

# TRANSCRIPT

## INTEGRITY AND OVERSIGHT COMMITTEE

### Performance of Victorian Integrity Agencies 2020/21: Focus on Witness Welfare

Melbourne—Monday, 9 May 2022

#### MEMBERS

Ms Harriet Shing—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Mr Jackson Taylor

Ms Vicki Ward

Hon Kim Wells

**WITNESSES**

Hon Robert Redlich AM QC, Commissioner,

Mr David Wolf, Deputy Commissioner,

Ms Marlo Baragwanath, Chief Executive Officer, and

Mr Glenn Ockerby, Executive Director, Corporate Services, Independent Broad-based Anti-corruption Commission.

**The CHAIR:** Good afternoon, everyone, and thank you for your attendance at this afternoon's hearing, a hearing for the Integrity and Oversight Committee's review into the performance of Victorian integrity agencies 2020/21 as it relates to witness welfare.

My name is Harriet Shing. I am the Chair of the Committee, and I am here today with my Deputy [Chair], Mr Rowsell; Mr Halse; Mr Wells; and then joining us online are Ms Ward, Mr Taylor and Mr Grimley.

I would like to acknowledge at the outset that we are meeting on the lands of the Wurundjeri and the Woiwurrung people of the Kulin nation. I pay my respects to their Elders past and present. I would also like to acknowledge any and all Aboriginal and Torres Strait Islander leaders or emerging leaders who are following online or indeed are part of this proceeding.

The matters that we will canvass in this particular review may well cause concern, distress or grief for people who are part of them or who are observing proceedings. On that basis, I would urge anybody who is affected by the subject matter of this review to contact Lifeline on 13 11 14 or Beyond Blue on 1300 22 4636.

I also note that for the purpose of this particular review we are not focused on individual matters. We are talking only about systemic frameworks and processes that exist for integrity agencies. Nor are we straying into the territory of matters which have not yet been resolved or are the subject of legal consideration or contemplation in any way, shape or form.

To witnesses: all evidence that is 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, these 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 you will be provided with a proof transcript of the hearing for you to check once it becomes available. Verified transcripts will then be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

What I would invite you to do today, members of the IBAC, is to provide a brief statement, no longer than 5 minutes in duration given the limited time that we have available, and then we will turn to questions from the Committee from there. So I might begin with you, Commissioner, to manage the 5 minutes as you see fit. Thank you.

**Comm. REDLICH:** Thank you, Madam Chair, for the opportunity to speak to the Committee. I will have to reassess the issues I wanted to address that I thought would be of assistance to the Committee, but let me go then straight to move on from the question of performance to the issue of witness welfare.

**The CHAIR:** There may well be questions on notice and a further opportunity to go to those matters, Commissioner.

**Comm. REDLICH:** Which I should address. There has been much misinformation in the public domain about the process of public hearings and how we deal with witness welfare, so what I would like to do is to emphasise some fundamentals about the legal framework in which we operate. As the Committee probably is aware, before we can examine any single witness in a public hearing we have to be satisfied about all of the criteria set out in section 117 of the [IBAC] Act [2011 (Vic)]. I say that, but there is a profound misunderstanding within the public domain about that fact. We are treated as though we are a royal commission

so that, once a subject matter of an investigation has been identified, the assumption is that any public hearing will involve calling all of the relevant evidence that relates to that subject matter. That is of course a function of a royal commission with terms of reference, but the *IBAC Act* is quite prescriptive and different. So with each witness that we determine should be called in a public setting we must be satisfied that there are reasonable grounds to conclude either that the witness has committed conduct which may be characterised as corrupt or, if it is a case of police misconduct, we have to be satisfied in relation to each individual witness that there are exceptional circumstances that justify examining that witness, that it serves the public interest to examine that witness and that no unreasonable damage will be done to the reputation or wellbeing of that witness.

Now, of course there are witnesses that we will call who are not the central target of any concern as to corruption or misconduct—they are simply witnesses who are providing indirect or circumstantial evidence about the events—so in that case it is relatively easy to conclude that there will be no unreasonable damage done to reputation or wellbeing. But in the case of those witnesses, particularly those who are persons of interest, on whom the investigation is focused, there is a process that we then follow before we determine whether or not there should be a public hearing in relation to that witness.

Now, the Committee has been provided with our welfare policy and our risk assessment, and Ms Baragwanath and Deputy Commissioner Wolf are here to expand on that if there are questions which the Committee wants to ask in that area. But I do want to emphasise that IBAC's preoccupation and the precedence that we give to witness welfare in that setting of public hearings is not because there is a statutory duty or obligation to do so beyond the matter I have just enumerated—namely, satisfaction that no unreasonable damage will be done to a witness's wellbeing. There is nothing in the Act at all that dictates how IBAC should proceed with witness welfare. Notwithstanding that there are no duties or obligations beyond those I have mentioned, it is in fact the case that in every circumstance in which we call a witness in public—and for that matter we go through the same process of course for a private examination—there is a process of consideration as to whether or not a risk arises to their welfare. So there are a number of avenues open to the Commission when it becomes apparent—and it is important I make this distinction—that there is some reason why we ought to be concerned in a particular witness's case about their wellbeing. Now, I say I make the distinction. It is a fundamental one. Every witness who is ever called under a coercive process is going to be subject to some level of distress and anxiety, and that level of distress or anxiety will obviously be greater if it is in the public domain. Parliament recognises that, and it says that nonetheless, so long as there is no unreasonable damage to witness welfare, the Commission may still proceed to examine the witness. But as soon as there are any circumstances at all which indicate that a witness's welfare is at risk, is an issue, a range of options immediately become available to the Commission. So first question: if there is a welfare issue, should we have a public hearing at all for that witness? So if the concern is sufficiently serious about the witness's welfare, we do not examine the witness in public.

