

# 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**

Mr Eamonn Moran, PSM, QC, Inspector,

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

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

**The CHAIR:** Welcome to Eamonn and your team; in a moment I will get you to introduce your team. I declare the public hearing for the Integrity and Oversight Committee's inquiry into the annual reports of the Victorian Inspectorate open. I would like to welcome any members of the public watching the live broadcast, and I also acknowledge my colleagues participating today. Mr Kim Wells will be a little bit late coming online; he is involved in another meeting, so he will be here shortly.

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 for the Committee staff.

I welcome the Victorian Inspector, Eamonn Moran. Eamonn, I would ask you to introduce your team. We welcome your opening comments for 5 to 10 minutes, which will be followed up by some questions from the Committee members. So over to you, Eamonn.

**Mr MORAN:** Thank you very much, Chair, and thank you for the opportunity to present here today. So with me on my right is Cathy Cato, who is the Executive Director, Legal and Integrity, at the Victorian Inspectorate; and on the left is Kathryn Phillips, who is our Director, Budget Independence and—

**Ms PHILLIPS:** Strategy.

**Mr MORAN:** And Strategy—correct; I find it sometimes hard to remember all these titles—so Budget Independence and Strategy.

I have just prepared a short opening statement; it is probably only for 5 minutes. The year 2019/20 was a challenging but productive year for the VI [Victorian Inspectorate]. It was challenging obviously because of the impact of COVID-19 on our operations, a machinery-of-government change that happened in the course of the year and the continuing issue of stretched resources.

Because so much of our data is stored on our air-gapped server, the VI was not particularly well placed to accommodate the kind of working-from-home arrangements that were made necessary by the COVID-19 government health directions. We needed to put in place some new working practices to allow staff to work flexibly. We developed a working-from-home policy based on three principles: the safety of our staff and the community, the security of our information and maintaining our service output.

Our complaint-handling, statutory notifications review and record inspection functions were particularly affected by our limited access to premises. That was compounded for our complaint-handling functions by the fact that our current telephony system is rather outmoded and is not set up for remote recording and monitoring of calls.

As the key oversight body in Victoria's integrity system, with oversight responsibilities in relation to 11 agencies and a workforce headcount during the year of only 16, excluding me, the VI in 2019/20 I think performed extraordinarily well in all of the circumstances. We handled 93 new complaints about oversighted agencies, and we received from those agencies 890 notifications of the exercise by them of coercive powers. We commenced three new investigations, we continued with an existing investigation and we completed one investigation. We completed one preliminary inquiry and commenced another one. We completed 10 inspections of records. Those records related to telephone interceptions, the use of surveillance devices, the conduct of controlled operations and the exercise of covert counterterrorism powers. We published a set of integrity response guidelines following a process of consultation with oversighted agencies. We published eight reports: five inspection reports, two integrity reports with private recommendations, plus a report of a monitoring project. We provided IBAC [the Independent Broad-based Anti-corruption Commission] with an analysis of the VI's complaints data about IBAC in the calendar year 2019. We completed a range of ICT projects, including installing a new server for our secure network and commissioning a new website. We participated in Law Week 2020, and we tabled our first annual plan.

The VI seeks to positively influence the conduct of the integrity bodies that we oversight. I believe that we did that in the course of 2019/20, particularly through direct engagement with the agencies and the making of private recommendations. The main challenge for the VI through 2019/20, apart from learning to deal with the impact of COVID-19 on our operations, was performing our mandatory functions with the really small staffing level that we had. During the course of the year we took on an expanded role under the *Public Interest Disclosures Act 2012* and we saw a large increase in our investigative workload related to public interest complaints. It is important work, and we seek to deliver it to the highest possible standard and in line with the set of values that we have adopted.

We will be able to report in 2020/21 on a welcome increase in resourcing, albeit at this stage on a short-term basis, and this will help with ensuring that the right checks and balances are in place across the integrity system and that the interests of the community in coercive powers being exercised lawfully, and their rights being protected, are being looked after. Chair, that was my opening statement.

**The CHAIR:** Thank you, Inspector. Just on that then, I will open it up for questions from the Committee members if anyone has got any questions of the Victorian Inspectorate.

**Mr ROWSWELL:** I do, Chair. Do you want to use your Chair's privilege to ask the first question? Otherwise, I am happy to.

**The CHAIR:** I am happy for you to ask the first question, Brad.

**Mr ROWSWELL:** Thanks, Chair. Inspector and Victorian Inspectorate team, good to see you again. As you know, in our last hearing I had a particular interest in your funding allocation. That continues to be my interest. In previous evidence you have told this Committee that your budget bid for 2020/21 was \$7.864 million over four years. I understand from the Budget papers you have been allocated \$5.8 million, so there is a funding shortfall there of \$2.064 million. I am keen to understand what the impact of this funding shortfall will have on the organisation.

