

# **TRANSCRIPT**

## **INTEGRITY AND OVERSIGHT COMMITTEE**

### **Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies**

Melbourne—Monday, 24 May 2021

#### **MEMBERS**

Mr Stephen McGhie—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Ms Harriet Shing

Mr Jackson Taylor

Hon Kim Wells

## WITNESSES

Mr Adam Fennessy, PSM, Commissioner, and

Ms Verity Harris, Executive Director, Integrity and Advisory, Victorian Public Sector Commission.

**The CHAIR:** I declare open the public hearing for the Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies. I would like to welcome any members of the public attending or watching the live broadcast. I also acknowledge my colleagues participating today and thank those who have provided apologies.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us is gathered on today and pay my respects to their ancestors, elders and families.

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.

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I would like to welcome the Victorian Public Sector Commissioner, Mr Adam Fennessy, and Ms Verity Harris, Executive Director, Integrity and Advisory. We welcome your opening comments for 5 to 10 minutes, which will be followed by questions from the Committee. If you could just state your name, position and organisation, thank you.

**Mr FENNESSY:** Thank you, Chair. Thank you, Members. My name is Adam Fennessy. I am the Victorian Public Sector Commissioner.

**Ms HARRIS:** Verity Harris, Executive Director, Integrity and Advisory, from the Commission.

**Mr FENNESSY:** So, Chair, through you, for Members I have got two slides to talk to today to give you the context of how we see our role intersecting with your terms of reference, and these two slides are based on the submissions that we have made to this Committee.

### Visual presentation.

**Mr FENNESSY:** While there were more than two slides, I intend to speak to the key points of emphasis—and for Members and the Chair, you can see that first slide now. Now, there is quite a bit of information there. I will speak to that at a higher level.

The first slide is the Victorian Public Sector Commission's role as a standard-setter as that relates to the education and prevention functions within the integrity context. When I move to the second slide, that will go through the key interactions we have with the integrity agencies with which this Inquiry is particularly interested—namely, IBAC, the Ombudsman, OVIC and the Victorian Inspectorate. I hope you do not mind me using acronyms. They will be very well known to you, I am sure, through this Committee.

In terms of our role, we do work in that at the front end of the system. As the standard-setter we have that direct interaction, not just with the 50 000 or so Victorian public servants but with the more than 330 000 people that work across the Victorian public sector. And while we do not have the depth of investigative and independent functions of other entities, we very much do play that front-end educative and preventative role, and as our submission outlines, we have specific powers relating to issuing mandatory codes of conduct based on legislated public sector values, and that is under the Victorian *Public Administration Act*, and, secondly,

mandatory standards around the application of public sector employment principles. So that has a broad reach, and while we do not have those specific regulatory or investigative powers, it is really that first contact that public servants will have with ethical behaviour through codes of conduct and indeed the education and preventative functions.

So that is, broadly speaking, our role, and that is alongside our role to advocate for an apolitical and professional public sector. I also have recommendation-making powers that I can make to public sector body heads in relation to any specific processes around promoting or improving compliance with relevant requirements. And our submission emphasises a point that is not often completely appreciated more broadly amongst the public that we are not a regulator, as I mentioned before, but that the employers in the public sector context are responsible for enforcing the mandatory codes and standards that we set. So we have that important standard-setting role but we do not then have the follow-up powers to investigate or implement or enforce codes and standards; that resides with public sector employers under the *Public Administration Act*.

We do have a range of independent functions. So, our submission explains to the Chair and members that we are not subject to ministerial direction or control in respect of our integrity functions. At the same time, we work very closely with departments across government, so we sit at that juncture between administrative departments and public sector heads and the integrity agencies that have those specific powers. A lot of what we do and the products we produce are guidance products. We work very closely alongside the other agencies, as I will outline, to support implementation and understanding of codes of conduct and standards. So that is the role of the Victorian Public Sector Commission.

The second and final slide I will speak to for the benefit of the Chair and Members is how we interact with those other integrity agencies. We have a lot of interactions with the entities that you are inquiring into, particularly with IBAC. We work with each of the four entities, and as well as those entities we do a lot of work with other oversight bodies like the Victorian Auditor-General and the Auditor-General's office. So we have very much shared interests in opportunities in education and prevention. If we are doing our job well, ideally there are less issues for IBAC ultimately to investigate. In a human system it is always going to happen that there will be issues that need independent oversight and investigation, but where we sit in the system we are very much at the front end and the preventative end.

