

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Performance of Victorian Integrity Agencies 2019/20

Melbourne—Monday, 15 March 2021

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

Hon Robert Redlich, AM, QC, Commissioner,

Ms Marlo Baragwanath, Chief Executive Officer, and

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

The CHAIR: I will declare open the public hearing for the Integrity and Oversight Committee's inquiry into the annual reports of the Independent Broad-based Anti-corruption Commission. I would like to welcome any members of the public watching the live broadcast, and I also acknowledge my colleagues participating today.

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.

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. You will be provided with a proof version of the transcript for you to check as soon as 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. Please mute your microphones when not speaking to minimise interference, and please switch your mobile phones to silent. If you have technical difficulties, please disconnect and contact the Committee staff, and I believe you have got all the contact details.

I will hand over to Commissioner Redlich for him to introduce his team and do a brief opening presentation of 5 to 10 minutes, and then we will follow up with some questions from the Committee. Commissioner Redlich, welcome. I am not sure if he is there.

Mr REDLICH: I am here, and probably for the 100th time, Mr Chair, those famous words have been uttered, 'You're muted'.

The CHAIR: That is normally me.

Mr REDLICH: Mr Chair, thank you for the opportunity to speak with you and the Committee. I want to commence by noting that I last addressed the Committee in August last year, so I am going to be very limited in what I say by way of introduction, because I want to thank you, Chair and Secretary Coley, for providing IBAC with a list of questions that you want directed to the 2019/20 report. So I will not take much time before we move to those questions. I just want to say a few things by way of introduction, and they really relate to IBAC's present position insofar as it will inform the questions that I have seen the Committee wants to pose in relation to the last year.

We have had a significant increase in the number of complaints that we have received as a consequence of the public interest disclosure legislation, and that is not surprising. We have developed what I would call the paradigm of the five obscuring behaviours, which we have developed in the context of Victoria Police, and I will explain very briefly what I mean by those behaviours.

First, the behaviour of a public servant who is guilty of misconduct. The second obscuring behaviour: those officers and staff around the person who is engaging in corrupt behaviour who turn a blind eye, who do not report that behaviour. The third obscuring behaviour: that of managers, supervisors who fail to properly oversight the conduct of their staff and report on that conduct. The fourth obscuring behaviour: namely, that of those assigned to investigate the misconduct, who sometimes in less than an intellectually rigorous way conduct that investigation. And finally, leadership, which may in particular circumstances fail to properly identify the importance of integrity in the exposure of corrupt conduct.

I mention that because that paradigm, which is now embraced at Victoria Police level and finds its way into police training, education and programs both at the academy and detective training school and so forth, is also

equally applicable to the public sector in general. I mention that now because IBAC has roughly the same number of investigations on its plate now as it did when I reported to you last some seven months ago. We have about 24 investigations. The most significant of those relate to the public sector, to very serious issues that throw into stark relief those obscuring behaviours, and I expect in the next 12 months that a number of special reports will be produced, including a report in relation to Operation Sandon into the Casey Council, which occupied a lot of public attention. But I mention that and the other special reports which we will have to produce because I want to foreshadow that amongst the recommendations that IBAC will make will be the fundamental requirement that there be much greater transparency and accountability at both a local government and a [State] government level in relation to decision-making, and we will be seeking the full support of Parliament, and I hope this Committee, in ensuring that those legislative reforms are introduced.

The only other thing I want to say at present before I permit the Committee to go to their questions, Mr Chair, is that it is one day less than 12 months since IBAC went into [a] COVID environment. On 16 March someone in our building had COVID, and the following day the entire staff commenced working at home. I want to take the opportunity to commend the collective resilience of all of the IBAC staff. They have done an extraordinary job in the last 12 months, so has the Victorian community, the public sector specifically and Victoria Police, who have worked to maintain and expand the vital front line in providing all of the necessary services which had to continue. I do want to emphasise, however, that I cannot push my staff any harder than I have been. The CEO, Ms Baragwanath, and I are extremely concerned with the expectations that we impose on our staff, and, without additional funding, which has been the subject of reference in our previous reports and in our *IBAC Insights* [newsletter], we will not be able to maintain our existing capacity to do all that is really urgent in the integrity domain.

So I think with those introductory comments, Mr Chair, I am happy to move to the questions, which, as I say, we are very grateful that you have posed for us.

