

CORRECTED VERSION

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

Ongoing work of the Victorian Inspectorate

Melbourne — 9 December 2013

Members

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Mr A. McIntosh

Mr C. Newton-Brown

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Witnesses

Mr R. Brett, QC, Inspector, and

Mr N. Jedwab, Chief Operations Officer, Victorian Inspectorate.

The CHAIR — I would like to welcome you all to this public hearing in respect of the Victorian Inspectorate. The committee is an all-party parliamentary committee and is hearing evidence during its public hearings today. In accordance with the guidelines for public hearings, I remind members of the public gallery that they cannot participate in any way in the committee's proceedings. Only officers of the committee secretariat are to approach committee members. Inspectorate officers, as requested by the Inspector, may approach the table during the hearing to provide information to the Inspector by leave of me as chair. Written communication to witnesses can only be provided by officers of the committee secretariat.

Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council Committee Room, and no more than two TV cameras are allowed at any one time in the allocated spaces. May I remind TV camera operators to remain focused on only the person speaking and that panning of the public gallery, committee members and witnesses is strictly prohibited. Filming and recording must cease at the completion of this hearing.

Each member will be able to ask one supplementary question following the Inspector's answers. No questions on notice have been provided to the Inspector. Should the Inspector be unable to fully answer any question, he may seek leave to provide a written response to the committee at a later date. The member for Altona will ask questions on behalf of the member for Eastern Victoria Region.

Welcome to the public hearing. All evidence taken at this hearing is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the *Parliamentary Committees Act 2003*, the *Defamation Act 2005* and, where applicable, the provisions of reciprocal legislation in the other Australian states and territories. All evidence taken at this hearing is protected by parliamentary privilege. Comments you make outside the hearing are not afforded such privilege. I ask you to commence with your full name, the organisation you represent and the position you hold in the organisation.

Mr BRETT — My name is Robin Alfred Brett. The organisation I represent is the Victorian Inspectorate, and my position is Inspector constituting the Victorian Inspectorate.

Mr JEDWAB — My full name is Neal Maurice Jedwab. I am the Chief Operations Officer, Victorian Inspectorate.

The CHAIR — All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript for fact verification by the end of next week. Verified transcripts will be placed on the committee's website in early January. I ask that all mobile phones be turned off or turned to silent. I now call on the Inspector to give a brief presentation of about 10 minutes. That will be followed by questions.

Mr BRETT — Thank you, Mr Chairman. I am not sure whether my presentation will last 10 minutes, but it will last a few minutes. As you know, the Inspectorate has been in operation for a little less than a year. I was appointed on 1 January and operations commenced on 10 February. I was very fortunate to take over the staff of the Special Investigations Monitor, Mr Leslie Ross, QC, who went out of office when my duties commenced. It is only a small office. We have only eight members altogether at the moment. That may increase over the next year or so, but not to any dramatic extent.

There have been, since we commenced, a number of changes of personnel, but the new members have fitted in well. We also undertook in the middle of the year a reorganisation of the structure of the office to better reflect the new functions that have been taken on in addition to those that were performed by the Special Investigations Monitor, and that is settling down well. The office is functioning efficiently, I believe, and I am glad to say that morale in the office is good.

The workload of the office is divided fairly equally between what I see as our three core functions. The first one is reviewing recordings of coercive examinations conducted by IBAC, the Victorian Ombudsman and the Chief Examiner. The second one is receiving complaints about various bodies. I think exclusively the bodies about which we have received complaints have been the IBAC and the Victorian Ombudsman, plus some that were kind of legacy complaints against the Office of Police Integrity. Of the complaints we receive, the majority are in relation to IBAC. Finally, the third part of our workload is the monitoring of regulatory compliance by authorities, principally Victoria Police, which use surveillance devices, have access to telephone interception material and conduct controlled operations. We basically have three core functions. The amount of work done in relation to each of them is approximately equal.

