

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Performance of Victorian Integrity Agencies, 2017/18–2018/19

Melbourne—Monday, 17 August 2020

MEMBERS

Mr Steve McGhie—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Ms Harriet Shing

Mr Jackson Taylor

Hon Kim Wells

WITNESSES

Mr Eamonn Moran PSM, QC, Inspector,

Ms Kathryn Phillips, Director, Budget Independence and Strategy, and

Ms Cathy Cato, Executive Director, Legal and Integrity, Victorian Inspectorate.

The CHAIR: Welcome to Eamonn Moran, the Victorian Inspector; Ms Kathryn Phillips, Director, Budget Independence and Strategy; and Ms Cathy Cato, Executive Director, Legal and Integrity. I declare open the public hearing for the Integrity and Oversight Committee's inquiry into the annual reports of the Victorian Inspectorate. I also acknowledge my colleagues participating today and thank those who are apologies. I believe Stuart Grimley is one that is an apology. I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples and the traditional custodians of the various lands each of us is gathered on today, and paying my respects to their ancestors, elders and families.

To the witnesses: all evidence taken by this committee is protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, those comments will not be protected by this 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 and livestreamed on the Parliament's website. You will be provided with a proof version of the transcript for you to check as soon as 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.

I welcome the Inspector. We welcome your opening comments for 5 to 10 minutes, which will be followed by questions from the Committee. Please mute your microphones when not speaking to minimise interference and switch your mobile phones to silent. If you have any technical difficulties, please disconnect and contact Committee Manager Sean Coley for whom I believe you have contact details. Over to you, Mr Moran.

Mr MORAN: Thank you very much, Chair. Thank you for an opportunity to make an opening statement. I will keep it brief, just around the 5-minute mark, to allow adequate time for all questions, and of course we have sent detailed responses to the questions that were circulated earlier.

The Victorian Inspectorate, the VI, with oversight responsibilities in relation to a large range of public bodies vested with coercive and intrusive powers, is unique in Australia. Other States and the Territories have inspectors of anti-corruption bodies. No State or Territory has anything like the VI, so there is no other model within Australia that we can look to for learning or as a comparator. The Victorian model has, I believe, considerable advantages. Its key strengths are: it enables us to take a consistent and coherent approach to oversight across a broad spectrum of integrity bodies; it enables individual learnings to be broadly applied so far as applicable.

Over the period covered by the 2017/18 and 2018/19 annual reports there was a great deal of change at the VI. This included a new operational structure with a new management team; a new vision, aspiration and values; improved internal governance arrangements and corporate policies, procedures and practices; and a new operations model that set the framework for all our operational activities. ICT infrastructure upgrades and ongoing support mechanisms were put in place, and improved complaint handling and record inspection procedures were implemented. Over the period covered by those two annual reports, the VI gained some new responsibilities. It gained a role in relation to the Office of the Victorian Information Commissioner. It gained a role in relation to the Judicial Commission of Victoria, and it gained a role inspecting counterterrorism records.

Over the period covered by these reports, the VI was active operationally. We completed three investigations, one of which resulted in the publication of our first special report, on witness welfare in IBAC investigations. Another investigation and a preliminary inquiry commenced in 2017/18, were continuing as at 30 June 2019 and have been recently closed. We published two integrity reports arising out of monitoring projects related to operations of the Ombudsman and IBAC. We published our first inspection report under the *Terrorism (Community Protection) Act 2003*. We conducted live monitoring of an IBAC public hearing. And, of course,

the business-as-usual activities of complaint handling, statutory notification reviews and record inspections continued, and full details are set out in the annual reports.

Our operations over that period led to the making of improvements in the workings of our complex integrity system, and that is what we see as our ultimate goal. We want Victoria to have a robust integrity system in which the public have confidence and trust. We want the agencies that we oversight to see us as their third line of defence, to see us as working constructively and collaboratively with them. With sufficient resources we can detect and highlight an issue at an early stage and thereby help avert or mitigate a problem, and we can provide a complaint avenue for people who consider themselves adversely affected by integrity body operations. We listen to their complaints, and we work with the agencies to resolve them.

So in conclusion, I would say we have an important body of work to do in the public interest and on behalf of the Parliament, and we are committed to doing that work as best we can within the resources available to us. Resourcing is a challenge, as discussed with the Committee in our consultation with you in relation to annual planning, but with the resources that we have, we endeavour to do the best job that we can. Thank you, Mr Chair.