For those of you that have followed the public hearings in Sandon, in Operation Watts, you will know from what has been said in the public domain that there are witnesses who had highly relevant evidence to give—in some cases witnesses who constitute persons of interest—

**The CHAIR:** Commissioner, I am just going to interrupt you there. For the purposes of this review it is actually really important—and I will bounce off what you have just said—to remind everybody on this committee and as part of this review that this does not actually go to matters which are extant or which are the subject of any further interrogation or review by any sort of jurisdiction. So I might just again use this opportunity to make sure that we are all on the same page as far as this not relating either to individual matters or to matters which are not yet concluded. Thank you.

**Comm. REDLICH:** Yes. So again to say that in both of those public investigations, which involved examinations, for those who followed them it would be apparent that there are persons of interest who were not called to give evidence in public. So that is the first option: Do we have a public hearing at all for that person if it becomes evident there is a welfare issue?

**The CHAIR:** You are just about to wrap up. I think we are at about 7½ minutes. So if I can invite you to make perhaps your last couple of points, and we will have a further opportunity to get a contribution from you.

**Comm. REDLICH:** So alternatively do we have a private hearing for that witness? If we have a private hearing, is there some special medical reason why the form of questioning should be moderated? Now, I am not

talking about theoretical choices here. In my period as the Commissioner these are actual choices that we have made. So in one case a critical individual was called only in private and his evidence was adjourned for nine months because of welfare issues.

**The CHAIR:** Sorry. Again, Commissioner, I do not want this to be a basis upon which that witness might be able to be identified.

**Comm. REDLICH:** No, I am speaking in sufficiently general terms, Madam Chair, to simply say I am not dealing here with theoretical options. These are real choices that the Commission makes. So in that case the questioning was moderated to allow for the particular medical state of the witness—or even, in some cases, because of the medical state of the witness, no examination at all. So I do want to emphasise that witness welfare is a prime consideration, not one which arises out of a statutory duty or obligation. But we give precedence to the welfare of the witness over and above discharging our functions, seeking to investigate and expose corrupt behaviour or police misconduct.

**The CHAIR:** Thanks, Commissioner, for that. I appreciate your brevity in relation to matters which do actually canvass significant terrain. I would like to begin, if I may, by asking you questions around the impact of a confidentiality order and a notice and the way in which changes to the status of that confidentiality notice, such as where it becomes invalid for any reason, might be communicated to people who were otherwise subject to that confidentiality notice; what the process is for managing the wellbeing consequences and the welfare consequences of a change to the status of that document; and more broadly what the pastoral care or care of witnesses and their wellbeing looks like and how it may change over time, including by way of communication with that person to whom a notice, valid or otherwise, might apply or have applied. So I am happy to throw the floor open for anyone who may wish to answer.

**Mr WOLF:** Well, I might start. Thanks, Chair.

**The CHAIR:** Of course, yes. Thanks, Deputy Commissioner.

**Mr WOLF:** So the confidentiality notices are an important tool for the IBAC in terms of the investigation. They serve two really strong purposes, the first being protecting the integrity of the investigation by preventing people from disclosing the matter that is under investigation but also affording the witness who receives one protection from having to talk about it—so it is a protection for the witness in themselves. Of course they are quite challenging for the individuals who receive the notice, so therefore there is a process that is in place in our organisation around the application to issue a notice. There are considerations all the way along in terms of the appropriateness and the witness impact. The Commissioner or my fellow deputy commissioners are the ones responsible for the issuing of that notice, so we take all of those considerations in place. So once it is determined that it is appropriate, then the document is prepared, and that document sets out the rationale of what is confidential—the issues that are to remain confidential. It sets out in general who they can talk to about it and who they cannot, which is really important and really clear. There is a general provision there, unless we determine to restrict it, about who they can talk to, which includes obviously a legal professional, a spouse, an employer, a health professional, their union, and I think there may be a couple of others. But there are a range of people that are allowed to disclose the matter, unless we determine to restrict it. Then there is the legislation, again, which sets out the provisions in the legislation that control confidentiality notices, and then there is a fact sheet, which sets out in plain English what the meaning of the notice is. So that is the documentation that is provided to the witness. It is very clear in terms of what they can and cannot do.

**The CHAIR:** So what happens if there is a change to the status of the confidentiality notice for some reason that is perhaps beyond the scope of a decision taken by the IBAC to lift it?

**Mr WOLF:** Are you talking in terms of who they can disclose matters to?

**The CHAIR:** Correct—if there is any change to the status of that confidentiality notice as it may prevent a person from talking about matters the subject of an investigation.

**Mr WOLF:** So it is important to note that, in terms of restricting who they can disclose matters to, by and large it does not go beyond those people named in the document. Ultimately, they can talk to a broad range of people unless we restrict it. Generally those decisions around restricting that group relate to the workplace, because it may involve an investigation of the workplace. So there are restrictions about disclosing it to

managers, and there may be, too, spouses or family members who may be involved in the investigation as well. So they are generally the restrictions that are placed over and above the broader document. If a person requests to be able to disclose matters to another party, then that application will be made to the Commission and again the Commissioner or the fellow deputy commissioners will make that decision to approve or reject that application.

**The CHAIR:** And what happens if a confidentiality notice becomes invalid?

**Mr WOLF:** By what means?

**The CHAIR:** Where it has no legal effect.

**Mr WOLF:** So if that were the case, firstly we would let the individual know that that was the case and then we would make a decision on whether we would reissue a notice that was valid.