There is nothing in particular that I want to report in relation to any of those matters. So far as regulatory compliance is concerned, we found in our inspections this year, as had been the case with the Special Investigations Monitor, who performed similar functions, failures of record keeping — nothing which indicates any attempt to circumvent the requirements of the regulations, merely failures to comply due to inadvertence or ignorance or whatever.

So far as the recordings of coercive examinations are concerned, again from time to time issues come up that emerge from our review of those transcripts. We raise those with the authority concerned and are given an explanation — we receive replies whenever we raise anything. There is nothing again in relation to those matters that has formed the subject or is going to form the subject of any recommendation or special report to the Parliament.

Finally, in relation to complaints, our process in relation to those is first of all to assess them to determine whether or not we have jurisdiction to receive them because, as I am sure you know, our jurisdiction to receive complaints is limited by what is in the legislation. The large majority of complaints are knocked out at that stage. Even if we do have jurisdiction we have a discretion whether or not to investigate a complaint, and again a number have been knocked out at that stage due to the age of the complaint or its relatively unimportant substance. Only a very small proportion have resulted in any communication with the authority concerned and none of them has resulted in any further action being taken.

Our annual report will be delivered to Parliament in time for tabling tomorrow. I very much regret that it is later than it should have been, and I can assure you that that will not happen again. Steps have been taken to ensure that it does not. I can say that when you read it I do not think you will find anything particularly controversial in it. Specifically, it will not be containing any recommendations for changes to the legislation or complaints about the way in which the legislation is operating. I have taken the view that the appropriate approach is to give the legislation a fair period of time to settle down, to get people used to working with it, and the earliest that you could expect any utterance from me about possible legislative change would be in next year's annual report, if then.

I think that is all I wanted to say by way of an opening statement.

The CHAIR — Have you become aware of any indications of systemic corruption within the Victorian public sector?

Mr BRETT — No, I have not.

Ms HENNESSY — We are grateful for your apology, because it is a bit difficult for us to do our job in the absence of an annual report that verifies your performance.

Mr BRETT — I am very well aware of that.

Ms HENNESSY — I feel it is incumbent upon me to make that point to you.

Mr BRETT — Yes.

Ms HENNESSY — In respect of the sorts of complaints that you are getting about IBAC, can you tell us generally what are the themes that people are raising with your officers?

Mr BRETT — I think all of them have arisen out of complaints that were made against the police. The complaints vary. A number relate to what is perceived as lack of speed in receiving a response. Some have complained about the fact that the IBAC has, upon receipt of a complaint about police, referred the matter back to the police instead of investigating itself. Those would be the two main themes I think that would emerge from them.

Ms HENNESSY — Are you able to advise the committee how many complaints your office has received?

Mr BRETT — In the period to 30 June we had only received 10 complaints that were within jurisdiction against the IBAC and 4 against the Ombudsman, so it is not very many. Since then I would say the level of complaints, including all inquiries, runs at about six or seven a week on average.

Mr WELLER — Has the Victorian Inspectorate developed any protocols to date for the engagement of the media and the public?

Mr BRETT — No. We have not. Our views have not been sought by the media and we have not had a need to develop protocols up to this point. It is probably something that we will give some thought to in the near future.

Ms HENNESSY — Could you advise us of your annual budget and whether or not you are under or over at the end of the last financial year?

Mr BRETT — I would like to take the question of the precise figure on notice. We are not over budget; we are under budget.

Ms HENNESSY — Significantly?

Mr BRETT — By a reasonable amount, which I do not think is necessarily indicative of anything other than the fact that it was only part of a year. We are a new office performing a new function. I think budgeting matters will become clearer over the next 12 months or so. But certainly we can supply to you very easily the precise figure of the annual budget for 2012–13, which is of course only part of the year as far as the Inspectorate is concerned, and 2013–14.

Ms HENNESSY — Yes, just the accrued amount.

Mr McINTOSH — Mr Brett, have you had any involvement with the Public Interest Monitor at all?

