

TRANSCRIPT

CLOSED PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

Inquiry into the external oversight of police corruption and misconduct in Victoria

Melbourne — 5 February 2018

Members

Mr Kim Wells — Chair

Ms Marsha Thomson — Deputy Chair

Mr Sam Hibbins

Mr Danny O'Brien

Mr Simon Ramsay

Mr Tim Richardson

Ms Jaclyn Symes

Witness

Mr Eamonn Moran, Inspector, Victorian Inspectorate.

The CHAIR — I declare open this hearing of the Independent Broad-based Anti-corruption Commission Committee inquiry into the external oversight of police corruption and misconduct in Victoria. All mobile phones should be now turned to silent. I welcome the Victorian Inspector. All evidence taken by this committee is protected by parliamentary privilege, therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege. Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

Mr MORAN — I have, yes.

The CHAIR — All evidence given today is being recorded by Hansard. Although this hearing is closed to the public, a transcript of today's hearing will be made public and published on the committee's website. You will be provided with a proof version of the transcript to check as soon as it is available. Verified transcripts, PowerPoints and handouts will be placed on the committee's website as soon as possible. I invite you to proceed with a 20-minute opening statement to the committee, which will be followed by questions from the committee. I congratulate you on your appointment.

Visual presentation.

Mr MORAN — Thank you very much, Chair. Thank you for the invitation to come along today. Obviously I am very new in the role. I commenced on 1 January. I have got five weeks behind me, so it is still very early days in my time with the VI. What I have been doing is, as rapidly as I can, learning what the VI has been doing these past five years and I guess working out the extent to which I need to do some redirecting of where our activities are headed.

I think the committee is aware there are some structural issues that I am working through too to try and make sure that we have got the optimum structure to deliver the functions of the VI. I have embarked on a get-to-know program with the other stakeholders, and to date particularly I have had a couple of meetings with the new IBAC commissioner, Robert Redlich. I propose over the next few weeks to gradually get to meet everyone and get them to know me and me to know them.

Obviously I have read the submission that the VI made last August, and I have read the questions that you have sent our way. I wanted to address the questions by just looking at some broad themes first, initially on this PowerPoint, and then attend to any particular ones that you think I have not properly covered. Certainly you are very welcome to interrupt me at any time.

That just shows you an outline of what we are proposing to talk about today: a bit about the complaints and disclosures that the VI does get about IBAC; a flowchart — I think you asked particularly to have a flowchart — which shows you the assessment process; I wanted to comment on what has the VI done to enable us to make an assessment of IBAC to date, looking at some of the issues that have come out of the work we have done to date; I guess then address that question, 'Does the current system meet community expectations?'; and the last little slide is about the website because I know the committee has been raising issues. To be honest I am pleased to see you raise those issues because when I was considering this position, I did look at the website and thought it could give a bit more information, so we will be certainly attending to that and have done some work to date.

This slide shows you a little bit about the complaints and disclosures that we have received to date about IBAC. The first thing to say is that we have had no protected disclosures about IBAC, but we have had a number of complaints. What the chart is saying is that 51 per cent of the total complaints we get about the various bodies actually relate to IBAC. Then of those 51 per cent, 64 per cent are complaints that relate to Victoria Police matters. Then breaking down that 64 per cent, we find that 30 per cent of complaints are about IBAC's referring back to the police a matter that the person complained about, whereas 56 per cent of the complaints are about how IBAC has determined the matter or the fact that they have dismissed the matter without an investigation. It is hard to know what to make of the numbers. It is what it is, but it does point up that the majority of complaints about IBAC, about Victoria Police, were about the determination or the dismissal rather than the fact that it has been referred off to the police.

The next chart is a very complicated chart. In fact the top you cannot really see because of the video, but you have got the hard copy. It shows the process for disclosures and complaints. As I mentioned, we have not

actually received a disclosure that has been assessed as a protected disclosure about IBAC. But if we did, on the left-hand side it would show you that obviously we would acknowledge the receipt and then assess whether it was a protected disclosure complaint under section 31 of the Protected Disclosure Act. If it is assessed as being a protected disclosure complaint, then we would advise the discloser of this determination in writing and then we have to investigate that complaint. The legislation is mandatory that if it is a protected disclosure complaint, we must investigate, whereas it is discretionary for any other complaint.

Going down that left-hand side again, if it is assessed as not being a protected disclosure complaint, then obviously you would advise the discloser of that determination and then consider whether the complaint merits investigation as a complaint in any event and advise the complainant of that outcome. Because the investigation process is the same for both disclosures and complaints — we can come to that afterwards — if it is just a complaint, on the right-hand side it is not a protected disclosure matter, then obviously again a similar process: acknowledge receipt, assess whether it is within our jurisdiction. If it is within our jurisdiction, assess whether it merits investigation, looking at matters like the credibility of the complainant, what evidentiary support there is, the significance of the alleged conduct and if there is some other remedy available. We may need to seek other information from the complainant and seek further information obviously from IBAC.

