

# **ACCOUNTABILITY AND OVERSIGHT COMMITTEE**

## **Inquiry into education, training and communications initiatives of Victorian oversight agencies**

Melbourne — 18 September 2017

### Members

Mr Neil Angus — Chair

Ms Jaclyn Symes — Deputy Chair

Mr Michael Gidley

Mr Luke O’Sullivan

Mr James Purcell

Mr Nick Staikos

Ms Marsha Thomson

### Witness

Mr Robin Brett, QC, Victorian Inspector.

**The CHAIR** — I declare open the public hearing for the Accountability and Oversight Committee inquiry into education, training and communications initiatives of Victorian oversight agencies. All mobile telephones should now be turned to silent. I would like to welcome the Victorian Inspector, Mr Robin Brett, QC, from the Office of the Victorian Inspectorate. Thank you for coming.

**Mr BRETT** — My pleasure.

**The CHAIR** — All evidence is taken by the committee under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Comments made outside the hearing, including on social media, are not afforded such privilege. The witness will not be sworn and is requested to answer all questions succinctly, accurately and truthfully. A witness found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence given today is being recorded by Hansard, and you will be provided with a proof version of the transcript for verification as soon as they are available. Verified transcripts, presentations and handouts will be placed on the committee's website as soon as possible. All written communication to witnesses must be provided via officers of the committee secretariat. Members of the public gallery cannot participate in the committee's proceedings in any way and cannot photograph, audio record or videorecord any part of these proceedings. There are no members of the media. I now invite the witness to make a brief opening statement of no more than 10 minutes. This will be followed by questions from the committee. Thank you, Mr Brett, and welcome.

**Mr BRETT** — Thank you very much for inviting me. What I thought I would do by way of an opening statement was basically take the written submission that we put in about a year ago now, which I saw is on the parliamentary committee's website, and just speak a little bit to that and bring it up to date. If that suits everybody, that is what I will do.

**The CHAIR** — Yes. Thank you.

**Mr BRETT** — Starting with question 1, which is, 'What current education and training initiatives exist, how are they measured and how effective are they?', we have mentioned in there a number of things that we have done in the past, speaking at occasional public engagements and so on. There is mentioned here the annual inspectors forum. That is actually being held in Western Australia this week for 2017, so I will be flying over there on Wednesday night. That is basically an opportunity for the inspectors in all the jurisdictions that have them — of which there are four at the moment — to meet, share experiences and share our thoughts about current issues and matters of that nature. It is not conducted in a formal way, and there are no formal outcomes of it, but it is nevertheless a very useful opportunity to keep an eye on what is happening elsewhere in the country.

The submission also speaks about our website and mentions a number of aspects of it that were being updated. I can say that most of those that were described in there as being updated have now been updated. There are still two, I think, that we are working on to finalise.

On participation in public events, we did take part in Law Week earlier this year and also in one of the sessions at Public Sector Week, and coming up in October, IBAC, as you may know, is having a Corruption Prevention and Integrity Conference. I will be participating in that in a session with the IBAC parliamentary committee chair, so that is another thing that we are doing.

Moving on to question 2, 'How well are the roles, powers and processes of these bodies understood by the Victorian public?', we try and do as much as we can on our website to explain what we do, where we sit in the hierarchy of things, what we can do and what we cannot do. I have to say that many of the people who approach us with complaints or prospective complaints are under the impression initially that we are some sort of court of appeal, and that if we do not like a decision that IBAC has made or the Ombudsman has made, we can just tell the Ombudsman to do it again and get it right this time. We try and explain to them that that is not exactly our position. We are very careful in the letters that we write to complainants informing them of the outcome of their complaints to explain our jurisdiction and to explain how we reached the decision that we reached. I regard that as an essential part of what we do — making sure not only that they understand what we have decided but why we have decided it.

We are talking with particularly the Ombudsman and IBAC to make sure that they give appropriate prominence to our existence in their materials so that people that they deal with are aware that there is an avenue for complaint if they are not satisfied with the operations of those bodies.

The submission again talks about updating the website, and I have spoken about that already.

One thing we have not done, I am afraid, is inclusion of translated documents on the website. That is an expensive process, and we have not done that one at this stage. We will keep that under review. We do not get a lot of call for it, I have to say. We do have the ability — where we do get a complainant who does not speak English, we have access to interpreters and we have access to a translator in a particular case, but that happens very rarely.

Question 3 asks, ‘How well are the functions of these bodies and the processes they enforce understood and complied with by government agencies?’. There are two quite distinct parts to that: how well are they understood and how well are they complied with. I think it is probably fair to say that most public sector agencies understand fairly well what the various integrity bodies do, and I think they understand fairly well what they are supposed to do as well. Protected disclosures is one area where a lot of public sector bodies are involved, because many of them — or almost all of them — can at least potentially receive protected disclosures initially. They need to have processes in place for that, and I think by and large they do. IBAC did a survey about that not so long ago and issued quite a detailed report on it.