Mr BRETT — Yes. I did not mention the Public Interest Monitor, and I should have. Our function in relation to the Public Interest Monitor is of monitoring compliance with regulatory requirements. For the annual report we had only conducted one inspection, because there was only the six-month period to deal with. There were a few issues of failure to comply strictly that we identified. Those were discussed at a meeting that I attended with the Public Interest Monitor and the deputy Public Interest Monitors. I think it is fair to say that our observation of the Public Interest Monitor's attitudes to these things was that they are very keen to comply precisely with the terms of the legislation and the spirit of the legislation and that they are extremely diligent about doing so.

Mr McINTOSH — Given the fact that all your roles are a bit novel, but certainly the Public Interest Monitor, are you able to make any comment about the way other integrity bodies perceive the Public Interest Monitor?

Mr BRETT — How do you mean 'other integrity bodies'?

Mr McINTOSH — Yourself. Do you think it is a meritorious body?

Mr BRETT — I do not think it is appropriate for me to make that sort of comment. The Public Interest Monitor was established by the Parliament. My concern is to monitor his compliance with the requirements that he is required to observe. I think the question of whether he is a good idea or not is a political question which is not for me.

Mr McINTOSH — I will crawl back into the box now.

Ms HENNESSY — A wise answer, may I say, Mr Brett.

The CHAIR — Inspector, the Victorian Inspectorate's Surveillance Devices Act report to Victoria Police noted errors in the register of protected information use and communication. Are you satisfied that there are satisfactory processes being introduced to ensure that these errors are reduced?

Mr BRETT — Can I have a bet each way with that one and take it on notice to give you a particular response in relation to that particular report? There have been a number of reports about a number of inspections of various authorities that I have read and signed, and I do not recall off the top of my head that particular one. What I will say is that, again in relation to Victoria Police, the general attitude that we have noticed, as did the Special Investigations Monitor before me, is that the Police are — like the Public Interest Monitor is now —

keen to comply with the letter and spirit of the legislation. When — I will use the word — anomalies are identified, they are very ready to listen to what we say about them and address them.

Ms HENNESSY — Mr Brett, have you had any cause to use any of your compulsive powers at all?

Mr BRETT — No, I have not.

Mr WELLER — Inspector, what measures and mechanisms or what issues is the Victorian Inspectorate dealing with to ensure complaints received by the Victorian Inspectorate are resolved promptly?

Mr BRETT — We have a system for monitoring the receipt of all complaints, recording the receipt of all complaints, the prompt allocation of each complaint to an officer within the Inspectorate to consider and deal with. We monitor progress of all complaints on a weekly basis, and it is a primary concern of our office to ensure prompt resolution.

Mr WELLER — What do you class as prompt?

Mr BRETT — It depends very much on the complaint. In many cases we can resolve complaints within a week — two weeks at the most. In others where communication with another body, such as IBAC or the Ombudsman, is required, it will obviously take longer than that. But again I can say that in our communications with both the IBAC and the Ombudsman regarding matters that we have raised arising out of complaints, their responses to us have been very prompt. I would like to stop there, I think. If you would like any more detail about the period of time that particular complaints have taken to resolve, we can do that, but I cannot do it off the top of my head at the moment.

Ms HENNESSY — Mr Brett, you have made some comments in one of your reports in respect of the practice of Victoria Police running two separate registries in respect of surveillance devices. Effectively — and please correct me if I am wrong — there is one registry that deals with surveillance devices and there is one registry that deals with retrieval for when VicPol goes back in to retrieve a surveillance device. Is it putting words in your mouth to say that it is your suggestion and recommendation that there will be one registry to mitigate the risk of running two registries where there is some disparity between what device has been put out there and what device is being retrieved?

Mr BRETT — You used the word ‘recommendation’, Madam Deputy Chair. It is not a recommendation in the formal sense. As I said in the introductory words that I said, we raise issues with bodies like Victoria Police, and we are as interested in their response to us as we hope and believe they are in what we say to them. This was a suggestion. We will look next time and see what has been done about that.

Ms HENNESSY — Are you aware at this point in time as to whether or not your suggestion is being taken up by Victoria Police?

Mr BRETT — No.

Ms HENNESSY — Thank you.