We have power under the VI act to conduct preliminary inquiries under section 48B of the act. If we concluded that it is not within our jurisdiction, if it is outside jurisdiction, obviously we would advise the complainant that no further action will be taken. Obviously in relation to police matters our role is to investigate how IBAC has handled the matter. We are not there to investigate how the police has handled the matter. Therefore if we get a complaint and it is in that area, we have to advise complainants that we have no jurisdiction. If it merits investigation, then we may investigate it as a complaint. Obviously the complainant could withdraw the complaint; I do not believe that has happened to date. We do have power to conduct an own-motion investigation in relation to the complaint.

The bottom half of the slide sets out what you would do when you have decided it merits investigation. Obviously on the left-hand side, you plan your investigation and go through the planning phase for that — notify the complainant, notify IBAC unless, as the act allows, you think this could prejudice the investigation. You would then look at how you want to handle this: do we hold an inquiry, do we conduct an examination and do we need to get any other documents that we have not been given, should we be exercising our powers to seize documents? If we are conducting an inquiry, do we want to summon any witnesses to come along to give evidence or request them to produce any documents? As you know, we do have power to examine witnesses on oath or affirmation. Of course we can issue a confidentiality notice to witnesses in a similar way that IBAC can. Obviously at end of that process you weigh up the probative value of the information you have received and then decide: what are we going to do? What is the outcome of all this?. If it is an adverse report, we must provide IBAC an opportunity to comment — clearly natural justice would definitely require that.

At the end of the investigation communicate the outcome to the complainant and to IBAC. The bottom little square is just listing the possible outcomes you could have. It could be a recommendation made to IBAC, which can be made in private. You could make some specific recommendation for further action by IBAC in respect of specified IBAC personnel. We could make a special report to the Parliament. We could put something in the annual report arising out of what we find. We could do any or all of those things or do nothing — make no finding or take no action following an investigation. So it is a very complex chart, but hopefully it gives the picture.

So this issue: what has the VI done to make an assessment of IBAC's performance? Obviously I guess the first thing is the work done on complaints. The earlier slide gives some numbers about the complaints that we receive about IBAC's handling of matters. That gives us a sense of how things have been handled by IBAC, because we may want to have a look at the IBAC file and see how it was handled.

Coercive examinations — the VI does carry out a review, a monitoring of all coercive examinations: we do get the tape and listen to the tape. While we have got some backlog from some earlier years, I think we are pretty up to date in terms of more current investigations.

We can conduct own-motion investigations. We have had two own-motion investigations conducted to date, at least one of which directly related to a complaint about IBAC's handling of a complaint that related to a police personnel matter. We have embarked on a process of reviewing all IBAC's policies and procedures related to

police personnel conduct. It is not just sitting and reading them but actually having an exchange with IBAC and having discussions with them on those.

In 2016–17 there was a review conducted by the VI of really what was a small sample of IBAC’s police complaint files. Those complaint files related to the preceding year, 2015 and 2016. It was only, I believe, 50 files, so it was a very, very small sample and I think you cannot attach too much importance to what you would find in such a small survey.

Obviously the VI participates in a protective disclosure liaison group with IBAC, the Ombudsman and the police. And we are still developing, in consultation with IBAC, a program to measure the effectiveness or the performance of IBAC’s protected disclosure framework. I am very keen that we push on with that and get that in place ASAP, so as we are in a better position to talk about how IBAC handles protected disclosures.

What issues have come up arising from the VI assessment? I mean, I probably should say at the beginning of that, before going through this list of issues, that we are very conscious in the VI of the statutory framework within which IBAC operates and the resources that it has available to it, which would make it difficult for IBAC to operate other than it currently does in terms of the number of complaints that are referred back to the police. So recognising those limitations and the framework within which they work, an issue that has struck us is there is minimal reasoning for a determination of the outcome as shown on the IBAC complaint file. So when we call for the file and look at the IBAC file, it is difficult to see completely how the decision was reached, and we have been saying that it would help us in our assessment if there was more information given as to how a particular decision was reached.

Particularly from that 50 survey it was found that occasionally you would see on the IBAC file some other information that did not come from the complainant but it was not readily identified where that information came from. Was it from within other police resources, or how did it come about? Again when you are looking at the file and trying to look at how IBAC handled it, it would be good to know better where all the information came from.

It is a longstanding issue about the policy of IBAC not giving complainants reasons for a decision. It would seem natural that if you have made a complaint and you just get back a pro forma letter advising you of the outcome of your complaint, whether it is dismissed or whether it is going to be referred to Victoria Police or whether it is going to be investigated, that you would want some reasons to better understand it. I believe that the VI has been raising this issue of reasons now for some three or four years, and it was first touched on in the 2014–15 annual report.