**The CHAIR:** Could I—

**Comm. REDLICH:** Assuming the confidentiality notice is invalid—and we have a recent example of that—then of course there are no restricted matters at all and the witnesses are plainly at large to speak to whoever they wish to.

**The CHAIR:** Unless it is reinstated.

**Comm. REDLICH:** But the important thing is to recognise that the legislation, the notice itself and the letter which accompanies the notice all make very clear that the witness is not restricted from discussing welfare issues with their medical practitioner or any counsellor who meets the criteria under the Act.

**The CHAIR:** So if I could just ask perhaps for you to take on notice the number of confidentiality notices that have been rendered invalid for any reason and the instance of those notices being reinstated as against that total number for the relevant period, that would be very, very helpful.

Just further to a point that you have just made, Commissioner, with the time that I have left available to me, because I am under the same restrictions that you are, you have said that there is a document provided to witnesses, whether directly or peripherally involved in matters that may be the subject of a confidentiality notice. That document—does it provide a means by which help can be sought or assistance can be given through something that you organise?

**Mr WOLF:** Yes, it does indeed. So reference is provided to our witness welfare service and the contact details for that service.

**The CHAIR:** And how is the privacy of witnesses who may seek to avail themselves of that witness welfare service maintained given that they are effectively being invited to go to an organisation which you have recommended they contact?

**Comm. REDLICH:** Well, not ‘recommended’; we are paying that organisation for providing that service.

**The CHAIR:** But they are specifically noted in the document.

**Comm. REDLICH:** Yes, but it goes without saying that whatever passes between the witness and the counsellor or medical practitioner is an entirely confidential matter between the witness and that person.

**The CHAIR:** Again, if I could get—

**Ms BARAGWANATH:** It is entirely confidential. So they do not report back to us on who they have spoken to or what they have spoken about.

**The CHAIR:** Whether they have spoken to anyone, yes. So if I could just get on notice perhaps the number of people who have availed themselves of that particular service during the relevant period, that would be very helpful. And I suspect there will be a number of other questions that I do have to ask you to take on notice that we will come back to.

**Comm. REDLICH:** Madam Chair, that might be a difficult question to answer, because the support service does not provide us with detailed—

**The CHAIR:** Presumably as part of the commercial arrangement that you have with them they would be required to disclose the way in which they have undertaken their work.

**Ms BARAGWANATH:** We might know raw numbers, but we will not know what investigations they relate to.

**The CHAIR:** No, no—just raw numbers. I do not want to go into any individual matters at all. Yes, all right. Thank you very much for that. I will hand over to my deputy now—‘my deputy’, that is terribly proprietary. Mr Rowswell, over to you.

**Mr ROWSWELL:** Thank you, Chair. Commissioner, if things are going as well as some may say in the witness welfare space, why then are there known cases of suicidal ideation and also people committing suicide—

**The CHAIR:** Mr Rowswell, I am going to have to pull you up again with the same general reminder to all committee members, and indeed witnesses, that we are not to stray into the subject matter of individual matters, individual inquiries or indeed matters that are still on foot. Thanks.

**Mr ROWSWELL:** With your advice, Chair—on behalf of your organisation, is there a degree of responsibility that you on behalf of your organisation take for that circumstance?

**Comm. REDLICH:** I am sorry, for what circumstance, Mr Rowswell?

**Mr ROWSWELL:** For the circumstance of—

**The CHAIR:** You might want to phrase this very carefully, Mr Rowswell.

**Mr ROWSWELL:** There being known cases of suicidal ideation and instances of people having committed suicide.

**The CHAIR:** Sorry, again, I am really going to have to emphasise this point. If you wish to talk about challenges associated with welfare and wellbeing of witnesses, that is one thing. If you are going to talk about specific details of matters that may be the subject of conjecture or indeed of legal proceedings, then I am going to have to ask and insist that you pull that back to the generality.

**Comm. REDLICH:** May I just say, Madam Chair, that we are conscious of Mr Rowswell’s particular concern, because he was quoted in the paper within a few days of the particular example expressing a view. We would like the opportunity to be able to satisfy all of the members of the Committee as fully as we can that that particular event should give the Committee no cause for concern. We are particularly aggrieved by the fact that both the Committee and we are limited in the extent to which we can explore that issue.

**The CHAIR:** Commissioner, again, for the benefit of everybody who is part of this hearing or indeed observing it, this review is about the performance of integrity agencies. It is a general review, and it is obviously subject to Section 7 of the [Parliamentary Committees] Act [2003 (Vic)], which prevents and indeed requires that this committee not embark upon a course that might otherwise compromise or prejudice matters that are the subject of investigation or indeed review or legal proceeding in any number of other jurisdictions. There are opportunities—I would suggest they are not here—to canvass individual matters, and I will be particularly stringent on that one for a number of reasons around the Integrity and Oversight Committee’s remit and the obligations that we have to meet under the Act.

**Comm. REDLICH:** I understand that, Madam Chair, but as the question Mr Rowswell posed indicates, we are anxious to address any residual concerns that exist in relation to that matter.

**The CHAIR:** And again, that might well be an opportunity that is available through other means. Again, with that in mind around this exchange, Mr Rowswell, I will come back to the point that this is a systemic discussion about performance with a focus on witness welfare generally.