How well are the functions of these bodies complied with? That is a different question. I am not actually quite sure what that is getting at. Do government agencies interact with the Ombudsman et cetera and IBAC in the manner in which they should? From our observation I would say mostly they do, yes. The Ombudsman in particular is very good at getting answers out of government departments or administrative bodies that have had complaints made against them.

Question 4 looks at other jurisdictions. So far as the Inspectorate is concerned, we compare, I think, very well, because the others basically do not have any education and prevention functions. They operate very much on a small scale. People can make complaints to them, but mostly they deal directly with the agency concerned. In other jurisdictions the Inspectorate does not have anything like as wide a jurisdiction as we do. Inspectors in New South Wales, Queensland and Western Australia are only concerned with their equivalents of IBAC, the anti-corruption authority. They do not have any jurisdiction, as we do, in relation to the Ombudsman, the chief examiner et cetera, so their function is much narrower than ours. We have said a little bit there about how internationally there is not a lot that is directly comparable there, I am afraid.

‘Is there a need to strengthen the education and training functions for each of these bodies through legislation and other means?’. I do not think there is any need to do anything about legislation that applies to us. We do not have a specific education function as part of the Victorian Inspectorate Act. We undertake what we do just so that people are aware that we exist and are aware that if they have had some dealing with IBAC or the chief examiner or the Ombudsman, there is an avenue open to them.

So far as the other bodies are concerned, IBAC has a specific education and prevention function, and it puts a lot of time and effort into it. I do not think that would need any revision. As for the Ombudsman, well, I am sure you would be very well aware that the current Ombudsman, Deborah Glass, is focused on this very, very much as an area of primary importance to her. That is really about it. I am not sure whether that has really addressed what the committee has been looking for or if there is anything else that I can help you with.

**The CHAIR** — Thank you very much for that, Mr Brett. We appreciate you talking to that and your comments in relation to that. We have probably got a number of matters we would not mind teasing out a bit, so I might start off, and I will follow on from that last point that you particularly note in relation to question 5 there. In relation to what you see as the priorities for education and awareness-raising initiatives in the Victorian Inspectorate, are there any priorities that you have currently, or, given what you have said, do you think it is accurate?

**Mr BRETT** — I think our priorities are just focused on keeping our existence prominent in the materials that are issued by the bodies we deal with — IBAC, the Ombudsman and the chief examiner being the primary ones — just so that people who deal with them know that if they are not satisfied with some aspect of the way in which that body has acted, then there is the possibility of making a complaint to us about it. That, I think, would

be first and foremost. I am not sure that it needs to go much wider than that because it is only people who have had interactions with those bodies that could possibly have any interaction with us.

**The CHAIR** — Would you envisage that continuing to be done on an informal basis? In other words, do you keep regularly liaising with those bodies in relation to making sure they do not forget your key role and making sure the public does not?

**Mr BRETT** — Well, I do not think there is much danger of them doing that. Yes, I do not see any need to do anything further. I am not encountering any resistance. They are well aware of what we do. They do in practice tell complainants who are dissatisfied that there is this avenue open to them, and that is in addition to the material that they have on their fact sheets and websites and so on.

**Ms SYMES** — Thank you, Mr Brett. I just want to follow on from that, and you make a good point that no-one gets to you before having dealt with someone that they need to complain about. Picking that up, and also your comment about people not really understanding what you cannot do, do you have feed-in to the material that goes out from IBAC? I guess this will be a question that I can prosecute with IBAC as well, but is it in their fact sheets — is it a bit concerning that people think —

**Mr BRETT** — Look, I am not concerned by it, and my attitude to that would be I would rather have too many people complaining to us and us having to tell them, ‘Sorry, you don’t quite fit’, rather than not enough. I think if we tried to get too complicated with what IBAC was telling them, that might be counterproductive.

**Ms SYMES** — Yes, but I think one of the concerns that our committee have is that there is this cohort of people to whom it is very difficult to explain to them that it is the end. So if they are thinking that it is not the end at IBAC and then they are trying to prosecute it with you, I get worried about what happens to those people when the advice from VI is, ‘Well, sorry, we can’t do anything for you’. I am just wondering if we can do better for those people that you cannot help.

**Mr BRETT** — I understand what you are saying. I think the basic problem is that at some stage somebody has to say to them, ‘No, you’ve gone as far as you can’. It is a question of where that should be said. I think quite frankly it is probably best said by us, rather than having IBAC or the Ombudsman doing a preliminary kind of sifting through and potentially maybe sifting out a few people that should not be sifted out.

**Ms SYMES** — So when you say, ‘You’ve reached the end of the line’, is there a particular way you guys go about that?

**Mr BRETT** — Yes. The letters that we write go for half a page or so just explaining where we sit, what our function is, the fact that we are not here to rehear their initial complaint. Our function is essentially to assess whether IBAC or the Ombudsman has dealt with their complaint properly, and that is what we focus on. With most of them we then go on to say, ‘We’ve looked at what IBAC has done or the Ombudsman has done with your complaint, and we are satisfied that they did deal with it appropriately’, and in the Ombudsman’s case in particular, ‘and have fully explained to you the reasons why your complaint was dismissed, and for those reasons we will not be taking any further action’. We do pay a lot of attention to the way in which we explain. I settle every letter that goes to a complainant, and I am still from time to time making changes to them just to improve the wording and improve the clarity, trying to make sure that they do understand properly, which I think is a very important function.