**Mr MORAN:** Thank you—

**The CHAIR:** Just before you go on, Eamonn, I should intervene and say that this hearing is about the 2019/20 annual report and not about the upcoming Budget proposals. If we want to talk about that, then I think that should be left to the private hearings, not in the public hearing itself. As I say, this hearing is about the 2019/20 reports is my understanding, and we should leave anything in reference to 2020/21 to the private hearings.

**Mr ROWSWELL:** Nonetheless, Chair, it is a matter of interest to me, and if the Inspector is happy to take the question, then it would be great to get a response.

**The CHAIR:** Well, what I am saying is that it is a matter that needs to be dealt with in the private hearings, not in the public hearings.

**Mr ROWSWELL:** So are you ruling the question out of order? And if so, on what basis?

**The CHAIR:** As I say, we are here to hear the agencies around the 2019/20 reports and not the 2020/21. And I am not saying you cannot ask the question, but what I am saying is that it should be dealt with in the private hearings. That is where I think it should be anyway.

**Mr ROWSWELL:** Righto. So this is the first time we have had the opportunity to ask questions of agency heads in this public hearing format since we last asked questions. That was an interest of mine in the previous hearings. It is an ongoing interest. We now have more information. It is a follow-up question from previous public hearings. Unless you deem it to be out of order, the question stands, and I would invite the Inspector to respond as appropriate.

**Ms SHING:** I might intervene if I may there, Chair. Mr Rowswell, the question itself has not been ruled out of order per se. The Chair has been actually really clear about the fact that this is a question—if it is to be asked—for the private hearings and not within the scope of the time frames as set out for this particular hearing. I mean, the purpose of these hearings is really clearly enunciated as relating to periods other than the one that you are referring to.

**The CHAIR:** Thank you, Ms Shing.

**Mr ROWSWELL:** All right. So, Chair, you are not happy with the question that I am asking? You are seeking that the question I am asking does not proceed to be answered by the Inspector?

**The CHAIR:** I am seeking that if you want to ask that question, it would be dealt with in the private hearings, not in this public hearing. I do not expect the Inspector to answer that question in this public hearing. If you want to raise that question in the private hearings, the Inspector can deal with that as he sees fit, but I do not believe this is a matter for this hearing.

**Mr ROWSWELL:** I think there is particular public interest in these matters, Chair. My strong preference is to ask these questions in this public forum, as opposed to a private meeting, and I would like to get the Inspector's view as to whether he is happy to answer that in a public hearing or otherwise.

**Ms SHING:** Sorry, can I just seek a ruling from the Chair?

**The CHAIR:** Sorry, Ms Shing. You go ahead.

**Ms SHING:** Can I seek a ruling from the Chair that might then assist the Committee and indeed witnesses in going ahead with these particular public hearings as it relates to the period in question and as it relates to any questions that might be asked of witnesses by any member of this Committee that may not fit within the prescribed period? It might then provide guidance to everyone, irrespective of the issues that individual members may wish to raise, for us to get that guidance from you at the outset given that we have a number of meetings and hearings scheduled for this afternoon and for later dates.

**The CHAIR:** Yes. Thanks, Ms Shing. I did not get all of that, because there is a bit of interference. But, as I have clearly stated, this hearing is about the 2019/20 period, and it is not about prospective periods and Budgets, and our questions should be retained to the periods that we are dealing with and not the prospective periods as Mr Rowswell has raised. I am happy for Mr Rowswell to raise the question in a private hearing, but not in the public hearing, and I do not expect the Inspector to answer that question in this public hearing, but he is as his will. If he wishes to in the private hearing, I am more than happy for him to do that.

**Mr ROWSWELL:** Inspector, over to you.

**Mr MORAN:** Obviously I am guided by the Chair and the Committee as to what I can say. So, Chair, can I just clarify: can I give an answer to the question here?

**The CHAIR:** No. You can give an answer in the private hearing if it is related to anything outside of the 2019/20 period, but I would expect that we stick to the time frames that we are talking about at this public hearing.

**Mr MORAN:** I would be very happy to do that in the private hearing.

**Mr ROWSWELL:** Inspector, would you agree that the funding shortfall of \$2.064 million between what you asked for and what you received is a matter of public interest?