**Mr ROWSWELL:** I do understand that, Chair, but if I elevate the question just beyond any specifics which were never intended—

**The CHAIR:** A hypothetical example might do you well, Mr Rowswell.

**Mr ROWSWELL:** Sure. What responsibility, if any, does IBAC take for circumstances where witnesses, no matter what the investigation, what the circumstances, through the inquiry of IBAC and the undertaking of an investigation, do have suicidal thoughts, and in some cases it may lead to suicide?

**The CHAIR:** Again, Mr Rowswell, if we can talk about witness welfare and witness wellbeing, that is the remit within which we find ourselves.

**Mr ROWSWELL:** I am doing my best to elevate this to as high a level as I possibly can.

**The CHAIR:** This is where again I cannot underscore or emphasise enough the importance of this review being about performance generally and within that the realm and the frame of witness welfare. I would like for us not to describe any specific instances of any sort of compromise to wellbeing or to welfare. Again, I am asking everybody to cooperate with the process of this committee and this review in the spirit of that guidance. If we can perhaps take that question with those limitations around it, that will enable us all to meet our respective obligations on this review as it stands.

**Comm. REDLICH:** It goes without saying, Chair, that if in a particular case we move from the general proposition that there are always going to be risks associated with a witness coerced into giving evidence, whether in a private or a public setting, to a specific case where there is any reason that comes to the attention of IBAC why one ought to be particularly concerned about welfare, then to my knowledge without fail those concerns are properly addressed. I do not have an example, Mr Rowswell, of where matters came to the attention of the Commission which ought to have led to a particular witness being treated in a more sympathetic or compassionate way. I do not have one example of it.

**The CHAIR:** A remaining question, Mr Rowswell, before we move on?

**Mr ROWSWELL:** Yes, thanks, Chair. Commissioner, you referenced Sandon and Watts in your opening remarks. Conscious of your guidance, Chair, as well, there has been a broadly reported circumstance where some witnesses have had their evidence heard in public and others in private, and I am keen to understand whether in relation to those witnesses—

**The CHAIR:** No, not in relation to those—just generally, please, Mr Rowswell.

**Mr ROWSWELL:** of which I am sure there are many—the evidence has been heard in private based on a decision that IBAC has made, or has it been instigated or can it be instigated in some cases by the legal representation of the witness?

**Comm. REDLICH:** I think I know the matters about which you speak. To my knowledge there has never been a witness who has asked for a private hearing as distinct from a public one, and certainly in the cases that I think you have in mind there was no such request made. The decision to hold witnesses' examinations in private in the context where there are also ongoing public examinations about that matter is because one or more of the mandatory criteria set out in Section 117 cannot be satisfied. That is why I said at the outset there is complete misunderstanding. Let us take the public examination of factional branch stacking. Because that is in the public domain does not mean—

**The CHAIR:** This has not yet been finalised, Commissioner.

**Comm. REDLICH:** No, no. But I am speaking theoretically here, not about individuals.

**The CHAIR:** You have talked about a specific matter, and I would ask that you come back again to refer to general performance matters and not to specific investigations that are the subject of your remit.

**Comm. REDLICH:** Yes. If a decision is made to examine a witness in private, it is because one or more of the criteria cannot be met. And that is the total answer to that question. Do not forget: if it is a public examination that has proceeded in relation to the issues, there will be a special report published, and if there is a

special report published, then the reasons for examining witnesses in public or private will be entirely apparent from that special report. And the sooner we can get those special reports into the public domain, the better for everyone, so that there can be no speculation about these issues.

**The CHAIR:** Mr Rowswell, that ends your time for today.

**Mr ROWSWELL:** Thank you, Chair.

**The CHAIR:** Thank you for that, Mr Rowswell. Mr Grimley, over to you, attending virtually.

**Mr GRIMLEY:** Thank you, Chair. Thank you, Commissioner and everybody else, for attending today. So just going on that discussion, it could be said that witness welfare management is not a finite process by any stretch and it certainly evolves over time. In your addressing remarks at the start there, Commissioner, you mentioned that the practices of witness welfare management do not differ between a public and a private hearing. My question is: What becomes of witness welfare management when a private hearing or investigation becomes known in the public domain? Does the management of that witness, either through the IBAC welfare contact officer or through other means, change at all, or does it still remain the same?

**Comm. REDLICH:** Do you mean: is there something additional that we might do when a witness who has given evidence in private suddenly finds that it has spilled out into the public domain?

**Mr GRIMLEY:** Exactly. Yes. For instance, if I were to give evidence in a private situation and if it were to become known in the public domain, clearly there would be some issues there. How is IBAC addressing the witness welfare management in those cases?

**The CHAIR:** Just for clarity, Mr Grimley, are you also referring to the issuing of a report, or are you talking just about an investigation as it is on foot? Because there are slightly different threads that arise from that.

**Mr GRIMLEY:** Just a general overall—

**The CHAIR:** The general comment.

**Mr GRIMLEY:** Yes.

**Ms BARAGWANATH:** If it is a leak, so if it inadvertently made its way into the public domain, I think generally, Mr Grimley, we would try and get in touch with a witness if we had advance notice that it was going to get into the public domain. Aside from that, we would make contact with them when we did become aware that it had made its way into the public domain and make sure that they were being adequately supported and make sure that they knew again about our witness welfare support services and had contact with their lawyer if they thought that was appropriate—those sorts of things. But they would be the supports that we would put in place. So it is defaulting to our regular practice but making sure that as soon as we become aware we let them know.

**The CHAIR:** But again, just to flesh that out, what about in the instance beyond the circumstance you have talked about, where there is a report which is issued which takes something that was in the private domain and the subject of a private hearing into the public space by way of a document or other commentary?