Mr McINTOSH — Mr Brett, given the fact you oversight Police, IBAC, the Ombudsman and the Public Interest Monitor, are you able to apportion how much time you spend with each of those agencies? Obviously Victoria Police exercises a significant and broad range and number of coercive powers, but are you able to apportion how much time would be spent with each of those agencies?

Mr BRETT — We have not done any survey of time spent. Our interaction directly with Victoria Police is only related to our compliance function — the inspection of registers and things like that. We have a section within the office which is dedicated to that function. It has got two people in it, and they spend their whole time working on that function. While they do have monitoring functions in relation to the Public Interest Monitor and a couple of other authorities as well, by far the great majority of their time is spent with Victoria Police. I am sorry; I have forgotten the remainder of your question.

Mr McINTOSH — Just in relation to IBAC, the Ombudsman and the Public Interest Monitor.

Mr BRETT — The Public Interest Monitor, relatively small time; the Ombudsman, less than the IBAC. We have received more complaints about the IBAC. We have greater jurisdiction in relation to the IBAC, and we spend more time in relation to the IBAC.

Mr McINTOSH — Just to follow up, you said you have eight employees. Is that excluding yourself and Mr Jedwab?

Mr BRETT — No, that is including us.

Mr McINTOSH — Obviously you have to live within a budget. Is eight acceptable at the moment, or do you think that is going to expand over time?

Mr BRETT — Look, I suspect it will, but I do not expect it will expand greatly. It really depends upon two things. It depends upon the flow of complaints, which seems to be settling down at the level that I indicated before, of about six or seven a week. But it also depends upon the number of recordings we get of coercive examinations. We started this year very slowly. In recent months we have been getting more and more, and I think if there was an area which was likely to require some additional resources, that would be it.

The CHAIR — What systems are currently employed by the Victorian Inspectorate to ensure that documents held by the agencies that it oversees are not inappropriately or inadvertently accessed, released or destroyed?

Mr BRETT — A large part of our compliance function is dedicated to specifically that purpose: identifying who has had custody of a matter of that nature, what they have done with it and where it is kept. That is a large focus of what we do.

We have also established a working party. As you are aware, we have a general monitoring function in relation to the IBAC, not related specifically to the hearing of complaints or the investigation of particular matters but just a general monitoring function to see that they comply with legislation et cetera and that their procedures are appropriate. We have established a working party with IBAC to devise a set of protocols for us to have access to the material that we need to carry out that function, and that would include things of the nature that you have been inquiring about.

Ms HENNESSY — Mr Brett, you also have jurisdiction in respect of monitoring compliance of the use of surveillance devices under the *Fisheries Act* and the *Wildlife Act* in respect of fisheries and wildlife investigations. Could you advise the committee what assessment you made of the state of compliance in respect of those two areas of your jurisdiction and any recommendations that have been made?

Mr BRETT — Can I take that one specifically on notice? What I can say is we do inspect the departments that you mentioned every six months, as did the Special Investigations Monitor. They do not exercise those powers very often. Usually there is only one thing or perhaps two things to look at in each inspection. I cannot recall off the top of my head what we noted in the last report. There have certainly been no formal recommendations.

Ms HENNESSY — But it is true that in the report it says the maintenance of warrants and emergency authorisations was not compliant. That was a finding in your report tabled in the Parliament.

Mr BRETT — Yes. My recollection is that in all our reports we have described everything as either compliant or substantially compliant. I do not think there was anywhere we said they were non-compliant, as such.

Ms HENNESSY — Right. Perhaps you can take it on notice, because the report does say that they were non-compliant, and there are in fact four recommendations made in respect of their surveillance device practices. Perhaps you could take that on notice and provide a response to the committee. Thank you.

Mr BRETT — I will. Could you repeat exactly what the question was?

Ms HENNESSY — It will be in the transcript, and we will provide you with the transcript. It is effectively about what the state of play is in respect of fisheries and wildlife investigations using surveillance devices and

their degree of compliance, which your report identifies as being non-compliant and makes a series of four recommendations — so any comment you have on that.