**The CHAIR:** Look, we can go around in circles and waste our time of asking questions. If you want to follow up with those questions and seek an answer to them, then let us deal with that in the private meetings. And I do not think that this is appropriate, to deal with areas that are outside of the time frames of what these hearings are about. So I do not expect the Inspector to answer that question here. If he wishes to answer those types of questions in the private hearings, I am happy for him to do so, but certainly not in this public hearing. And I think that our questions should be retained to the time frames that we are here for, to hear the reports back from the agencies of 2019/20.

**Mr ROWSWELL:** So, Chair, is that your direction to the witness or a guidance point only?

**The CHAIR:** If you want me to make it a direction, I am informing the Inspector that I do not wish him to answer the question in the public hearing. He can answer the questions—any question—in the private hearing, outside of the time frames that he is reporting back to at this public hearing, but I expect that he would stick to issues that directly relate to the time frames of the 2019/20 period and their reports.

**Mr GRIMLEY:** If I may, Chair?

**The CHAIR:** Yes, Mr Grimley.

**Mr GRIMLEY:** Is it possible, perhaps, to have the question rephrased in terms of more general resourcing rather than specific numbers? Would that assist?

**The CHAIR:** Well, it is possible if you stick to the time frame that we are here to talk about. If that is okay—

**Mr ROWSWELL:** I have previously asked those questions. I have asked about government resourcing. The Inspector has provided those answers, as have other witnesses. There is no additional information that I need at this point in time or I have an interest in. I am happy for you, Chair, to direct the witnesses to answer or not particular questions. My question stands, and the record will show that it has not been answered at this point in time. But it is an area of interest to me. That is not new information for the Committee, or for the Inspector I don't suppose, and it will be an ongoing area of interest for me.

**Ms SHING:** Sorry, Chair, can I just leap in there, before we perhaps move on? It is not the case that the Chair has indicated that these questions are not to be answered and that that is a matter of the public record, Mr Rowswell, as you are seeking to summarise. The Chair has indicated really clearly that questions that go outside this relevant reporting period can indeed be asked and answered, they just do not belong in this particular forum. So I would hate for any witnesses or indeed anyone viewing this hearing or looking at the transcript down the track to conclude in fact that the Chair has blocked a question on this issue when in fact it is able to be asked and answered when and as it relates to the proceedings of this Committee, which is not the purposes of the hearing that we have today within the prescribed time frame that are the purpose of this hearing.

**Mr ROWSWELL:** Ms Shing, my concern is that if I do ask these questions in a private hearing, those answers are given as committee-in-confidence answers and cannot be shared in a public domain. My concern remains that there is significant public interest in these matters and the answers to them should be in the public domain, but I am happy to move on, Chair.

**The CHAIR:** Thank you. Any other questions that any members have?

**Ms SHING:** Yes. Sorry, Chair, I might leap in and suck some more oxygen out of the room if I may.

Thank you, Inspector, and witnesses for appearing today. I am interested in understanding a little bit more about the way in which remote working arrangements and operations have been able to function, looking at the implementation of the new telephone system but also understanding how you have responded to COVID-19 as that relates to the integrity and security of documents and information that would otherwise be exchanged or reviewed in much more secure settings. It is a question potentially for strategy but potentially also for you, Inspector.

**Mr MORAN:** Thank you, Ms Shing. If it is fine with you, I might ask Ms Cato to respond to that particular one.

**Ms SHING:** Absolutely. I am happy for anyone to answer any question. Thanks, Inspector. Thanks, Ms Cato.

**Ms CATO:** Thanks, Ms Shing. In terms of the impact overall, as you would probably be aware, we do house our classified information in a secure air-gapped network, which meant that none of our operational material was accessible for remote working, and that was by design to protect that information. So across each function we had to take a number of steps to ensure that we could continue to work during COVID. The first thing we did was with respect to the complaints line, the telephone line. Our particular telephony system was also not accessible at home. So they were the two key issues. I will just deal briefly with the telephone issue. We moved into dealing with complaints online. So we accepted complaints online and by email and dealt with urgent complaints as required over the phone when staff occasionally attended the office in order to continue other work.

With respect to managing the security and the classification of information, we set up especially encrypted folders on the remotely accessible server so that we could continue work from home, and we set up a careful protocol for managing that information. We engaged our security advisers to ensure that we looked at all relevant areas and had those properly encrypted. It did take a couple of months to have those established, which was a bit disappointing. But once we had those up and running, we were able to start to save information in those folders, password-encrypted, all very carefully managed, and that enabled us to keep going with our operational work.

**Ms SHING:** So just on the delay that occurred, of a couple of months, can you explain what the basis for that was? Then, secondly, are there any opportunities to continue with remote and working-from-home arrangements, given the evolution of work as we know it but specific to the classified environment within which you deal with information?