**Ms BARAGWANATH:** Generally the witness will have been consulted—well, will have had the opportunity through the natural justice process to see drafts of the report and make comment. If there is an adverse comment, they will be given the opportunity to respond and will have access to their evidence so that they can also review that in the course of preparing their response. If there is not an adverse comment but we are proposing to name them in the report, we will also hear from them whether they do not wish to be named in the report, and I am hard pressed to think of a time with someone who there is no adverse comment about and who has asked not to be named that we have not acceded to that request. And then—

**The CHAIR:** If you could just take that on notice and confirm that that is the case, that would be very helpful. Thank you.

**Ms BARAGWANATH:** Yes.



**Comm. REDLICH:** The Act is quite explicit, though. Whether they are adverse comments or not, they all are entitled to respond to the report.

**Ms BARAGWANATH:** Yes, they are.

**The CHAIR:** Just the circumstance, though, in terms of numerical outcomes—that would be great.

**Ms BARAGWANATH:** Yes, that is fine. After the natural justice process we also send them notification about what the next steps are. Depending on how long it takes the natural justice process to transpire, because there could be challenges to that natural justice process, we will be in contact with people who are named in the report prior to the tabling of the report so that they are aware of the tabling date. Does that answer your question, Mr Grimley?

**Mr GRIMLEY:** Thank you very much for that. Thanks, Chair.

**The CHAIR:** Thank you, Mr Grimley. Now, Mr Wells, over to you.

**Mr WELLS:** Thanks, Commissioner. My questions are along the line that Mr Rowswell was asking but in a different way. I was interested in your answers to the Committee, especially 20.4—the examination can be held without causing unreasonable damage to a person's reputation. Is that the reason why Daniel Andrews was grilled in private rather than in public?

**The CHAIR:** Sorry, again, again, again—can we cut the feed, please.

### Hearing suspended.

**The CHAIR:** Thank you very much, everyone, for your cooperation in the course of a private discussion while we had a brief break from proceedings. Before we continue with Mr Wells's questioning, because we had agreed to reinstate his time, I would just remind everybody that this is a review which does not stray into the territory of individual matters, that the Integrity and Oversight Committee's obligations to understand and to report on the performance of integrity agencies do not extend to prejudicing in any way any investigation which is the subject of the jurisdiction of integrity agencies, nor do they in fact enable us to reach into individual matters to pass comment on them or indeed to create any expectations that this review is about individual matters being undertaken by those integrity agencies. I would urge all members of the Committee and indeed all witnesses, as I will do throughout all of the hearings that we have scheduled for this particular review, to comply with those responsibilities and obligations. I will, where necessary, go into in camera or private hearings where indeed I anticipate that there is a breach or where indeed there is a breach.

Mr Wells, over to you. I will start the clock again, and thank you to everyone in being prepared to stay a little longer today.

**Mr WELLS:** Commissioner, take 2. Do you agree with the current IBAC legislation around your ability to call for a public or private hearing, or are there changes that need to be made to the legislation in order to give you the power to be able to do that—to call a public or private hearing?

**Comm. REDLICH:** The terms in which IBAC is currently constrained in terms of public hearing are quite exceptional, starting with the fact that there is an exceptional circumstance requirement. I do not think at this time of the Western world's development that there is a serious alternate view to the view that public hearings are by far the most effective way of placing in the public domain issues about corruption or police misconduct, not only because of their educative purposes. Take, for example, the commentary by a senior sergeant only yesterday in [a] public hearing who talked about the benefits—even though acknowledging wrongdoing, he talked about the benefits to his fellow officers from the revelation of his misconduct.

I do not think there can be any argument that public hearings are still the most effective way of developing trust in the institutions that have to investigate and expose corruption. I do not think there is a doubt that by placing matters in the public domain one is best able to ensure that there is a public and executive government appetite to embrace reforms that are exposed when particular wrongdoing is revealed. Minds can differ about the extent to which public hearing rights should be limited. Yes, our requirements are more onerous than they are in other circumstances. I doubt the validity of the exceptional circumstance requirement, but I think it would be evident to all members of the Committee that the provision that says 'Don't call a witness in public unless you can be

reasonably satisfied that there will be no unreasonable damage done to reputation or wellbeing' is a good criteria. It is a protective criteria, which enables the integrity agency to focus on whether or not unreasonable damage to reputation or unreasonable damage to welfare will occur, so I certainly do not want to be understood as suggesting that provision is other than a beneficial one for all concerned. I think there could be serious consideration given to the exceptional circumstance requirement. I am sorry if that is a longwinded response.

**Mr WELLS:** No, no. And to follow on from that answer—

**The CHAIR:** Just before you do, again, Commissioner, you referred to an individual matter. Again, if you could please confine yourself to the hearing—

**Comm. REDLICH:** I did. I am sorry. Thank you, Chair.

**The CHAIR:** Even if it is in the public domain, if it is the subject of a matter that you are yet to determine—I do not want to set any precedents upon which anyone else might rely down the track.

**Mr WELLS:** Can you start the clock again?

**The CHAIR:** My clock is okay. You just keep going.

**Mr WELLS:** To follow on, Commissioner, on what you have just said, if you have made a public announcement that there is going to be a public hearing and you are going to have your witnesses come through and be cross-examined or examined in public, but then you receive credible information, hypothetically, that there are mental health issues or suicidal tendencies for a particular witness, do you then make the decision based on credible information that that person would then be dealt with in private?