In discussions that have been had with IBAC, they say that it is at the discretion of the assessment and review officers whether to give reasons but the default position is no reasons to be given. I believe that a reason for that is that IBAC is concerned that the giving of reasons may just open up another avenue of complaint and another avenue of review when particular reasons are given, but we do believe that there should be some reasons given to a complainant to give them the satisfaction of knowing that their complaint has been fully considered and dealt with and a decision has been reached.

The mandatory nature of section 73 of the IBAC act — because section 73 says:

(1) The IBAC must refer to a —

listed —

person or body —

which includes the Chief Commissioner of Police —

... a complaint ... if, at any time, the IBAC considers that —

- (a) the subject matter of the complaint ... is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and
- (b) it would be more appropriate for the complaint or notification to be investigated by that person or body rather than by the IBAC.

So that is the provision that operates. Obviously there is a discretion in terms of IBAC considering whether or not the subject matter is relevant to the chief commissioner and whether or not it is more appropriate for the chief commissioner to deal with that.

We understand that IBAC does not have any internal policies and procedures around deciding when it is more appropriate for it to be considered by the police, and we feel that written guidelines within IBAC would be helpful for us in reviewing or overseeing what they are doing and perhaps helpful in terms of managing the business — if you have got guidelines as to when you will dismiss and when you will refer and when it may be more appropriate for a particular matter to be dealt with by the police.

The next matter listed there is the lack of follow-up with the chief commissioner as to whether the complainant is advised of the outcome of the police investigation. So it is referred off to the police, and obviously the complainant wants to know how things are fully handled, and I do not believe — it is my understanding, and I will discuss this more with IBAC to make sure — there is no real follow-up between IBAC and the police to say, ‘Well, what was the outcome? Have you communicated that outcome to the complainant?’.

Under the legislation — the IBAC act — IBAC is required to prioritise the investigation and exposure of serious or systemic corrupt conduct. So it is perfectly understandable that they are going to devote the majority of their resources to that task. Whereas with respect to police personnel misconduct, there is no sort of similar obligation. There is no classification of what might be regarded as serious police personnel misconduct or systemic, where a priority could be given to IBAC to then look at that form of misconduct.

The last issue on that slide is that, under the IBAC act, IBAC also has a function of assessing police personnel conduct. In discussions with IBAC we believe that really has not been a focus. They have obviously been concerned about police personnel misconduct, but the whole issue of what could you do, working with the police, to try and look at conduct, which may be a preventative measure to prevent issues of misconduct coming up. When IBAC can refer a matter back to the police, of course they can ask to review the file when the decision is made and they do do that. I think if there is an issue that involves professional standards command or if there is a vulnerable complainant involved, I believe there is a policy of calling those back for review. I think IBAC can, and I believe does on occasion, recommend a particular course of action to the chief commissioner. Of course it could withdraw a referral from the police if there was anything that came alive that made them realise that maybe it should be investigated by IBAC and not the police.

I think the next slide is: does the current system meet community expectations? I understand the figures are around about 99 per cent of matters that merit investigation that relate to police misconduct are referred to the chief commissioner, which is a very high number. While the VI itself has not done any surveys of community views, but just based on your own feeling and your own intuition about what community members would feel when they make a complaint that is then referred to the body that they are complaining about, together with a literature review which we have conducted, we feel it is reasonable to say that the community is not comfortable with police investigating police. Obviously that has been a feature, having read some of the other submissions that you have received — from the Law Institute of Victoria and the Flemington legal centre, clearly there is a view being expressed there that it is not in line with community expectations. There is always going to be a perception of bias when police are investigating police, and justice must not only be done but be seen to be done. It is understandable that community members would feel that there could be a perception of bias in that.

Now I should say I know that one of the questions that you raised does relate to the Police Ombudsman for Northern Ireland. As you can probably tell from my accent, that it is where I originate from. Even though I have been living in Australia for 40 years, I have not quite lost the Northern Ireland accent. So I am very well aware of what happens in a community when there was no confidence in the police themselves determining complaints made against the police. Obviously the model that has been adopted in Northern Ireland would seem to be a gold standard model: you know, well-resourced, lots of investigators, having investigators who are not police personnel or if they are police personnel, from another police force, whether from an English police force and not from the Northern Ireland police force itself. So there are peculiar circumstances in Northern Ireland that makes this sort of model necessary, but if you are looking, as I said, at a gold standard model, it would be hard to go past that.