The CHAIR: Thank you, Mr Moran. We will move to questions now. Mr Rowswell.

Mr ROWSWELL: Thank you very much, Inspector, and to you and your team for making yourselves available this afternoon. You mentioned in your opening remarks that your responsibilities in this last reporting period have increased, including such things as oversight of OVIC and the Judicial Commission, and in relation to some counterterrorism activities. I am interested to know if the resourcing that your organisation receives from the Government has also increased to acknowledge these additional roles that you have taken on board.

Mr MORAN: Thank you, Mr Rowswell. The reality is that the resourcing available to the VI has not increased in any real terms since the VI was established and began operations in February 2013. The VI started of course with its remit particularly looking at IBAC, but now we have interactions with some 11 bodies, including those new ones that we mentioned. But we are a micro-organisation. Our resourcing at the moment allows us to have nine ongoing staff, and we have got six fixed-term staff, including two who are project based.

When I took on this role at the beginning of 2018, one of the first things I did was to have a look at what structure we needed in the VI in order to carry out our functions, and we identified at that time that we needed an increase in our staffing, an increase in our FTEs, and we are still waiting for that. We have not had any significant increase in our resourcing. The reality has been that, for example, last year to avoid a deficit we obtained supplementary funding from DPC and from Treasury, and that was to enable us to maintain our current level of staffing and to be able to attend to some end-of-life infrastructure requirements that we had, and thereby we avoided a deficit.

I think the Committee and Government are aware of our critical needs if we are to effectively perform our functions. With the staffing that we have and with the funding that we have basically all we can do is the work that we have to do—our mandatory work—which are the public interest complaints that come our way and public interest disclosures that come our way, leading to complaints that we must investigate. Unlike some of the other integrity bodies, we do not have discretion not to investigate, and so the number of those has increased. I think there was one in 2018/19, and that went up to four in 2019/20. Clearly, we must investigate them. We have no option; we cannot send them anywhere else.

Mr ROWSWELL: Are you suggesting, therefore, Inspector, that you are perhaps undertaking your roles as they are required of you but that you could be undertaking them to a more comprehensive degree?

Mr MORAN: There are aspects of our role that we could do. For example, we receive notifications from the various integrity agencies when they exercise their coercive powers. So if IBAC or the Ombudsman, for example, issue a summons or a confidentiality notice, the VI gets informed about that. There is something like 1100 or 1200 of those that come in each year. We do not have the resources to review in detail all those notifications, so we have to make a risk-based judgement as to what it is that we will look at, and we cannot possibly look at them all.

Mr ROWSWELL: Sorry, just to be clear, you are actually saying that you, with your current resourcing, are not able to undertake what is required of you?

Mr MORAN: Well, the current legislation, as amended at the start of this year, made it clear that it was a discretion, our power to review. It says that we may review, and if we do review them, there are a number of matters that we must look at. But with staffing of 16 we could not possibly review everything that comes in. So we do have to apply a risk-based approach, which we accept is not a risk-free approach. With increased funding we would obviously increase the number of reviews that we would do.

We would like to take on some monitoring roles like some of the ones that we published over the period of these annual reports, but we have not really got the resources at the moment for monitoring work. We do not have any resources for educational activities. We are very much in the position that when we carry out these functions that we have to do or the investigations of public interest complaints and ordinary complaints that come our way—once we do those and once we have paid salaries and once we pay our rent, that is it.

Mr ROWSWELL: What is the additional quantum of funds that you are seeking in this budgetary period? Are you able to give us a dollar figure?

Mr MORAN: Look, I understand. Clearly we have gone through the normal channels for obtaining additional funding. We have put forward a budget case to Government, which will be considered as part of the upcoming Budget. I am not able to put an exact figure on it. I understand too that a number of these things are covered by cabinet-in-confidence processes.

Mr ROWSWELL: Your request, as I understand it, is not covered under the cabinet-in-confidence. Once the amount is received, then any discussion as part of the cabinet process is considered cabinet-in-confidence. So if you are making a request and that request has been made to an appropriate minister or department, that is not considered cabinet-in-confidence. If you are not able to give us an exact figure now, you are welcome to take it on notice.

Mr MORAN: If I could take it on notice, please.

Mr ROWSWELL: Thank you.

The CHAIR: Thank you, Inspector. Thanks, Mr Rowswell. Ms Shing?