The CHAIR: Thank you, Commissioner, I think Mr Taylor wanted to ask the first question.

Mr TAYLOR: Thank you very much, Chair. Thank you very much, Commissioner. The question I have is: What distinctive challenges and risks arose to Victoria Police and IBAC with the policing of COVID-19 public health restrictions in Victoria? And, of course, how did IBAC seek to meet those challenges with respect to police oversight?

Mr REDLICH: Well, we had in excess of 200 complaints received over the COVID period concerning specific COVID issues. All but one of them were not regarded as sufficiently serious to warrant an investigation within IBAC. The balance of those complaints were referred to Victoria Police, and, as we have done in relation to the large number of matters which regrettably we have to refer to Victoria Police because it is beyond our capacity to investigate them, we await the outcome of those investigations and we review those that have any particular importance. They may throw open questions of systemic failure or a theme that spans multiple complaints, in which case we would conduct a review of the way in which that matter has been investigated and, if necessary, if we are concerned either with the outcome of the investigation or with some aspect of the investigation or the event itself, we would then make recommendations to Victoria Police.

I might say in relation to recommendations that we have a forthcoming special report, at the request of the Committee, which will focus on our recommendations throughout the entire period since IBAC has been in existence to draw together the range of areas in which recommendations have been made. I might add this additional point in relation to recommendations: we have indeed made a request of Government that we need to amend the *IBAC Act* to remove the current prohibition that prevents any recommendation that is not made in a public report being made public. I am sure the Committee would appreciate there is a fundamental distinction between a recommendation which relates to an individual and one which might invite the organisation to which that individual belongs to consider whether actions should be taken against that individual—IBAC fully understands why such recommendations might remain private if they are not the subject of discussion in a special report—but there is no justification for keeping private recommendations that are made about institutional failing. Whether it is a recommendation that relates to Victoria Police or a government department, if it is a recommendation concerned with institutional failings, it needs to be on the public record. As you would all know, the ultimate critical value of an organisation such as IBAC is its prevention obligations, and if we cannot publish the recommendations we make without writing a voluminous special report to support them, the public is not well served. Indeed I think the Committee made some recommendations in its 2018 report about recommendations which are consistent with what I have just indicated to the Committee.

Mr TAYLOR: Thank you, Commissioner. Chair, if I may, just a very quick follow-up question.

The CHAIR: Sure, go ahead.

Mr TAYLOR: You said that all but one of the complaints were referred back to Victoria Police. Given perhaps the slight uniqueness of obviously the referrals to IBAC, was there a general turnaround time in which you would make the referrals back to Victoria Police on these matters?

Mr REDLICH: No, it is very hard to ascribe a particular pattern of time. That really depends upon the nature of the allegation, the level of cooperation of those involved and the seriousness of the matter. But I think it important to say and it is fair to say that by and large Victoria Police have managed the challenge which the COVID environment created for every Victorian exceedingly well. Certainly to the extent that IBAC is intended to be the repository for complaints where there is misconduct, those are a relatively small number of complaints and they are not what I would describe as complaints of a serious order involving serious misconduct.

Mr TAYLOR: Thank you, Commissioner. Thanks, Chair.

The CHAIR: Thanks, Commissioner. Thanks, Mr Taylor. I believe Mr Grimley and then Mr Rowswell have got questions.

Mr GRIMLEY: Thank you, Chair. Thank you, Commissioner. I have just got a couple of questions. They are in relation to government workplace accountability, particularly in relation to an article which appeared in *The Guardian*, Australia, two days ago concerning the results of an internal People Matter Survey. Are you able to offer any idea as to how this internal survey was able to be produced outside?

Mr REDLICH: Do you mean how did the People Matter survey become public?

Mr GRIMLEY: How did they obtain the results of that survey?

Mr REDLICH: I think the answer to that is that it is unknown, but if you will permit me, Mr Grimley, I will ask Ms Baragwanath, the CEO, to respond more specifically to that question.

Ms BARAGWANATH: Thank you, Commissioner. Mr Grimley, we present the results of that survey to all staff because we are transparent and open about those issues, and then the actual survey itself is placed on our intranet site so all staff can read it at their own leisure as well. So all staff have had access to it. As to how it came to get into the journalist's hands, I do not know.