**Comm. REDLICH:** Of course, or not at all. Absolutely. I want to assure you, Mr Wells, that I know of no circumstance, either in my period as Commissioner or in my predecessor's time, where if information has come into the possession of the Commission that suggests that a person has a mental issue, a welfare issue, a suicidal ideation, that it is not addressed so as to ensure that the welfare of the witness is protected. I said at the outset that IBAC gives precedence to the welfare of the witness. Notwithstanding, there is no statutory obligation that that override the exercise of its functions, but we always have. I give you a complete assurance as to that, and any suggestion that we have ever ignored such information and not addressed a welfare issue when it is known is simply wrong.

**The CHAIR:** We may yet have time if you have questions on notice or indeed that we come back. I note that the Commissioner has indicated that he would be happy to return to this particular forum for the purposes of answering further questions, and that might then provide you with another opportunity, Mr Wells.

**Mr WELLS:** Can I just seek clarification on that?

**The CHAIR:** Yes.

**Mr WELLS:** Is the Commissioner happy to come back in regard strictly to the—

**The CHAIR:** I would like to consider that within Committee if we can.

**Mr WELLS:** witness welfare and then other matters that the Commissioner may wish to discuss?

**The CHAIR:** Let us resolve that as a committee, and I look forward to being able to provide a form of words around the way in which you might be able to return to provide additional materials to this committee.

**Comm. REDLICH:** Yes.

**The CHAIR:** Is everyone comfortable with that?

**Comm. REDLICH:** Could I just add that I think there is a serious question to consider about the lapse of time that occurs between the end of investigation and the point of time at which a special report is ultimately published. If we only look at the last two royal commissions, we know that the Lawyer X royal commission took two years from the time it commenced until it was able to publish a report and a similar period of time for the royal commission into mental health—

**The CHAIR:** Well, no, that was slightly different, Commissioner. I am going to pull you up there. There was a change to the terms of reference and the pandemic was added in as additional terms of reference. The same with the family violence royal commission. So that is actually a slightly different circumstance to the one that you have just outlined with Lawyer X.

**Comm. REDLICH:** Well, of course the issues that a commission is going to consider evolve; they are never static in terms of information that comes or the terms of reference. I am just saying that it has been my invariable experience that from the time that a royal commission completes examination of witnesses to the point of time at which it is able to publish a report is often years—certainly in those two examples over a year from the time that they ceased examinations.

**The CHAIR:** Not without an interim report.

**Comm. REDLICH:** Well, maybe so, but I am just trying to illustrate. We have at any given moment in time 10, 15 investigations underway, and—

**Ms BARAGWANATH:** It is more like 30.

**Comm. REDLICH:** Thank you.

**The CHAIR:** All right, let us park that for now, because there is a further issue that we can obviously interrogate around the way in which you discharge your obligations within the broader remit of the performance review that we are undertaking. Time has gotten away from us, though, Mr Wells. What I am going to do now is invite you, Mr Halse, to ask your questions, noting that the clock appears to have been thrown out the window for this afternoon, but we will give it a go in terms of reinstating it anyway.

**Mr HALSE:** Thank you, Chair. Some of these might elicit a very brief response, so I will not take up too much time. You have an IBAC welfare officer, correct?

**Ms BARAGWANATH:** No.

**Mr HALSE:** You do not have an IBAC contact welfare officer?

**Ms BARAGWANATH:** On individual investigations there will be a contact point for witnesses, but in relation to a welfare officer across IBAC in general, no.

**Mr HALSE:** Okay. So what clinical and mental health expertise does the IBAC workforce have?

**Ms BARAGWANATH:** In relation to our staff?

**Mr HALSE:** In relation to those who are appearing.

**Ms BARAGWANATH:** In relation to witnesses?

**Mr HALSE:** Yes.

**Ms BARAGWANATH:** I will handle some of this, and then my colleague Mr Wolf may wish to handle some of the rest of it. So we hire expert staff who are generally experts both in investigations and legal proceedings. We have a range of policies and procedures which they are all trained in and they are expected to know, and we conduct assurance activities to ensure that they are actually complying and adhering to those policies and procedures. We have other assurance activities such as internal audits—those sorts of things. We also provide staff with mental health awareness training—that is offered to all staff—and we also have mental health first aid training that is offered to staff. Not all staff undertake that; that is quite an intensive process. And then for our own staff we have an employee assistance provider, and then for witnesses that are involved in IBAC examinations there is the independently funded service provider Converge, which is available to them throughout the life of the investigation from when it starts as either a preliminary inquiry or an investigation, when we first have contact with the witness, all the way through to the end of it, which might be a special report or legal proceedings—those sorts of things. So to the extent that we have contact with witnesses those services are always available to them.

**Mr WOLF:** Yes, in a practical sense our staff are dealing with people all the time, so they are very attuned to the non-verbal cues or the verbal cues that a person might give off, and that includes every contact we have with them. That builds a picture over time. So our lead investigator may deal with a witness over many months and build a bit of a rapport with them but also build a picture about how that person is tracking, and that then is fed back to us in terms of every decision we make. And then of course in the actual examination process one of the key roles of the examiner or the Commissioner or deputy commissioners is to monitor the witness in terms of how they are looking, feeling, performing—looking at those cues, making sure they have appropriate breaks, access to services and access to their legal representative. In fact, as the Commissioner said, we might even alter an examination mid examination to go from public to private if we think that may assist the witness. So we are constantly looking at our picture of the witness, informing that picture to then inform our decisions about how we will deal with them.

**Comm. REDLICH:** I think it is important to understand, Mr Halse, that it is not because they have mental health training. We are talking about two possibilities: the theoretical possibility that a witness will become distressed or anxious because they are coerced to give evidence, and we are talking about the specific case where something comes to attention that suggests it is something more than just the general issue that might arise—there is something about the witness. And everyone that is involved in the examination process, because of our welfare policy, is alerted to be looking for those signs. But we do not have people there that are paramedics or experts in mental health.