Ms SHING: Thanks very much, Chair. Thank you very much, Mr Moran, and also to Cathy and Kathryn, for attending today. I am keen to follow up on a line of questioning that has been pursued in previous hearings in relation to cooperation, collaboration and joint work with other integrity agencies. One of the things that I am keen to understand is how you, in your role at the Inspectorate, are able to work with other agencies to either reduce or remove duplication or to enhance understanding of where different jurisdictional lines sit or in fact to generate efficiencies. So to the extent that you can, I would welcome any response that goes to that particular detail, if you could, please.

Mr MORAN: If it is acceptable, could I ask Cathy Cato if she would like to give—

Ms SHING: Thank you, Cathy. Yes, it would be lovely to hear from you.

Ms CATO: To continue the line we have talked about earlier, there is a very collaborative and cohesive relationship between the Victorian Inspectorate and the agencies we oversight. We have worked very hard on building the sort of relationship with each agency whereby we can exchange information efficiently and review and look into complaints and all of the enquiries and that sort of thing. We have regular meetings at all officer levels to enable that to be done, and that has developed a very efficient way of approaching our role.

To go to your question with respect to removing or reducing duplication, that is a more difficult one because probably the only area that is one that we all sort of do together would be in the area of public interest disclosures. The new iteration of the whistleblowing scheme, which commenced, as you know, at the start of 2020, does involve—and needs to involve—a collaborative approach to make sure that the Victorian Ombudsman, IBAC and ourselves are implementing this scheme in a really consistent way. So we are all members of a Public Interest Disclosure Consultative Group, which is chaired by IBAC—I represent the VI on that—and in doing so try to make sure that we work together to iron out any confusion across the public sector as to how that scheme operates, and we work collaboratively in looking at each other's guidance material and making sure that we try and have a consistent approach to that and do not reinvent the wheel in that respect.

Ms SHING: Great. Thank you. And if you are able to give any additional detail on the quantum of any efficiencies that you generated or that might be in the forward reporting periods around changes that have been made as you continue to improve on the relationships that you have with the VO and with IBAC, I would also love to hear about them.

Ms CATO: Sure. Look, it is difficult to put, I suppose, a quantum on it, other than to say that I think the number of complaints that we are able to address in any given year—I think the annual report for this year will probably show an increase in that and an increase in the amount of work generally. But, of course, our ability to do any of our work is very constrained at the moment by our limited resourcing, so we are investing a lot of resources into trying to improve our case management system, for example, which we have had funding to do, and that will absolutely generate efficiencies in the administration side of the work that we do. We have also sought funding in this Budget bid for a document review software system that will increase the efficiency of how we undertake our investigations.

Ms SHING: I was going to ask about technology, just quickly, in relation to, again, efficiencies there and the way in which you have worked in a COVID pandemic remote-working situation. Has that changed the extent to which you can work through the pipeline of jobs that you have on your respective—

Ms CATO: Yes, it is fair to say that—I am sorry, Eamonn; did you want to answer that, or would you like me to continue?

Mr MORAN: Look, I am happy to say, if I can, that obviously COVID has created a challenge for us because of the way we keep our documents—we have a secure, standalone system. We have maintained the confidentiality of our documents by not making them available over the internet in any way. There is no internet connection on that system, and of course that has created a huge problem when we come to trying to work remotely. We have invested a deal of time in developing our system that is connected to the internet—our other system—we have created some encrypted folders so that we are able to transfer some information, which is enabling our staff to work effectively from home, but we have got material here that we just have to come into the office to access. So during this period we have usually had a bit of a skeleton staff attending here doing the things that need to be done but also that need to be done to enable staff to continue working from home. Making sure that the material that we receive in—we assess it, and if it is possible to go on to these encrypted folders on a drive that is accessible from home, we do that. Cathy, do you want to add?

Ms CATO: No, that's good.

Ms SHING: Thank you very much for that. Thanks, Chair.

The CHAIR: Thanks, Ms Shing. Thanks, Ms Cato and Mr Moran. Mr Wells.

Mr WELLS: Thanks, Chair. Inspector, I just want to go back to some questions that Brad Rowswell asked you earlier. The legislation is that you have the discretion to choose which matters you follow up and investigate. But if it is a matter of resourcing, then technically you would be in breach of your responsibilities as the Inspector because you may have the discretion or you may wish for that discretion to be that you investigate or follow up on 90 per cent, but because of the resourcing issue you can only do 70 per cent; is that true?