We regularly refer to the work of the Ombudsman and IBAC in particular, and we pick up quite a bit of our work coming out of their recommendations. To give you a specific example, IBAC's recent Operation Meroo report looked into public sector entity governance and in that case the Commissioner made some comments about how we could work more closely with public sector boards to give them a better understanding of their obligations so that issues that IBAC uncovered in that case relating to public sector health—a hospital board—we then pick up the broader system issues around the particular conduct matters that IBAC uncovered.

Other examples: IBAC has recently published research documents on State integrity frameworks, on conflict-of-interest issues and will work directly and frequently with us in developing those recommendations and in some cases will recommend that the VPSC then implements or updates guidelines that might relate to that. A good example is during the COVID pandemic we worked together with IBAC and produced a report on integrity and corruption risks while working remotely. So we published those guidelines and that guidance, acknowledging that was an increased risk for public sector entities, employees and businesses during lockdown. And we did not just develop that with IBAC but we presented on it publicly as well as part of that education function. So there are examples of how we work together with particularly IBAC and the Victorian Ombudsman. We also work with OVIC in some of the data gathering and information we collect about, for example, public sector executives, and we have interactions as well with the Victorian Inspectorate.

Finally—and my last point in my opening remarks—our submission identifies ongoing opportunities that we see for closer working relations with the specific integrity entities that your Inquiry looks at. We see close operational relationships as an ongoing opportunity. I note that we consider we have got very good working relationships and work very frequently with those integrity agencies. There is always the opportunity for continued collaboration for emerging risks and for the changing role and nature of government, particularly post-COVID.

The second opportunity is convening and operating good governance communities of practice. While there are specific investigative functions of those other entities, our educative and preventative role is working actively

and practically with people across government who are involved in these issues, and those communities of practice go a long way to improve the prevention and education in a real way for everyday public servants rather than having to wait for new recommendations coming out of something that went wrong. So, communities of practice, we find, are a very important part of the practical workings that we promote.

The third issue is de-identified whole-of-sector data sharing where we see common complaints received by those integrity agencies. And this is an interesting overlap with OVIC so that we are making sure we are using data in the best way we can and appropriately in terms of data security and privacy and using the data and analytics opportunities to see where issues either are or are emerging. So it is very much data-driven, particularly the data that those integrity agencies collect where thresholds may not be met but there are still concerns about integrity. I think that is a very important aspect. Just because a formal investigation may not be triggered, we can still learn what that means about emerging risks or opportunities across the public sector.

And then, finally, we hold regular forums. I mentioned some of the public work we did with IBAC about integrity while working remotely. We do a lot of work particularly through the Institute of Public Administration Australia—IPAA—Victoria as the peak public sector industry body. We do a lot of co-presentations with the integrity agencies, and that again is very important as part of the education and prevention. So, Chair, through you and Members, that is the overview that I would like to present today, and I am very happy for questions of interest and relevance to the Committee.

**The CHAIR:** Thank you for that presentation. I will just put it to the Members: if there is anyone there that would like to ask a question. Mr Rowswell?

**Mr ROWSWELL:** Thanks, Chair. I am happy to kick off.

**The CHAIR:** Mr Rowswell, yes.

**Mr ROWSWELL:** Thank you, Chair. Thank you, Mr Fennessy, and thank you, Ms Harris, as well for that broad overview that you have commenced with. If I can just take you down a couple of layers in some detail. How does the VPSC educate directors of statutory agencies about their rights and responsibilities where either actual or perceived conflicts of interest arise?

**Mr FENNESSY:** Member Rowswell, I will make a couple of specific comments on that and I will also hand to Verity Harris if we need to go to the next level of detail.

**Mr ROWSWELL:** Thanks.

**Mr FENNESSY:** We manage forums to induct new board members, but we also use online tools like Get on Board which set out guidelines for public sector board members, and in particular we look at the interface between statutory board requirements and what public sector governance might require in addition, as outlined by the legislation under which each board is appointed. Now, it will be no surprise to Members that across Victoria we have a lot of very experienced board members from publicly listed companies and private companies who have got a very strong understanding of their governance duties and obligations and directors duties. But the question then is: What does that mean if you are on a public sector entity where you might have an additional set of requirements or expectations of your shareholder, which may be a defined minister? That is where we do our lot of our work. We run workshops, inductions. We also work quite specifically with different departments; for example, what this might mean for the government-owned water sector or the State hospital boards or government-owned TAFE boards, which will be different in each case depending on the *Water Industry Act* or the public health legislation, et cetera. So that is the next level of generality to your question. Verity, did you want to add to any of that, because we do a lot of work in this space.