Mr GRIMLEY: Fair enough. Apparently it showed that around 49 per cent of IBAC staff felt confident of being protected from reprisal if they reported improper conduct at work. Given the results of that, how are the relationships within IBAC between lawyers and investigators at the Commission? And given that, what is the organisation proposing to do to address this 49 per cent result?

Mr REDLICH: Perhaps I will make one comment and then ask Ms Baragwanath to answer it more specifically. I think it is fair to say that the suggestion in the article that more than 50 per cent of the staff feel unsafe is simply not warranted from the statistics that came from the survey. Those who expressed some concern about some aspect of safety in the working environment was a very much smaller percentage of staff. Beyond that, the only other comment I would make is that the heading to that article is nothing short of scurrilous, because the suggestion that IBAC has not been disposed towards recruiting women to senior executive positions could not be further from the truth. IBAC has always had a significant component of female executive officers, and during my time the majority of those recruited to the executive have been women.

Ms BARAGWANATH: Thanks, Commissioner. We are rolling out these results to our staff at an organisational and divisional level, and we are currently in the process of engaging with all staff, including the leadership team, to develop a series of action plans and commitments. However, we already know that some of the key actions for the coming year will include continuing appropriate workplace behaviour training in areas such as mental health and wellbeing, occupational health and safety and appropriate behaviours. We will implement some process-mapping work to provide clarity to our staff about decision-making processes and their ability to work collaboratively across teams—such as lawyers and investigators, as you mentioned,

Mr Grimley. We are also developing a new IBAC strategy for 2020/21 and beyond and looking at our work priorities, and we are also implementing a leadership development program.

Mr GRIMLEY: Thank you. Thank you, Chair.

The CHAIR: Thank you. Mr Rowswell.

Mr ROWSWELL: Thanks very much, Chair. Commissioner, you raised in your opening remarks ongoing concerns with the funding of IBAC. As you may recall, this is an ongoing area of interest for me, in the questions that I have asked. Thank you for providing on notice to the Committee your budget bid of \$55.371 million. You have instead been allocated \$27.1 million, and on my reading that represents a shortfall of \$28.271 million less than what you asked for. My question is: What impact will this funding shortfall have on your organisation?

Ms SHING: Sorry, I might just raise a point of order there, Chair, if I may?

The CHAIR: Yes, Ms Shing.

Ms SHING: I am just wondering how this fits with rulings that you have made in earlier hearings in relation to the reporting period itself, which covers 2019/20, notwithstanding comments that have been made earlier in this particular hearing by the Commissioner, and noting that we do have an opportunity for a private meeting, which may in fact encompass issues that go beyond this relevant reporting period of 2019/20 and not into future budget discussions.

The CHAIR: Thanks, Ms Shing.

Mr ROWSWELL: On the point of order, Chair, I raised the matter specifically because the Commissioner himself raised a matter of ongoing concern with funding of the Independent Broad-based Anti-corruption Commission. I once again [re]iterate that I am happy to raise these in a private meeting, but I feel that these matters should be aired in a public hearing. Everyone in this hearing knows that if they are raised in a private meeting, they are considered as Committee-in-confidence and therefore withheld from the public domain, which I do not think is appropriate in the circumstance, given the seriousness of the matter which the Commissioner himself has raised publicly on a number of occasions.

Ms SHING: Just further to that, Chair, if I may, this Committee is not here to censor or indeed fetter the opportunities that witnesses have to provide evidence in these particular committee hearings. For you to then extrapolate, Mr Rowswell, that this in fact provides you with an opportunity along the lines of an argument that the door has been open to stray into a new reporting period goes contrary to the ruling of the Chair in a previous hearing and contrary to the discussions that have been had in relation to the reporting period for these Committee members as opposed to witnesses who may appear. So, Chair, I will be guided by you in relation to reinforcing that ruling as you have made it.

The CHAIR: Thank you, Ms Shing, and thanks, Mr Rowswell. Commissioner, this issue has been raised in previous hearings with other agencies, and what I have done is given the direction that any Budget issues should be related to the reports of 2019/20 as part of this public hearing. The issues that Mr Rowswell has raised, quite clearly they can be dealt with in the private meetings. We are here today to listen to the agencies in regard to the reports of 2019/20, and my direction would be that we stick to those reports and to any Budget items around them. I would hope that that is what you would do. We can deal with those other matters of Mr Rowswell's within the private meetings later today.