Mr MORAN: What we are doing is that when notifications come in we go through a triage process. We will have a look to see immediately if there are issues that need to be identified. So if something is jumping out and this looks like an issue, well, then we will give that some priority within the system. So I think we can say that there is nothing that is coming that is of significance that is not being looked at in some way. But we cannot do the deep dive we would like to do across the system because of our limited resourcing. I mean, as I say, with only such a micro team of nine ongoing and six fixed-term positions, naturally that is all we can do. But I believe that because of legislation saying that we 'may review' these notifications, by doing that plus this triage of everything that comes in, I believe we are carrying out our statutory function.

Mr WELLS: So I guess it is an issue, isn't it, of whether you are fully satisfied as the Inspector exercising your discretion or whether you are being hampered by the lack of resources in regard to the way the you make those decisions?

Mr MORAN: Well, I think I said earlier that while it is a risk-based approach, it is not an entirely risk-free approach. We cannot say that operating the way we do everything that really should be looked at in a deep way is looked into. With more resourcing, that is where we would be putting the majority of our resourcing—into our operational side. The challenge that we have had is with the increase in public interest disclosures coming our way, which we must investigate, and an investigation is a terribly resource-intensive exercise. And obviously we want to conduct those investigations as quickly as we can, and with more resourcing we could speed that up. We have raised the issues about how additional funding to enable us to have some additional resourcing would be helpful. We acknowledge the current state of finances in Victoria, and so we have abandoned any idea of getting the level of resourcing that we were looking at when we did a restructure in 2018. At that stage we felt 26 was the sort of number that we needed. We have reduced our expectations, but we need something more than we have.

Mr WELLS: Just to follow on with that, with the extra responsibilities you have been given, did you immediately ask for more resourcing at that point, or was it more of a ‘Wait for the end of the year and we’ll put in our budget submission’?

Mr MORAN: Really over the last couple of years we have been raising issues about resourcing and the impact that it has on us. On 1 July next year we are getting a new body, the Wage Inspectorate Victoria. In the course of this financial year we have to get set up in order to be able to oversight the activities of that body. So I think the Government, DPC, DTF, et cetera, are well aware of our requests for resourcing.

Mr WELLS: Okay. Thanks.

The CHAIR: Thanks, Mr Wells. Thanks, Inspector. I will go to Mr Halse, whether he has any questions.

Mr HALSE: No questions, Chair, thank you.

The CHAIR: Okay. Mr Taylor?

Mr TAYLOR: No questions for me, Chair, thank you.

The CHAIR: Thank you. Are there any further questions from any of the Committee members?

Ms SHING: I have just got a question about staffing, if I may, Chair. I am keen to understand the extent to which the Inspectorate has staff employed on part-time arrangements and also the split between men and women in the office. I am very happy for you to take that on notice and to give that back to the Committee when and as you have a moment.

Mr MORAN: Perhaps my colleague Kathryn might remember the split between men and women. I think probably there are more women than men in the Inspectorate.

Ms SHING: Never a bad thing, depending on where they sit within the hierarchy of positions within the office.

Mr MORAN: If we look at our hierarchy, in terms of our management group we have got a management group of the Inspector; Cathy as Executive Director, Legal and Integrity; and Kathryn Phillips, Director Budget Independence. We have also got a person acting in the role of General Manager, Corporate Services and Alison, who is our general manager of Integrity Operations and Policy. I am the only male among them. So, at the senior levels women are certainly well represented. But Kathryn, are you able to supplement?

Ms PHILLIPS: Yes, what you said is correct in terms of the senior levels, but overall we have four men in our staffing contingent, other than Eamonn, and then we have three part-time positions. And we have started to look at offering part-time positions as an offering in terms of enabling some flexibility.

Ms SHING: Great. Thank you very much. And if there is scope also to ask about any progress that you might make toward remote working operations in a—I am going to use the term—COVID-normal situation. I do not want that to sound jingoistic, talking along the lines of programmatic specificity or anything like that, but how is it that you are able to work toward perhaps being more dexterous into the future with your workforce around working from home and remote working arrangements?