**Ms HARRIS:** Yes. Thank you very much, Commissioner, and thank you for the question. I will perhaps just direct the Committee to, for example, where we take it down another level. In providing advice and good guidance for directors of public entities we released last year integrity guidance for new board directors and we go into the things that they need to know before they start the duties and responsibilities of boards and board directors, and particularly to your point [on] how to manage conflicts of interest and the duties of a board director; gifts, benefits and hospitality; as well as employing staff as a board director. So those are key areas that we see are matters of key importance for board directors to be aware of from an integrity perspective.

**Mr ROWSWELL:** Thanks, Ms Harris. But just another level of specificity down, if I may. I would like to pose a specific but hypothetical question. Where a board member of a statutory entity is married to a minister of the Crown or to a Member of the Parliament, must that director declare a conflict of interest when considering any matter which relates to their spouse's portfolio or electorate? Is that a requirement that you stipulate?

**Mr FENNESSY:** My first response to that is there are very thorough declaration-of-interests processes for board members, and some of those go to things you would expect, like ownership of property, including residential. For specific relationships, if there are issues that the person would believe could constitute a conflict of interest, we would expect that issue to be indicated. In terms of the way it applies across the public sector, in many ways it is similar to publicly listed companies, where, if a relationship is material to the duties of that particular director, then we would expect that to be declared through the materials that we use. But I also add to that that we have a guidance role rather than an investigative role. So we would suggest that people make those declarations and then we can assess, and particularly through board appointment processes the government of the day can assess the relevance and the nature of those interests that have been declared.

Verity, did you want to add anything to that from our guidelines?

**Ms HARRIS:** Yes, thank you. Just to, I guess, point out that our guidance does talk about the conflict existing when you have private interests that might influence or be seen to influence you in your decisions or actions as a board director. Private interests include direct interests, such as your own personal family and professional or business interests. Then, in relation to consensual personal relationships, there is guidance on that, and therefore one's personal relationships with people could be affected by one's role and it could create a conflict of interest. In these cases it is all about being upfront and open and declaring what could be an actual or indeed a perceived conflict of interest.

**Mr ROWSWELL:** Yes. As a recent graduate of a company directors' course we went through this in detail, and I think it is always better to be upfront about these things when there is a perception or there could be a perception of a conflict as opposed to withholding information. Are there any formal reporting requirements for such declarations? Are there any requirements that govern this circumstance, noting that you are there not as a regulator but to purely set the codes?

**Ms HARRIS:** Not to the Commission—not that I am aware of. I would have to take on notice if they are reporting more broadly.

**Mr FENNESSY:** In my experience in the public sector there are certainly requirements, and, if people do not disclose, it might go to the nature of the disclosure document. So it will not be a surprise to members that if a statutory declaration is required, you have got to comply with statutory declaration legislation and you cannot contravene that. But because these are guidelines and often are dealing with perceptions as well as potential actual conflicts, there is not a strict regulatory requirement around that, but it is very much important to the integrity and transparency of board appointments. So, as you say, it is always better to disclose, and we find that in the work that we do that the greater the transparency, the better the public confidence in these appointments, as a general principle.

**The CHAIR:** Sure. Thank you.

**Mr ROWSWELL:** The reporting may very well be just through the minutes in that case, but then you do not have any role in that?

**Mr FENNESSY:** No. We do not have that regulatory role.

**Mr ROWSWELL:** In the minutes then. That would be separate to your activity and function.

**Ms HARRIS:** I mean, each organisation needs to have a register of conflicts. That is where someone who was on a board would actually register that particular conflict.

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

**The CHAIR:** Thanks, Mr Rowswell. Anyone else with any further questions? Mr Grimley?

**Mr GRIMLEY:** Thank you, Chair, and thanks, Verity and Adam, for your submission. I have got a question in terms of other jurisdictions within Australia that mandate annual ethics and integrity training for public officers. Is there merit in this approach? And who do you think within Victoria's integrity system is best placed to coordinate such training and deliver it?

