a number of simple fact sheets, including 'About IBAC' and 'Reporting corruption and misconduct'. This information clearly explains who IBAC is and the process of making a complaint to it.

We recently assisted Victoria Police in their production of a simple plain English fact sheet on how to make a complaint to Victoria Police or IBAC. This fact sheet is designed to be accessible for vulnerable people, including young people and those with a disability. In addition, IBAC has a number of resources to ensure Victoria Police personnel are informed about IBAC and how to report corruption and misconduct, such as a fact sheet entitled 'IBAC and oversight of Victoria Police'.

We also participate in a session as part of the Victoria Police Probationary Constables Training Course. This course is delivered to all incoming constables. IBAC presenters provide a plain English overview of IBAC, what constitutes corruption and police misconduct and how to make a complaint. This presentation is consistently well received by participants, with 100 per cent of the 131 participants involved in the six sessions delivered to date this financial year recording either a 'high' or 'very high' satisfaction rating.

Question 11: the annual report notes that IBAC this year produced a guide to conducting internal investigations. Would it be a good idea for IBAC to jointly produce with other integrity agencies a guide for the public about where and how to make various complaints in Victoria?

IBAC, the Victorian Ombudsman and the Victorian Auditor-General's Office have published a joint guide to Victoria's integrity system called *Safeguarding Integrity*. The document is available on each of the three agencies' websites. It provides information on each of Victoria's integrity agencies, what sorts of issues and complaints they handle and how to get in contact with them. Our agencies are currently collaborating on updates to that document following the recent legislative changes, and we're also looking to jointly produce other accessible materials next year. IBAC's website also includes information on the roles of other integrity or complaint-handling bodies, with direct links to these agencies for ease of access.

Question 12: what processes are used to explain to complainants that their matter has been dismissed? Are complainants kept informed about the progress of their claim? How could these processes be improved?

Upon receipt of a complaint by IBAC, the complainant is sent a letter advising the complaint has been received and that it will be assessed in accordance with the IBAC Act to determine whether IBAC will investigate, refer or dismiss it. The complainant is informed they will be advised of the outcome as soon as possible and are encouraged to contact IBAC should they have any concerns or questions in the meantime.

When a determination is made to dismiss a complaint, the complainant is advised in writing. Specific reasons are not provided but the complainant is advised that in reaching the decision, IBAC exercised its discretion pursuant to the IBAC Act guided by section 67, 'Complaints or notifications to IBAC that do not warrant investigation'. The complainant is informed that the information provided is used by IBAC to develop a greater understanding of potential risks of corruption within the public sector and to target prevention activities. The complainant is directed to the IBAC website for further information regarding IBAC's assessment process, the definition of 'corrupt conduct' and thresholds for IBAC to investigate corruption.

Generally, complainants are not kept informed of the progress of the assessment process as assessment times are relatively short; however, complainants are encouraged to contact IBAC if they have any questions and case officers are available to address questions over the telephone. If a complainant contacts IBAC for further information regarding the dismissal of a complaint, provisions of section 67 of the IBAC

are explained to complainants to assist them understand the discretion applied and elements that guide the assessment.

Question 13: the annual report notes IBAC's commitment to the safety, health and wellbeing of people involved in IBAC investigations. What processes and plans does IBAC have to protect the welfare of whistleblowers from the outset?

Generally, the current safeguards to protect the welfare of whistleblowers or disclosers are contained in parts 6 and 7 of the Protected Disclosure Act. From the outset, IBAC provides complainants with advice about the protections under the Protected Disclosure Act through information sheets and provision of the relevant sections of the IBAC and Protected Disclosure Acts. We have also produced a clear guide to welfare management for public sector agencies and that information is reinforced to protected disclosure coordinators through our information sessions and training. It is also covered in our e-learning module.