Mr MORAN: Well, with the regulations that have been made a few months ago under the COVID emergency measures Act, it has enabled us to do things like serve some process such as confidentiality notices by email that we could not ordinarily do; they required personal service. Currently we have not held a remote hearing as yet, but we are looking to do that—we are just testing out what is a safe and secure way of doing it. I believe, having now got these encrypted folders set up within our DPC system—the system that is accessible on the internet—it is greatly facilitating working from home. Unfortunately it took a while to get it established, which delayed us at the start. We believe that COVID has in a sense forced us into looking at a different way of doing things. We very much in our organisation in the past had a strict view that really nothing could go outside the organisation—that, in order to maintain the confidentiality of our material, it stayed in the office—but we realised we had to find ways of working in a safe way and a secure way while still carrying out our functions.

Ms SHING: And you are satisfied that the changes being made now will enable you to preserve that confidentiality into the future?

Mr MORAN: Yes. It has been made, as I said, because we have got a system that we will only transfer material that we believe, within the confines of not only being an encrypted folder but being password-protected, will be safe to transfer. There is some material that we will not transfer, and therefore we do have staff occasionally coming in because they have to come in to do that work, but we try to keep that to an absolute minimum.

Ms SHING: Great. Thank you very much, everyone. Thanks, Chair.

The CHAIR: Thanks, Ms Shing. Thanks, Inspector. Just a clarification from me, and either [the] Inspector or Ms Phillips might wish to answer it: my understanding is that you have nine ongoing staff, so I assume that is permanent staff, and six fixed-term staff. I did not catch how many women were employed. I think it was suggested there were four men and three part-timers. I was just wondering, out of the nine ongoing staff and six fixed-term staff, what the breakdown would be, and in regard to the tenure of the terms, generally speaking how long are those tenures for?

Mr MORAN: I could maybe just start and then perhaps Kathryn could add. I mean, one of the difficulties is our budget situation has meant that for some people that we have employed in recent times we have had to take them on a fixed-term position. For the last one I think we got someone on a two-year post. We have got some project-based ones which are six-month, nine-month periods. Kathryn, you probably have more details than I have at hand.

Ms PHILLIPS: You have done pretty well, Eamonn. That is correct. We have got three project positions that are fixed term—two of those are part-time, one of those was part-time by choice—and we have three other fixed-term roles. The last two fixed-term roles will be put on for two years at least. So that is approximately right. We can provide some more information on that specific breakdown to the committee later.

The CHAIR: That is fine. Thank you very much for that.

Mr ROWSWELL: Just one question for the Inspector. You have recently taken on board oversight of OVIC. According to evidence that they have previously given to this Committee—and I am going to paraphrase here; I am not seeking to ‘verbal’ an earlier witness—they are overworked and under-resourced. Is that your finding early in the piece? Are there any other insights that you can offer as to the causes of that?

Mr MORAN: Sorry, the question was about OVIC?

Mr ROWSWELL: Correct, yes.

Mr MORAN: Well, we did have a function in relation to OVIC looking at, for example, their compliance with procedural fairness and how they were doing reviews of FOI applications. We had received a number of complaints, and we did actually do quite a detailed piece of work with OVIC in looking at and putting forward some private recommendations on those matters. Since the legislation was changed on 1 January this year, our role has been cut back in relation to OVIC. So now we are only looking at procedural fairness in relation to exercise of coercive powers or the conducting of investigations or the making of recommendations. So we no longer have an ongoing role in relation to procedural fairness requirements on conducting reviews. But it was clear to us—and looking at when we did have that—that it is a very busy office. It has got a large amount of

reviews to look at, and we dealt with them on issues because we would have complaints that would be about time lines, for example, about things not being done within a time line. So, again, it is like everyone—my feeling is it was all resourcing issues.

Mr ROWSWELL: And those areas of responsibility taken away from the VI, have they been assumed in another area or in another organisation or body, Inspector?

Mr MORAN: I am not aware that there is any integrity body that has them. I am not sure. Perhaps the Committee has now got a role in relation to that. But it was a change that was made. I think it came in on 1 January this year.

Mr ROWSWELL: Thank you. Perhaps that is something the Committee can follow up. Thank you.

The CHAIR: Thanks, Mr Rowswell. Thanks, Inspector. Are there any other questions from any Committee members? No? Okay then. Well, thank you, Inspector, Ms Cato and Ms Phillips, for presenting today to the Committee and answering our questions on your agency's annual reports. If there are any further questions from us, we will put them in writing to you and you can take them on notice if you can. I declare this hearing closed, so thank you very much for your time. I ask Hansard to pause the recording.

Committee adjourned.