**Mr HALSE:** No, I appreciate that. You are not a hospital; that is not the responsibility that you hold. But I am interested to know, given the extraordinary circumstances in which you often encounter people and witnesses and the stress that you talk about and note that they will be placed under: What is your process of looking into that, adapting the skill set of your staff, indeed of the leadership, to respond to best practice approaches, just to make sure that witness welfare, despite the importance of the work you are doing, is paramount to that process?

**Comm. REDLICH:** Ms Baragwanath?

**Ms BARAGWANATH:** I think one of the most important things that has actually happened in the last couple of years is that we now have three deputy commissioners who kind of sit above and independently of the investigation. They are less kind of immersed in everything that is going on and very much in that position of reviewing the work that the investigators have done and assessing independently of the investigative team how this is going to impact witnesses. They basically have quite an extensive process where they go through the risk assessments that the investigations team have conducted. So the risk assessment process basically takes place throughout the life of an investigation, and particularly before major investigative activities like a search or a summons or an examination or a draft before going out for natural justice—those sorts of things. The deputy commissioners' role is to interrogate: Well, what are we doing about this? What does our intelligence suggest? How did this witness go when they were appearing in a private or a public hearing? Is there anything that has changed? What do we need to be aware of? So there is kind of the independent interrogation of our own approach to each witness that comes from the deputy commissioner. So of all our investigations, yes, the Commissioner does appear in most of our public examinations, but there is a deputy commissioner that is also assigned to every single investigation that plays that role of that sort of QA and stress testing—whether or not we have adequately considered those issues—as well as other risks to the investigation.

**The CHAIR:** Thank you, Mr Halse. You have actually helped us to claw back some time. Right, I will now ask Mr Taylor. If you would like to take yourself off mute, please.

**Mr TAYLOR:** Thank you, Chair. My question is: How has IBAC contributed to the Government's systemic review of Victoria's police oversight system?

**The CHAIR:** Noting of course that it will probably get dark before you are ready to finish answering that question, let us give it a go. You can always provide additional information on notice.

**Comm. REDLICH:** I did not think, Mr Taylor, I would get the opportunity to respond to that today, so thank you for that question. I am pleased to say that in the last Budget just recently announced by the Treasurer IBAC has received real-time additional resources. Up until now, any additional resourcing has really been in the area of indexation to keep us where we are at, or last year we got a one-off Treasurer's advance. But for the first time now, looking into the future, we actually have a real-time addition to our resources. But it really is

important to understand one thing: at present we investigate approximately 2 per cent of the complaints that we receive concerning Victoria Police which we conclude should be the subject of investigation, and the balance—98 per cent of the complaints we receive—have to be referred back to Victoria Police for investigation. We currently are able to review something like 8 per cent of matters that we have referred back to Victoria Police for investigation; we review about 8 per cent. These additional resources might enable us to increase the number of investigations from the 2 per cent that we do to 4 per cent or perhaps 5 per cent. They might enable us to raise the number of reviews we do of police investigations from 8 per cent to 10 per cent or 12 per cent. But it does need to be understood that, no matter the volume of additional resources we receive, we are only going to be able to investigate and review a small portion of the matters which come to us and which should be the subject of investigation. We cannot change that harsh reality.

**Ms BARAGWANATH:** Can I just add one other thing? Lest there be any suggestion that we are somehow inefficient, we have recently been subject to a base review that looked at our efficiency and effectiveness, and indeed no areas of inefficiency or ineffectiveness were found in that review. So it is simply a matter of resourcing and arithmetic.

**The CHAIR:** I do not think anyone was suggesting that, but thank you for removing any doubt there. Mr Taylor, anything further?

**Mr TAYLOR:** No. Thank you, Chair.

**The CHAIR:** Wow. We are clawing back time. Ms Ward, you are the last cab off the rank. I have one small question and then we can wrap up for the day—at least for this particular attendance.

**Ms WARD:** Thank you. Thank you for your time today. I was just wondering if you could tease out just a little more what it means ‘no unreasonable damage’. How do you process that, and does it differ from person to person?

**Comm. REDLICH:** I will venture an answer and then call on my colleagues to add to it. It is a good question, because it is a curious concept, isn’t it, that we are asked to ask ourselves, ‘Will there be unreasonable damage to welfare?’, which rather suggests that Parliament recognises that there is always going to be some level of distress and anxiety which every person is going to suffer. Each person is different, so the volume of stress and anxiety will differ. What I have been at pains to emphasise is that as soon as any information comes into our possession which adds something to the theoretical risk, we then have to immediately examine and modify our approach having regard to the additional knowledge we have of the witness. Now, I am not sure that that is an answer to your question. It might be as well to ask those who were in Parliament who passed that legislation, but I think it is evident enough that Parliament recognised that there will always be a reasonable amount of damage done to a witness’s welfare simply through the coercive process.

**Mr WOLF:** I think in addition, the last part of your question, Ms Ward, was around ‘Is it a case-by-case example?’ And I think that is exactly what we have tried to demonstrate here today—that each witness is assessed on their own basis; all the inputs around our information intelligence that go to build that picture. Hopefully we have demonstrated today the amount of time that goes into that thinking and the priority in which it is placed around how we assess that criteria.