As previously stated, there are concerns that the Protected Disclosure Act apparently excludes people from consideration for protected disclosure status when they first make a disclosure to another public sector entity and where IBAC is not notified under the Protected Disclosure Act by an entity that is prescribed for the purpose of receiving such a disclosure. This is an area of potential legislative reform.

Question 14: in public examinations, how does IBAC ensure, as the annual report notes, that there is no unreasonable harm to a person's reputation, safety or wellbeing?

IBAC has a statutory obligation, namely under subsection 117(1)(c), to ensure that public examinations can be held without causing unreasonable damage to a person's reputation, safety or wellbeing. As part of the process of determining whether to hold a public examination, a careful assessment is made of the prejudice or hardship which could be caused to each witness who could be required to give evidence in public.

Factors taken into account in making this assessment include: whether the witness has made an assessable disclosure under the Protected Disclosure Act; the nature and seriousness of the behaviour under investigation, and the witness's apparent level of involvement in that behaviour; whether a suppression order could prevent prejudice or hardship; whether it is otherwise in the public interest for the witness to give evidence even if such evidence could damage the witness's reputation; IBAC will not summons a witness to give evidence at a public examination where there is a reasonable likelihood this could place a witness or another person in danger.

These assessments have been made in relation to all the public examinations conducted to date by IBAC—namely, its Operations Fitzroy, Ord, Dunham and Ross. I also receive in private and rule upon applications based on circumstances particular to the applicant for private examination or for a suppression order. Some such applications have been successful over the last few years, but that is normally done in private.

Question 15: in evidence to the committee regarding IBAC's first report, IBAC indicated that it considered that it can be appropriate for protected disclosure complaints to be investigated by the agency the complaint came from. If this process were implemented, does IBAC have a view on how it would monitor such investigations and whether any additional powers should be provided to IBAC to facilitate this? Would IBAC have any concerns about agencies investigating protected disclosures internally?

In evidence before the IBAC Committee on 15 December last year, I said it would be appropriate for some protected disclosure complaints to be referred back to the entity from where the complaint emanated, noting that that entity would need to have the right procedures and processes in place to respect the confidentiality of the referral and otherwise to protect the individual, as required under the Protected Disclosure Act.

In IBAC's experience, the capacity of agencies to investigate complaints varies. Generally, well-resourced agencies should be able to conduct investigations in much the same way as Victoria Police conducts its investigations under the Protected Disclosure Act and IBAC Act. It is not considered that there is a need for additional powers to enable IBAC to monitor such investigations. Through our existing reviews, IBAC

can assess investigations undertaken by public bodies in relation to matters IBAC has referred to them. The review process can help to ensure investigations are conducted fairly and appropriately. We recognise, however, that some smaller agencies could benefit from capacity building in relation to investigations.

The guide to conducting internal investigations jointly developed by IBAC and the Victorian Ombudsman is one way in which such assistance is being provided to agencies, and of course there is always the fallback under our act where we can take back a referral and we can just investigate it ourselves in an extreme case where we think the agency is just not capable of dealing with it properly for whatever reason.

Ms SYMES—Have you done that? Has there been an incident where you have done that?

Mr O'BRYAN—We have threatened it. We have threatened it at least once. I will not say to whom. I do not think we have done it. No. But a couple of times we have warned that we might, but that smartens them up, we find.

The CHAIR—Are there any other matters that you want to raise with the committee?

Mr O'BRYAN—Thank you, no.

The CHAIR—Are there any questions on the annual report; otherwise, we will go quickly to PD.

Mr HIBBINS—One was just in regard to the desire to be taking a more strategic, intelligence based approach. You have indicated some legislative changes that possibly could be made, I think, to enhance that, but does it require further funding or resourcing to take that approach, both from the funding that you receive, that you are allocated from the government, but also internal funding? Does that require you to change your internal resourcing, if you are dialling up the intelligence approach and there is less responding to complaints?

Mr O'BRYAN—I do not believe at the moment that that is a resourcing issue for us, but Ms Howlett or Mr Maclean might have a view from their perspective.