**Mr FENNESSY:** So, through the Chair, Member Grimley, this is a very pertinent question. Certainly there is a need for clear ethics training, and the question is: What are the broader benefits and practicalities and costs of mandatory or non-mandatory? So at present in Victoria we administer a lot of the guidelines and we do run training, but in some cases that is also run by other organisations. So in Victoria, for example, that same Institute of Public Administration Australia runs an integrity and ethics leadership program. That is a broader program aimed at those ethical discussions and questions that public sector executives face. That is a collaborative program with the Cranlana Centre for Ethical Leadership, which I think these days is located at Monash University. So a lot of the programs are very much a collaborative effort, and then we work alongside those programs in there, particularly in the development of that initial one to make sure it satisfies what we see is important. But to come back to your question, I think of other jurisdictions, I know working with the Commonwealth, for example, I do not think they have a mandatory approach, Verity, but we can double-check that.

**Ms HARRIS:** No, we would need to check.

**Mr FENNESSY:** In our quick scan, and I do a lot of work with all the other jurisdictions across Australia, and we also do work with New Zealand, my understanding is the training is generally not mandatory but it is very much a core part of what those entities do and it is a core part of what we do. We certainly see this as a critical part, and the Commission itself has a role there. I know coming out of the work of IBAC and the Ombudsman in particular, if they have a strong view about this—and I think in some of my informal discussions they will from time to time form a view from their independent inquiries—that is of course something we will look at. The one risk associated with mandatory training is that it needs to be properly resourced and funded so that it is not seen as just a compliance activity but it is properly done and it is also assessed as to its effectiveness.

Two or three other areas where we are actively involved. We run what is known as the Victorian Leadership Academy, which is that training of executives across the Victorian public service. We certainly have ethics components of that training, and that is generally done in consultation or in partnership with universities and entities like the Cranlana Centre, I mentioned, from Monash University. We also do it with our graduate intakes, and we have other capability-building programs that are either done in partnership or are targeted at mid-career. So to me there is always the opportunity for improvement, and to me the question is: What is the effectiveness of this training going to be if it is mandatory? We would not have an issue with the mandatory per se, but it would be important that it is properly funded, and then it is in competition with all sorts of other training. But, particularly looking at trends and analysis from entities like IBAC and other jurisdictions, if we see the trend is towards more mandatory, that is something we are very interested in. I think at this stage it is fair to say that there is a broad level of training across other jurisdictions but not at a mandatory level. Verity, I will just check with you to see if you have got a—

**Ms HARRIS:** I think you have covered it.

**Mr GRIMLEY:** Thanks, Adam. Thanks, Chair.

**The CHAIR:** Thanks, Mr Grimley. Any other questions? If there are no other questions, I certainly have one. I was just wondering, given that your agency is there to set guidelines, how often the guidelines would change and what would be the catalyst for the change. What happens if you have non-compliance from public service agencies? How would you address those issues?

**Mr FENNESSY:** Thank you, Chair, for that question. So going to the first part of your question, we regularly review our guidelines and we find that the two main drivers for change to refresh them are either external events that we may not have anticipated, like COVID lockdown, in which case we refreshed the guidelines for integrity while working remotely—and frankly that is a good opportunity to rethink what that could mean. From time to time technology is another driver, refreshing our guidelines for how we are interacting through the internet, social media, et cetera, as public servants. The underlying principles would not

generally change—that we have got to be frank, independent and driven or guided by codes of conduct and public sector values—but the way in which we work is very material. So that is the first general set of triggers for a review of guidelines.

The second will be external inquiries, and this is where we do work closely with particularly IBAC and the Ombudsman. That example before about Operation Meroo has given us the opportunity to look at some very specific aspects of public sector governance, which indeed went to the first question of Member Rowswell, that from time to time we do need to refresh them. What we also do is we work very closely, not just with the integrity agencies but with our colleagues interjurisdictionally, and that allows us to make sure that we are remaining as contemporary as possible to refresh our guidelines. We are always interested in what other major jurisdictions are up to and what we can learn from that. So, for example, we recently attended the national conference on how we work with lobbyists, and so how do we make sure we have got the most contemporary and refreshed register for lobbyists, which is another function that we have within the Commission. So that makes sure we are always looking at the most practical role and approach for the Victorian Parliament, Victorian government agencies—informed by what might be happening in Queensland, the Commonwealth government, New Zealand or even indeed global trends—as long as we can bring that relevance back into Victoria and satisfy the government of the day, the Parliament and the expectations of Victorian taxpayers and members of the community.

**The CHAIR:** And with some of those public sector agencies, if they are dragging their feet on the guidelines—

**Mr FENNESSY:** Sorry, the second part of your question.

**The CHAIR:** I suppose I will even go further—if they feel that that is not the priority for them because they have got other issues that are the priorities for their agencies, how do you address that? How do you convince them to take up the guidelines?