**Ms WARD:** Thank you. But is there a formula? How do you determine what is unreasonable?

**The CHAIR:** The great test of every court and jurisdiction for the whole of time, I would suggest.

**Comm. REDLICH:** I think it is important that I make the point that will be obvious to anyone who practises law—that whether it is a judicial process, whether it is a coronial inquest, whether it is any other form of inquisitorial process, witnesses in any of those processes are going to be subjected to stress and anxiety from being coerced in having to answer. I must say, and this perhaps is a reflection also on my period as a judicial officer, it was not until very, very recent times that I have suddenly observed a preoccupation for the first time by all of those institutions in the question of witness welfare—What are we actually doing to assist witnesses in coping with the anxieties that come from a coercive examination? I understand that only last week, for the first time, I believe, the Coroners Court announced that it is focused also on the welfare of witnesses. I suspect, really, the inquiry which the Committee is currently undertaking has contributed to a much broader questioning within all of those jurisdictions about how witness welfare is managed.

**Ms WARD:** Thank you. I would hesitate to challenge that a little by saying that I think that a number of women have been advocating for some time that, for example, in some situations witness welfare is actually incredibly important, particularly within the judicial system. There has been a conversation, but in the current climate I am glad that we are having a much wider conversation, particularly in the coercive environments as you suggest. Thank you.

**The CHAIR:** I think that also builds upon a number of comments that have been made around changes to the Children's Court jurisdiction, to the Magistrates Court and to the way in which alternative dispute resolution is managed as an alternative to proceedings. So that is an interesting point around the way in which that has reached into other jurisdictions, including, as you referred to, the Coroners Court.

Right, that just about brings us to the end of the hearing, but I did just want to ask something further to the discussions that have been made earlier around understanding the reasonableness of an impact upon specific witnesses. You would be well aware as a judge that the impact of a matter is contingent upon the way in which you find your person, so you take your victim as you find them. I am not saying there are victims here but that that classic principle applies where you have a witness to a matter and where the concept of reasonableness or unreasonableness is infused into what they present as a specific cohort, a member of a minority group, the way in which they may live and move in the world for a range of different reasons. I would just be keen to understand how those accommodations are made, noting that you deal with a wide range of witnesses and a wide variety of different challenges, how it is that those specific challenges are met as they relate to individuals for whom a specific skill set might come into play around determining what is reasonable in any given circumstance.

**Comm. REDLICH:** I will call on my colleagues to add to this, but perhaps I have not made the position clear enough that those sorts of considerations do not have any bearing at all on the decision that is made to modify processes. Once it is apparent that a witness—no matter what their background, no matter what their reasons—is struggling to deal with the process or will struggle to deal with the process we want to follow, we as a matter of course modify that process. So even if it be the primary person of interest who, according to the Commission, on any view has clearly been engaged in serious corrupt conduct, if it becomes apparent that they are not able or will not be able to manage the process properly because of a welfare concern, we have to modify it—and that is without exception.

**The CHAIR:** So there is speculation involved in that?

**Comm. REDLICH:** Well, there is only speculation in the sense that we move from the general proposition that there is always a theoretical risk to, 'Do we have some information that tells us there is a particular problem in this case?', and if that is the case, then we must—and we always [do]—modify our approach.

**The CHAIR:** But that that can occur pre-emptively so that they are not or will not be—that is what you referred to just now around the impact upon their wellbeing.

**Comm. REDLICH:** That depends on when we become privy to that.

**The CHAIR:** Yes, that is right, but you can actually make that determination pre-emptively.

**Comm. REDLICH:** Indeed.

**The CHAIR:** Okay, that is fine. That is all I wanted to clarify. Ms Baragwanath, you wanted to add something, I think.

**Ms BARAGWANATH:** Were you talking more in relation to how we deal with sort of diverse communities and make sure that we are accommodating people appropriately?

**The CHAIR:** Witnesses to whom there may be specific needs attached as a consequence of membership of and belonging to a specific group.

**Ms BARAGWANATH:** Leaving aside there are various protections in the Act around things like mental impairment, age, et cetera, that are hardwired into the legislation, I think probably the things that we have focused on in the time I have been at IBAC are more in terms of reaching out to those communities and making sure that people are comfortable to complain to IBAC. Now, there is a trick to that in that you have to manage

expectations about how many complaints you can take on as an investigation versus other referral pathways that might come into play. It is an interesting thing to go to a community and say, ‘Come and complain to us’, and then not investigate the next complaint they bring to you. That is an exercise in expectation management and familiarity with the organisation, but we have an increasing emphasis on that that is led very much by one of our deputy commissioners—and we are continuing that work. In actual fact we have got a plan that has got 17 activity areas this year which we are hoping to progress. Then I think the other thing is in terms of internally making sure that we are an organisation that is diverse and inclusive and understanding of issues that particular communities may confront, so we have had a very intensive diversity and inclusion strategy.

**The CHAIR:** Yes, you have mentioned that in earlier hearings.

**Ms BARAGWANATH:** That is very much designed to make IBAC a welcoming and inclusive place that understands the lived experience of people from different walks of life.

**The CHAIR:** That is excellent. That is very helpful.

**Mr WELLS:** That is very comprehensive.

**The CHAIR:** Excellent. All right. That then brings us to the close of today’s hearing. There are obviously a number of matters to follow through on as a consequence of matters raised since you first sat down today. They will be the subject of consideration and determination by the Committee. You will receive a transcript as it becomes available for comment prior to publication, and given what has occurred today there may well be parts of that transcript that are redacted for the sake of the very purpose for which we are here. And I would hope that everybody understands the basis upon which that will occur and will necessarily and appropriately occur. On that basis, thank you for your attendance today, and I am happy to end proceedings here. Thanks.

**Committee adjourned.**