**Ms CATO:** The delay of two months was purely technical delays from I guess the—I would not like to be disparaging about anyone—service provider delays. There was also obviously a little bit of lead time setting up the solution, but mostly it was delays in providing that service. It was a rather unusual request that had to be addressed, but we did it as quickly as we possibly could.

In the second part of your question—

**Ms SHING:** My apologies; I am keen to understand what opportunity there is to continue remote—

**Ms CATO:** Yes. sorry. Continuing with remote work, we are still working part remotely and part in the office. Those encrypted folders have enabled us to do that. And with respect to the telephone line, we are just about to finalise a new telephony solution which will enable calls to be taken remotely and protect the security of that information as well. That has been quite a complex set-up to establish, in terms of that new telephony system, but moving forward it will address things very well, and we hope that will be operational from the next financial year.

**Ms SHING:** And operational from a business-as-usual perspective or just in extraordinary circumstances?

**Ms CATO:** Business as usual.

**Ms SHING:** That is great. Thank you very much for that. I appreciate it.

**Mr ROWSWELL:** Just as a matter of record, Chair, the witness's response to that question referred not just to the 2019/20 year but also the current financial period as well. Is it your ruling that those answers be in order or allowed, because there was guidance that you gave previously about a specific question that I had?

**Ms SHING:** Sorry, just on that, the questions that I asked were very specifically related to the COVID pandemic response and indeed recovery, which was addressed in the substantive presentation. And, again, the witness cannot be compelled to answer a question in a particular way. But to seek to re prosecute the argument when you have had a pretty clear ruling from the Chair, Mr Rowswell, does not in fact lead us anywhere that I would consider to be useful or productive within the time that we have available.

**Mr ROWSWELL:** I appreciate your opinion, Ms Shing, as always, but the point I think has been made.

**The CHAIR:** Sorry, Mr Rowswell. I did not get all of what you had asked, but I think again the questions that Ms Shing had asked were specific to the COVID period, but again we are here today to hear about the reports of 2019/20. I do not need to go over it again. We are sticking to those time frames. The COVID issue went through 2020, and that is why I assume Ms Shing asked that specific question around the arrangements at the Victorian Inspectorate's agency. So I think that we will just move on from that and stick to these periods that we are supposed to be talking about.

So are there any further questions from any other Committee members?

**Mr GRIMLEY:** Yes. Thank you, Chair, if I may?

**The CHAIR:** Yes, Mr Grimley.

**Mr GRIMLEY:** I just have a question in relation to the complaints about police specifically. What is the VI's view on how IBAC assesses, justifies and records decisions in relation to complaints about police, those that go back to Victoria Police for investigation?

**Mr MORAN:** Thank you, Mr Grimley. Obviously, we regard the oversight of police misconduct as a real matter of public interest, and in October 2019 we published a monitoring project that we did on this whole issue. We looked at how IBAC assessed and recorded its assessment of police misconduct complaints, and we made some recommendations to IBAC around showing on the system a recorded analysis of the complaints, of the substance and credibility of the allegations, and also an analysis of why a matter is, for example, referred back to the police for investigation, because that has always been a matter that comes up to us. In the relevant year I think about 9 per cent of the complaints that we got involved the issue of referral to the police to investigate complaints about the police.

So we have looked at the system. We have made recommendations. IBAC I think has welcomed the recommendations that we have made and has said that it will work towards a system of continuous improvement in how it handles these complaints and work towards implementing the recommendations.

We had planned a workshop with IBAC where we were going to work through the implementation of the recommendations, and again, because of COVID, that particular workshop has not happened. And, of course, there are a number of areas that IBAC have to take into consideration. They have got a general discretion under the *IBAC Act* on how to deal with a complaint—whether to deal with it themselves, whether to refer it back or whether just to dismiss it. Of course under the *IBAC Act* they are required to prioritise serious corrupt conduct, and I think they have made submissions to parliamentary committees that they, too, have got limited resources that must be used appropriately.

So we see improvements as a result of the work that we do looking at complaints, and looking at IBAC files we see a lot of improvements in how matters are being recorded. So we think there has been some value obtained from the work that we have done in this space.

**The CHAIR:** Thank you, Inspector. I was just looking at the clock, and I notice our time is running out very quickly, so unless there was a very quick question from anyone else?

I know that there are further questions, and I want to thank you, Inspector, and your team, Ms Cato and Ms Phillips, for presenting today and answering our questions and the questions on your agency's annual report for 2019/20. We will provide some questions in writing on notice to you and some follow-up responses [Zoom dropout] as soon as we can. Obviously you will be provided a copy of the Hansard transcript for your viewing and any amendments you that feel need to be made. So I thank you for your participation today, and I declare this public hearing closed.

**Witnesses withdrew.**