Ms HOWLETT—We have boosted the staffing of our Strategic Intelligence and Research Team by a couple of positions just this year. One of the key things that we are finding is trying to recruit and develop staff who have got that capability. It is a pretty specialist skill set and so getting hold of good strategic intelligence analysis can be difficult, particularly when we are competing with other agencies like, at the national level, the Australian Criminal Intelligence Commission, they are now called—it used to be the ACC; now the ACIC—as well as, of course, competing with police forces, with VicPol. So, a rare and precious resource, but we are keen to get them and hold on to them.

Mr HIBBINS—Terrific. Just one follow-up question: you mentioned some research projects you are undertaking. Do you undertake research on an as-needs basis or do you have an allocated budget line for research and that sort of stuff to occur each year?

Ms HOWLETT—Again, we have a dedicated Strategic Intelligence and Research Team that sits within my division, so the Prevention area within IBAC, and we do have a rolling program of research as well as strategic intelligence work. As the commissioner mentioned earlier, we are just commencing our next strategic intelligence assessment, so that is our broad environmental scan that we conduct every 12 to 18 months, and so coming out of that we can identify issues for deeper analysis.

The CHAIR—If there are no other questions, we will go quickly on to PD. Commissioner, do you have written responses to all of these questions?

Mr O'BRYAN—I can provide them later today. I made a few tweaks earlier this morning, which was just before I came in.

The CHAIR—So can I suggest that if you send them over to us, then, as the committee, we will give them out to the members.

Mr O'BRYAN—Yes.

The CHAIR—Later this afternoon or first thing tomorrow morning, Sandy, if that is okay. So, given that, are there questions that we would like to ask in addition or to clarify some of the questions that are already there? Danny, there was something in the first lot that you were going to follow up in regard to protected disclosure.

Mr O'BRIEN—It was just on the title. There is fairly general agreement that 'protected disclosure' means nothing to the average punter. The question is whether that matters in the context that people do not generally go and look for an act when they think, 'I want to blow the whistle on my boss,' or whatever, and just whether you have a view on the name, whether that is important or not.

The CHAIR—And just to follow up on that, on exactly the same line, have you had experience from people coming forward and saying, 'Look, it took me a month to work out what "protected disclosure" was because I was chasing whistleblower legislation, whistleblower guidelines,' or along those lines?

Mr O'BRYAN—I am not aware of a specific instance like that, but I think that there would be a greater ready awareness in the community with something more like 'whistleblower'. My impression is that 'protected disclosure' has become a bit of a national sort of name, and there are variations on the theme around the country, but that people have sort of fallen into that terminology. But it is terminology that the normal citizen is unfamiliar with.

Mr MACLEAN—I think internally in IBAC we have made the same observation. The language is somewhat clunky. But, no, we do not have specific complaints of dealing with the term 'protected disclosure', although I think anecdotally there is no question that people find the language a little bit dense.

Mr O'BRIEN—As I say, that may or may not matter if the fact sheets and websites and other things that you have are easily accessible to the public, because if you think that someone has broken into your house, you do not go to the Crimes Act and find out whether it is unlawful or not. You ring the police or you ring—

Ms THOMSON—You google.

Mr O'BRIEN—Or you google, yes.

Ms HOWLETT—We do know that the adoption of that sort of language nationally, 'protected disclosure', was premised on research showing that individual whistleblowers actually found the term 'whistleblower' negative.

Mr O'BRIEN—Pejorative.

Ms HOWLETT—Yes, precisely—had negative connotations. So we recognise that that is why it has been adopted here, but again, from a communication perspective we have found it challenging, put it that way. It does not roll off the tongue and it is not, as you say, easily understood by the average person.

The CHAIR—One of the other issues that we were coming across is how do you reward or compensate a whistleblower. Obviously, in the American system they are looking at a percentage of the illegal takings that are being gained through corruption. Does the commission have a view about (1) the reward or (2) fair compensation? It relates in part to question No. 5 of the questions that we put to you.