**Ms SYMES** — Thank you for that. Just a practical thing: I was looking at your website, and I am wondering how long we are going to continue to call the integrity system ‘new’?

**Mr BRETT** — Yes, okay — good question. We will, perhaps, stop calling it new.

**Mr PURCELL** — Thank you, Mr Brett. I presume for your complaints you would record where they all come from?

**Mr BRETT** — Yes.

**Mr PURCELL** — Do all they come from IBAC or the Ombudsman?

**Mr BRETT** — Virtually. We have never had a complaint against the chief examiner. We have had, I think, two or three over the entire lifetime of the inspectorate relating to the Auditor-General. But our jurisdiction in relation to the Auditor-General is very narrow, and those complaints have not been within cooee of coming within jurisdiction, to be frank. If all we talk about is IBAC and the Ombudsman, that covers the field, yes.

**Mr PURCELL** — Covers most of it. So what sort of numbers or percentage of issues that go through IBAC and the Ombudsman would actually come to you? Are they small percentages?

**Mr BRETT** — Small.

**Mr PURCELL** — Quite small.

**Mr BRETT** — Those bodies deal with a very great number of complaints. I cannot recall all the figures off the top of my head. I know that the Ombudsman gets something like 38 000 or 40 000 approaches every year, of which, from memory, somewhere around 4000, I think, are actually accepted as being complaints that are worthy of being looked at. Of those, we would only get about 50 that come through to us. With IBAC we get approximately the same number coming through to us, but the field is a bit smaller.

**Mr GIDLEY** — Mr Brett, a couple of questions. In your submission you mention the website project. I am just wondering if you can give us an update as to exactly where that is at? In line with that question, do you anticipate being able to use that and some tools with it to better refine your data as to who is seeking those services and what ways that new website could be improved?

**Mr BRETT** — Starting with where we are at, we have rewritten the complaint form. You can submit a complaint form online, and that has been redone to make it more user-friendly. The notes that are available for complainants to read before they make the complaint have also been revised. We are currently close to completing revision of our protected disclosure guidelines. We have not restarted the website from scratch, and we do not see a need to do that. When I said we have been revising it, it has been really revising the individual parts of it. That was the first part of the question, and I have forgotten the next parts, I am afraid.

**Mr GIDLEY** — That is okay. Just in line with when you are updating the website, technology changes and the capacity to utilise technology changes, does that include any tools that you might look to in the future to have the website data better serve any of your needs?

**Mr BRETT** — We do not directly link the website to our database, except for the complaint form. That goes straight through. Our systems for collecting data about complaints and about complainants, as I say, are not directly connected with the website. We do that in the course of dealing with the complaint. I am not sure that there would really be any need to do it a different way.

**Ms SYMES** — I am just going through your website.

**Mr BRETT** — You probably know it better than me now.

**Ms SYMES** — What data do you keep in relation to the fisheries and wildlife acts?

**Mr BRETT** — The fisheries and wildlife acts — our function in relation to them is not a complaint function. To a certain extent the inspectorate — I will not use the expression I could use; I will simply say we have a variety of functions in relation to a variety of bodies, and our functions in relation to fisheries and the others are inspecting their records regarding their use of controlled operations. In fact for fisheries I think it is only controlled operations, but we have an inspection function in relation to the bodies that can use telephone interceptions and surveillance devices.

We have two people, a compliance team, whose job it is to inspect the records kept by these bodies and ensure that the records are all kept in accordance with the legislation. They conduct inspections. In fact they are out inspecting today. So that is what that is. But it is not a complaint function; it is not a review of decisions about whether they are going to be conducting controlled operations or anything like that.

**The CHAIR** — Just coming back to the education sessions that you hold for the Ombudsman and IBAC, can you clarify how often they are held?

**Mr BRETT** — It is more contact with individual people within the Ombudsman and IBAC, and as I say, it is directed towards ensuring that the materials that they make available to people they deal with are accurate and up to date.

**The CHAIR** — Right; so if a new staff member came into one of those bodies —

**Mr BRETT** — We would not normally have anything to do with them, no.

**The CHAIR** — So it would only be at other times that —

**Mr BRETT** — IBAC and the Ombudsman train their people to know that we exist.

**The CHAIR** — So there is no specific role within those organisations for you per se?

**Mr BRETT** — No.

**The CHAIR** — We might conclude the hearing there. Thank you, Mr Brett. I would like to thank you for your attendance today.

**Mr BRETT** — My pleasure.

**The CHAIR** — There were no questions taken on notice, but we may have some other questions that arise. We will get those to you in due course. Can I conclude by thanking you very much for coming today and indeed for your initial submission to the hearing. I declare the hearing closed.

**Mr BRETT** — My pleasure. Thank you.

**Committee adjourned.**