Mr WELLER — Has the Victorian Inspector met with IBAC; how often, and what kinds of subjects were discussed?

Mr BRETT — I have certainly met with the Commissioner on a number of occasions. There have been no, kind of, formal interviews, if that is the sort of thing you are inquiring about. What has been discussed? What we have discussed, really, are just matters of how we are going to work together and how our processes can fit together appropriately. I am just trying to think. In the course of the year I have probably met with Mr O'Bryan on four or five occasions. Several of those have been not social occasions but occasions that were related to matters of common interest. For example, last week both Mr Jedwab and I went to the IBAC offices to meet a lady who had been the deputy chair of the Independent Police Complaints Commission, I think it is called, in the United Kingdom. So I have met him — and there have been a couple of things of that nature. That is about it, I think.

Ms HENNESSY — Mr Brett, I appreciate that it is early days, but in planning for the year ahead, and in terms of allocating resources and ensuring that you have got the right workforce plan in place, what are you anticipating will be the greatest demand on your office's resources?

Mr BRETT — It is very hard to predict. The greatest demand that could occur on our office's resources would be if we had to hold a full-scale inquiry into something. So far that has not happened. It may not happen next year, or it may.

Putting that to one side, I would say the level of compliance monitoring will remain about the same. I would say the flow of complaints would remain probably about the same, and perhaps a little bit more as people hear about us a bit more and as IBAC does more things and gets better known in the community. The one that is variable is the one I mentioned before, the review of coercive examinations, and that really just depends upon the extent to which IBAC, the Ombudsman and the Chief Examiner use their powers. As I also said, it is certainly on an upward trend at the moment. Whether that will continue and for how long, I do not know.

Mr McINTOSH — Mr Brett, I am just wondering, do you have any interaction with the Freedom of Information Commissioner or the Auditor-General?

Mr BRETT — I have met with both the Freedom of Information Commissioner and the Auditor-General. I met with the Auditor-General and the Freedom of Information Commissioner, as a matter of fact, at IBAC offices, at a meeting which Mr O'Bryan organised between integrity heads, just to get to know each other. The Ombudsman was there too. So I have met with them. I would say that our meetings were really pretty much in the nature of meet and greets rather than any specific activity.

Mr McINTOSH — You have no formal oversight role?

Mr BRETT — No, I do not — with the Auditor-General I do; I can receive complaints — sorry. And I have to monitor his use of coercive powers. I do have that oversight role. However, I think a previous Auditor-General has used coercive powers on one occasion, and it is not a jurisdiction which is large.

Mr McINTOSH — Not busy, anyway?

Mr BRETT — Not busy.

The CHAIR — Inspector, did you attend the recent conference in Sydney, I think it was?

Mr BRETT — I did, yes.

The CHAIR — Are there any lessons that could be learnt from what you discovered at that conference?

Mr BRETT — I would not call them lessons, but I did find it extremely instructive to hear what people from a number of different organisations had to say. I attended sessions about corruption in local government. There was a very informative and interesting talk given by a woman who runs the integrity commission in New York

City. I just found it very useful hearing about the different approaches and getting an appreciation of the breadth of activities that were engaged in in various jurisdictions.

Ms HENNESSY — Mr Brett, have you been required to review any coercive transcripts arising from an IBAC investigation?

Mr BRETT — Not yet, but we are expecting to.

Mr WELLER — Mr Brett, has the Victorian Inspectorate exercised any of its coercive powers to date? If so, which ones?

Mr BRETT — No, we have not, so none.

Mr WELLER — You have not?

Mr BRETT — No.

The CHAIR — Thank you very much.

Ms HENNESSY — Thank you very much, Mr Brett.

The CHAIR — The public hearing has now concluded. Thank you, Inspector and Mr Jedwab, for your attendance today. Where questions were taken on notice and where there are unasked questions, the committee will follow up with you in writing at a later date. The committee requests that written responses to any matters be provided within 21 days. This concludes the hearing.

Committee adjourned.