While section 67 of the IBAC act sets out detailed circumstances in which a complaint does not warrant investigation — you know, it has got a list of it being frivolous or vexatious or whatever — section 73, which was the section we were looking at earlier about something being more appropriate for a complaint to be

investigated, does not itself provide any guidance as to that. It very much leaves it in the discretion of IBAC. I know IBAC say to us, 'We do not need policies and procedures around when something warrants or does not warrant investigation because section 67 has got a pretty fulsome statement of that'. But the same argument could not possibly apply to section 73, and therefore there would seem to be certainly a need for some policies and procedures there.

I think the last slide, because the questions also touched on the issue of the website, I would say that in the five weeks we have been there we have begun improving the content of the website. We have put in a revised statement of the VI's functions and their position and values, with a revised summary of what the VI does and a summary or a listing of the bodies over which the VI has oversight and also quite extensive now protected disclosure complaint procedures. I have got a program in place to review the website to improve its appearance and accessibility. I believe there is a meeting on today with some people from DPC to look at what can be done.

One of the things that I was interested in when I arrived at the VI was saying, 'What is the traffic that we get through our website?'. But we had not been keeping the figures; they had not got the system launched to do it. So from 16 January we embarked, so over that two-week period we can say it is around the 1000 mark of people visiting the website. Perhaps one measure of whether we actually improve it will be those numbers going up in the years to come. I hope I have not exceeded my 20 minutes timeframe —

The CHAIR — By probably a smidge, but anyway. Thank you, Inspector, for that. We will open up for questions. We have got about 13 or 14 minutes, so I will open it up to questions. Who wants to go first?

Mr RAMSAY — If I may, your predecessor raised with this committee the limitations the VI has in relation to investigations and investigators. In fact I think there was one case where there was a considerable time delay due to staffing issues. I am just wondering if it is a priority for you to readdress those issues.

Mr MORAN — Yes, absolutely. I am conscious of that and I have read through the file. The time that particular investigation took just seems totally excessive. I am certainly glad to report that that one is now completed and we have communicated with IBAC about it. No, I am looking at the structure and I think we have to be able to do better. If we embark on an investigation, we have to try and wrap it up before too long — but I am very conscious of the criticism that has been made of VI. It is going to be a priority to address that, because I cannot defend it.

Mr RAMSAY — How many outstanding investigations are you currently operating at the moment?

Mr MORAN — We have got one other own-motion investigation underway at the moment and then we are contemplating a further one which does not involve IBAC. Obviously there is the continual review of the coercive examinations that is going on, and from that issues may come up. Resourcing is something that we really need to pay attention to and ensure that we can carry out our functions properly.

The CHAIR — Just following up from that — is that a matter of resources or is that a matter of applying the resources to the core functions of what VI should be doing?

Mr MORAN — I think it is really a matter of both to be honest. It is a pretty small-scale organisation, you know, with 10 or 11 full-time staff. But I have become aware that over the last year or 18 months a lot of time has been taken up with some internal issues which undoubtedly would have diverted staff away from carrying out their functions. If we cranked up the number of investigations, we would really need to make sure we had got the staff to cover it. I hope the outcome will be that the internal issues that people have been focused on can be solved satisfactorily and that that they can fully concentrate on what they are there to do and apply their time to that, and I am confident we are making progress there.

Mr HIBBINS — I have two questions: one was whether you think there should be a separate police oversight body, separate from IBAC; and whether you think IBAC should be investigating more police complaints, whether that is by lowering the threshold that they investigate or by greater resourcing for IBAC.

Mr MORAN — As I said, when you look at the resources of IBAC at the moment and the range of functions that they have and the number of complaints that they get, you can understand that they are not set up to investigate all complaints that are made about the police. I believe there is ground, and I think it was raised in the submission about where do you draw the line. There has got to be a category of complaint where you say,

‘That is appropriate for it to go back to the chief commissioner’ if it is just a local service issue, some low-level issue.

There has also then got to be a category of complaint where you say, ‘IBAC itself should look at it’. You have the definition of police misconduct. Government and Parliament could look at having a definition of serious police misconduct — conduct that if it was substantiated, could lead to a particular level of imprisonment, so as to raise it up and above the level, and say that IBAC must investigate those matters. Then it seems to me that the third category then has to be a mixture where you exercise discretion as to whether or not this is going to be appropriate for IBAC or to go back to the police. But for there to be, obviously, a separate body — if the decision was made, ‘No, we really want IBAC to be concentrating on anti-corruption and not really a complaint-dealing body’ — yes, you would have to be diverting resources from PSC within police and from IBAC to having a body closer to the Northern Ireland set-up.

As I said, we have not done the surveys but it would stand to reason I think that the community would feel that having an independent investigation of more issues would be something that was desirable to achieve. But the resourcing and skills — there are lots of issues involved.

The CHAIR — Inspector, we thank you very much for your time and we look forward to working with you for the rest of the term of this Parliament.

Mr MORAN — Thank you very much; I look forward to it.

Committee adjourned.