Mr O'BRYAN—We do not support that. We think that the most important thing is the development of a culture of whistleblowing, if you like, and a zero tolerance for corruption, and anyone who sees it feeling confident, under the scheme that is in place to protect them, to speak up, and that it comes naturally to speak up. At the moment I think there is still—I do not know whether it is an Aussie thing, where you do not dob in people, but there will be a bit of that, and people who have worked with people and 'Oh, he's a good bloke, so I'll just let him do what he does. I don't want to know about it'—that kind of culture. The thinking needs to be 'Look, doing the wrong thing is just wrong,' and we all speak up if we see it, and

eradicating it that way, and encouraging people to speak up. I think that should be the mindset, not 'Oh, there might be a dollar in it for me if I speak up, but if there's not, I won't.' I just think that might be a negative message to send out.

The CHAIR—What about such things as the legal fees for a whistleblower coming forward; that, one way or another, they are hit with a heap of legal fees and there is a disincentive because they think, 'Well, I just can't continue to go this way because I can't afford it'? What happens, and what could or should happen in those cases?

Mr O'BRYAN—That is an area that I suppose could be looked into. I would be interested to know if that works and how it works in another jurisdiction—probably not Australia, but elsewhere. I would certainly, for my part, be open-minded to looking into whether that might assist people in speaking up, particularly people who are not in the public sector, who are outside but know things. We sometimes get good information about wrongdoing in the public sector from people who are not within the public sector. It is a valuable area for information.

Ms THOMSON—Can I tease that out a bit more, because that is a really important point. So in the practices already that IBAC has, in cases it has heard where whistleblowers have come forward, how many are really paying huge costs in lawyers' fees? Are they compensated at the end if it is found that the case in fact was validated and they were genuine whistleblowers coming forward? What has been the practice for compensating, if need be, those situations? How many are coming with lawyers? How many feel like they do not need them?

Mr O'BRYAN—I cannot think of an example where I have been aware that someone is in that position.

Ms HOWLETT—It might also be, Commissioner, because we are still at a relatively young stage of operation here. Whether things have played out to that extent—I cannot think of any either.

Ms THOMSON—It would be worthwhile knowing in the Australian jurisdiction how many whistleblowers have felt the need to go to the expense of hiring lawyers, or what they have done, what the practice has been, before we even—

Ms SYMES—If you are in the public sector, you would almost be an agent of the department that you were whistleblowing within, so it would be covered there. But if you are an accused, I suppose you might get preliminary legal assistance until such time as it was deemed appropriate not to provide state funded legal assistance.

Ms THOMSON—You are talking about the whistleblower in this instance, not the accused.

Ms SYMES—If they were within a department, they would be right.

Ms THOMSON—Yes.

Ms SYMES—If they were outside, it is something the community—

Mr O'BRYAN—But you do sometimes get these tensions, where the person within is accused of something and does have to defend themselves, and they say, 'Well, hang on a sec. I'm a whistleblower and that's why they're doing it to me,' and the department says, 'Well, no, actually. They're a wrongdoer and they're just saying that to'—

Ms THOMSON—Get some coverage.

Mr O'BRYAN—And you get that tension. We see a little bit of that sometimes and we have to work out, 'Well, okay, we will look into it,' and, 'Who really is the wrongdoer? Is it that person?' because often they will be the first to jump in and whistle-blow to try and protect themselves. That is a phenomenon that occurs.

Mr O'BRIEN—Commissioner, I share your view. I do not think we should be rewarding people for whistleblowing, but one of the things that we heard from James is that people potentially and quite often suffer quite grievous loss, whether it is future employment or those sorts of things. So I think that is probably the question that we as a committee need to have a bit of a look at as well. Sometimes, without knowing what they are in for, people blow the whistle and then find, okay, they might not lose their job because they are protected under the Protected Disclosure Act, but—

Ms THOMSON—They are ostracised at work.