Mr REDLICH: Mr Chair, of course I will adhere to whatever rulings the Committee have accepted. I am not sure, then, that I can respond in public to the inquiry that is made. There will be an opportunity in a private session, no doubt, to discuss this with the Committee.

The CHAIR: Thank you, Commissioner. Ms Shing.

Ms SHING: Thank you very much. I have a separate question, if we may go into new subject matter, which Ms Baragwanath has also covered around continuous improvement. Commissioner, I believe also you have referred to that in the context of Mr Grimley's questions. I am interested to know for the relevant reporting period, given the commitment made to improve OH&S and wellbeing and engagement in the workforce, the

number of allegations and complaints of bullying or improper workplace behaviour that have been received by IBAC in the 2019/20 period, and therefore what the rationale was, by extension of the commitment to reform the system, to make it easier for people to make complaints and to escalate them accordingly.

Mr REDLICH: I will call on Ms Baragwanath, but I just should say this, Ms Shing: to my knowledge during my entire period as the Commissioner there have been two bullying complaints—in the entirety of that time. Both have been independently investigated by an external agency, as you would expect. Both were found to be unsubstantiated. That is not to say that there are in pockets of the organisation, as there are likely to be in most large organisations, elements of bullying. I am sure it comes as no surprise to the Committee to understand that when you have an organisation—and a quite unique organisation that pits together those who are drawn from an investigation culture and those who are drawn from a legal services culture—that there will be quite often fundamental differences of opinion about how matters should proceed and the extent of collaboration which should occur between those aspects of an organisation, and so that has sometimes given rise to some level of discord.

Ms BARAGWANATH: Thank you, Commissioner. Ms Shing, in the 2019/20 period we had one complaint. As the Commissioner said, we engaged an external workplace investigative body to investigate that matter fully and independently, and it was found to be not substantiated.

In relation to our revised approach to OH&S, the reason that work started was a new HR director, new CEO, with a particular focus on OH&S given our particular backgrounds, and as a result of that we engaged a consultant to assist us with the development of a new OH&S three-year strategy, which is being implemented and overseen by our own internal OH&S committee, which obviously has staff representatives from each designated workgroup on it as well as management representatives. There is a significant focus on staff engagement in the OH&S strategy, which indeed is one of the issues we need to address arising from the People Matter Survey, but also in ensuring that staff really are engaged in this work and champion this work in their own teams and trying to make it as staff-led as possible.

Ms SHING: Great. Thank you for that. I am just, very quickly, Chair, wanting to know how it is that you have extrapolated that the 58 per cent increase in OH&S incidents in the reporting period which you have referred to in the report at page 80 is in fact due to an increase in training, which then leads to correspondingly increased awareness and willingness to report on OH&S incidents. I am just wondering how that has been concluded.

Ms BARAGWANATH: So an increase in OH&S complaints—we actually put in place a new OH&S incident system as well, the name of which currently escapes me, and rolled out training in relation to how to use that system, and really have encouraged staff to record incidents as well as near-miss incidents, which enables us to detect risk over time and prevent incidents from actually occurring. So I think it was because of that increased focus on it and increased discussion about OH&S internally that have really generated that increase in complaints.

Ms SHING: But you cannot be sure, though, can you? I am trying to work out how it is that you know that there is causation established when it is not necessarily the case, though, that a change in the system is the reason for—

Ms BARAGWANATH: No, not necessarily, but given the sort of disparate nature of incidents such as slips, trips and falls versus a one-off bullying complaint in the course of a year versus other sorts of issues that have been raised, no; it is difficult to identify what the cause of that is.

Ms SHING: Yes, that is fine. Thank you. I just wanted to see whether there was anything that sat underneath that. That is very helpful. Thank you very much for that. Thanks also, Commissioner.

The CHAIR: Okay, unless there is a very quick question, I think what we will do is we will bring this to an end. I am just looking at the clock there. So any quick questions from any of the Committee members? Not that I can see at this stage. Okay, all right. Well, on that basis then I just want to thank you, Commissioner, and your team for doing your presentation and answering our questions today. We really appreciate your time. What we will be doing is we will put some questions on notice in writing to you and some follow-ups to some of the things that were raised today. But we really appreciate your time and your presentation today. What I will do is I will ask Hansard to pause the recording and I will declare this public hearing closed. Thank you very much.

Mr REDLICH: Thank you, Mr Chair.

Committee adjourned.