**Mr FENNESSY:** So, there are two ways. One is more going to the *Public Administration Act*. We do have the ability to work with agency heads directly and make recommendations—and, Verity, I will get you to comment on that in due course. But secondly, in my role as the Victorian Public Sector Commissioner I sit on the Victorian Secretaries Board, and that is a very direct way of working with that leadership group. Now, that is an administrative entity, the Board, but we have very regular conversations about all sorts of business across government, and what I find is it is very important that the different secretaries are following their legislative requirements under the multitude of legislation that they manage on behalf of their ministers and the Parliament and at the same time there is general consistency across the Victorian government. So, the second is the administrative ability to work directly with secretaries and agency heads, and the first is more of a specific opportunity or function under the *Public Administration Act*. Verity, would you—through the Chair—mind commenting on that issue please?

**Ms HARRIS:** Certainly. The Commission and the Commissioner do not have the powers to investigate per se, but we do have a role in monitoring and reporting on compliance. When it comes to how to take action in relation to that, the action that can be taken is in the form of a recommendation about a process improvement; it is not about a recommendation that might overturn a particular decision that a department head might have made. The other function that the Commission is sometimes called upon is at the request of a public-sector body head. If they sense that their organisation is not functioning appropriately or would like an independent review of that organisation, then the Commission undertakes that. And so in the submission that was made to the Committee, for example, we undertook a review of Forensicare, an organisational, on behalf of that chair, capability review that looks therefore at the governance, the administration, the capability of an organisation to undertake its leadership strategy and delivery of its functions.

**The CHAIR:** Right. Thank you for that. I will call for the last question, if there are any other questions out there from the Members.

**Mr ROWSWELL:** Just a last one to conclude, Chair. We will leave just aside, Mr Fennessy and Ms Harris, the heavily redacted Operation Meroo report, but the report notes that IBAC has written to the VPSC requesting the Commissioner review its tools or resources for board members be strengthened. The report refers to the new

guidelines issued in November 2020. What work has been done to work on the implementation of these guidelines?

**Mr FENNESSY:** Through the Chair, and thanking you for that question, in my introduction and comments that was the example I used of how we work very actively with IBAC. So we are refreshing those guidelines quite proactively and constantly—and it also goes to your question, Chair, ‘When do we intervene to look at guidelines?’ If from time to time there are observations from particularly IBAC or the Ombudsman that we may not have anticipated, or that represent a new interpretation or challenge thrown up by public sector governance, that is when we will get involved. And in this case we have worked very proactively, and that is in particular around managing conflicts of interest and duties as a board director. So that is to make sure that we are working in as contemporary a way as possible. But in terms of how we then work with IBAC, we are also subject to that legislation as everybody else is, so we will not be fully privy to all the information that the Commissioner and IBAC is across—so we get the same redacted version.

**Mr ROWSWELL:** Mr Fennessy, you will not be because it is heavily redacted. So I mean, what is the point of publishing a heavily redacted report with a recommendation like that when all you have to work on really is the heavily redacted report?

**Mr FENNESSY:** It is a fair question. We will work directly with IBAC officers to ask about the general issues that they have uncovered. They will not, and we will not, ask about material that we are not able to see, unless and until IBAC publishes that. So we do rely on the insights of IBAC and the Commissioner to help guide us to do that work on the guidance. Even though that is a convoluted sentence, we cannot see that information unless and until IBAC shares it with us. But if the IBAC Commissioner in this case says to us, ‘We’re seeing an issue’, we will work on that, and this is part of the ongoing and continual engagement we have IBAC. But we do have to be patient and respect those independent powers and the rights of people who are perhaps being investigated by IBAC. That is part of the role, that we will never have the access to the full information until others get it at the same time, so we do rely on that relationship to guide the work that we do. It is a fair question. And hence there is the need for very respectful and mature relationships with IBAC, and to some extent the Ombudsman, where they have got those much deeper powers, but also the requirements of natural justice before we or others can see the full redacted detail.

**The CHAIR:** Great. Thank you very much. Thanks, Mr Rowswell. On that basis, and I just noticed the time, I just want to thank you, firstly, for the submission that you put to the Committee—we really appreciate that—and also for answering the questions today from the Members. On that basis, I do not think we need to go any further, and I will declare this hearing closed.

**Committee adjourned.**