Mr RAMSAY—They will never get promoted et cetera.

Mr O'BRYAN—We touched on that in our Operation Ord report in the education department. They were mostly women who gave evidence—and we will be addressing that in our Operation Dunham follow-up report on the Ultraset—who were shunted out of the place if they dared speak up about these sorts of things. So their careers could well have been impacted by basically being shut down as whistleblowers.

Mr RAMSAY—Just a quick one to Stephen, if I may, as it is fairly fresh in my mind. I just have come fairly fresh off a presentation by Simon Illingworth, who was a whistleblower back in 2004, prior to having an anti-corruption body. It would be interesting to know, from my perspective, if there is serious corruption in the police force and a policeman wants to disclose that corruption, does not want to go to the Police Integrity Unit or the commanding officer as such, but direct to IBAC, how his or her identity is protected. Simon Illingworth's case was that he did go to Command and reported the corruption, then was victimised by the police—in fact, bashed by his fellow colleagues, and had to leave the police force in the end. It left a very bitter taste in his mouth, his friends' mouths, and created a lot of angst in the police force. So I am just wondering about that trail now. Given we have got this body, how would someone like him and his reputation be protected if he was to inform on his police colleagues?

Mr O'BRYAN—Under the act—I think it is also under the Victoria Police Act—police can come straight to us and then it is a matter for us what we do with it. If these issues are raised with us as a concern, then it is a difficult question for us as to whether we do refer it back or not, or whether we investigate it. Of course, if you refer it back, you cannot really refer it back, normally, without disclosing identity. In fact, I think our act requires the disclosing and we have had advice from the Solicitor-General, because it is important to us, earlier this year that he essentially agrees with our reading of the act in that regard. But police are meant to be, because they are one of the four who can receive protected disclosures, are meant to have proper systems in place to ensure that sort of thing does not happen and they are there just as much as us if it is referred back, to protect the person from retribution, but I appreciate that that is all very well and good for that to be their lawful duty, but it is difficult in a police force, particularly when you are dealing with corrupt people, which is what the allegation is all about.

As far as we are concerned, we would have to make a decision 'Is this the sort of matter we investigate?' and also, I suppose, the decision 'How serious is the risk to this person?' and therefore 'Should we just hang on to it?' The other tension in this area is it is often obvious who has blown the whistle. Once you go poking around investigating, people know often who it is—'It must be Illingworth'—and they will be at risk anyway. All you can do is do your best to help support them and perform your duties under the PD Act. If you have to, you can go to court and get injunctions for them and that kind of thing, but no injunction is going to stop someone being bashed up in a dark alley one night, because you are dealing with corrupt people who want to deter someone from handing over more information. It is tricky. Very difficult. I could talk all day on the topic, but it could only be in a general sense. We are very conscious of these issues.

Mr RAMSAY—The question I posed to him was: if he knew what the outcome was, would he actually have then volunteered to whistle-blow.

Ms THOMSON—What was his answer?

Mr RAMSAY—He did not respond.

The CHAIR—Are there any other questions? If not, Commissioner, can I thank you for being here today to discuss the annual report and also protected disclosure. If we could get a copy of those written answers to the PD by this afternoon, that would be terrific. Sandy will send them out to the committee members. That would be terrific, so we can get on with our report.

Mr O'BRYAN—I think later today we can send that.

Ms HOWLETT—Yes, certainly. I do also have copies of some of the publications that we referred to in our answers. You may have them already. They are of course all on our website.

The CHAIR—If you can give them to Stephen, that would be great.

Ms HOWLETT—I just brought along copies for ease of reference as well for the committee.

The CHAIR—Thanks very much.

Mr O'BRYAN—Thank you, Mr Chairman. Thank you, members of the committee.

Witnesses withdrew.

