

VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2012–13

Melbourne — 7 May 2012

Members

Mr N. Angus

Mr P. Davis

Ms J. Hennessy

Mr D. Morris

Mr D. O'Brien

Mr M. Pakula

Mr R. Scott

Chair: Mr P. Davis

Deputy Chair: Mr M. Pakula

Staff

Executive Officer: Ms V. Cheong

Witnesses

Mr A. McIntosh, Minister responsible for the establishment of an anti-corruption commission, and

Ms P. Armytage, Secretary, Department of Justice; and

Ms J. de Morton, Deputy Secretary, Government and Corporate Group, and

Mr S. Widmer, Director, Anti-Corruption and Integrity Taskforce, Department of Premier and Cabinet.

**Necessary corrections to be notified to
executive officer of committee**

The CHAIR — I welcome Ms Joanne de Morton, deputy secretary, Government and Corporate Group, and Mr Scott Widmer, director, Anti-Corruption and Integrity Taskforce, Department of Premier and Cabinet. I now call on the minister to give a brief presentation of no more than 10 minutes on the more complex financial and performance information relating to the budget estimates for the establishment of an anti-corruption commission portfolio.

Overheads shown.

Mr McINTOSH — Thank you, Mr Chairman. The government is taking a measured and staged approach to the rollout of Victoria's new integrity system. I emphasise that these are the most significant reforms to Victoria's integrity regime probably in its history. The IBAC is the centrepiece of these reforms, together with the IBAC parliamentary committee, the Victorian Inspectorate to oversee the IBAC and the PIM. These initiatives are part of a wholesale reform of Victoria's integrity regime. For the first time an independent body will be in place to ensure our public sector is acting with the integrity that Victorians expect. I just mention that of course we have introduced three pieces of legislation relating to the establishment of the IBAC; legislation where we set up a genuine oversight body, being the Victorian Inspectorate; and also amendments to creating a Public Interest Monitor. We have also introduced legislation to significantly reform the freedom of information processes in this state.

Education and prevention, Mr Chairman, again is a significant role that we wish IBAC to undertake. IBAC is not just about investigations — although that will no doubt have some degree of interest for the community — but it is also the opportunity to assist in preventing corrupt activities by facilitating education of the public sector and indeed to some extent of the broader community about the detrimental effects of corrupt activity and assisting government departments to effectively capacity build in relation to preventing corrupt conduct.

Obviously IBAC has an investigations and examinations power. It will have special powers to investigate more than 250 000 public sector employees, including all members of Parliament, ministers, ministerial and parliamentary staff, all councillors and council staff, judges, public prosecutors, the Governor, consultants to the government and corporate contractors to government engaging in public functions. It will have broad powers to enter premises and to the use of firearms. I note that the firearms parts of the amendments are an exact copy of the OPI. I do not notice the OPI carrying bazookas, but perhaps that might come up later. On how to gather intelligence, including the use of surveillance devices and telecommunications interception technology, of course the telecommunications technology is still subject to the commonwealth passing the required legislation, although I understand the legislation has been introduced into the House of Representatives. Ultimately it has the power to hold examinations and coercively question witnesses in the conduct of its investigations.

As I mentioned, the commonwealth legislation has obviously significant amendments to the body of material that the commonwealth oversees in relation to telecommunications. Can I just say from the outset that my dealings with the commonwealth government, and certainly the current Attorney-General and the previous Attorney-General, Rob McClelland, have been without any form of rancour or political interference or otherwise. It has been completely aboveboard, and I am very pleased with the cooperation that we have received in relation to these matters.

Mr PAKULA — You are going off the Baillieu government script there, Minister.

The CHAIR — Thank you for your assistance, deputy. Minister, please proceed with your presentation.

Mr McINTOSH — Obviously telecommunications is a significant part of the investigative mechanisms of the IBAC. I am very pleased that the legislation has been introduced into the House of Representatives to enable IBAC to undertake its activities. Also, it would enable the proper oversight by the Victorian Inspectorate including in relation to telecommunications intercepts, and also the Public Interest Monitor to appear at first-stage applications in relation to those and other matters.

The inspectorate, of course, is a significant body. For the first time not only will you have a body that will oversight the IBAC and indeed the other integrity agencies that will undertake a requirement that something is being done lawfully — that is, you tick the boxes, the warrants have been issued appropriately and all of those sorts of things — but essentially the inspectorate will now be providing what other states have provided in similar legislation, which is a proper oversight mechanism whereby an independent body can actually undertake an investigation to ensure that these powers are not only used in ticking the box legally but are appropriate and

proportionate in all the circumstances. Indeed that has been a significant difference with the special investigations monitor, and again the individuals involved have done everything they have done in accordance with the law, but of course that SIM will have the capacity that was replicated in other states — in New South Wales, Queensland and Western Australia in particular — and can undertake a review to ensure that all of the powers exercised by the anticorruption bodies are done appropriately and proportionately.

The Public Interest Monitor is an idea. It is in operation, as I understand it, in only one state, Queensland. I must admit I had an opportunity of meeting with the former public interest monitor in Queensland, and it sounded a very sensible idea. I must admit a number of judges have raised with me not the specifics but their concern that when an application is made for any form of exercise of coercive power you quite often hear just one side of the equation, usually of the law enforcement agency. They relish the opportunity of getting effectively someone who represents the public interest on these matters and can represent the public interest and act as a contradictor, if you like, in an application. In most cases that will not cause any form of delay or otherwise, but essentially the material that is being used has a second set of eyes to ensure that it is done, again, appropriately and proportionately.

I am very pleased that this state finally is coming into line with many other jurisdictions around this country that have this form of independent oversight of the FOI process. Of course the FOI commissioner will now take responsibility essentially of coordinating responses in relation to FOI across the entire state. It will also have a significant role in relation to the education of government agencies of their responsibilities under the FOI legislation but also monitoring compliance by agencies, providing advice and education, and indeed finally reporting on the operation of the act. As I said, this is a significant change. It is the first time. There are many other similar bodies around the rest of the country, but certainly this is a significant development now.

The most important thing about this is that essentially the FOI will be undertaking all internal first-stage reviews, commencing with the current legislation of course, which excludes principal officers and ministers. That has not changed; that is the existing legislation. But now for the first time you will have first-stage reviews, internal reviews, conducted by one person, again trying to get some degree of concomitancy across the entire state. Most importantly out of this slide, over the next four years the government has committed over \$200 million to implement what I would say are the most significant reforms in relation to integrity matters in this state.

The CHAIR — In the remaining time, members will direct questions. I will start with a reference to some key information that the committee is seeking in relation to growth and efficiency initiatives announced in the budget. Can you please outline for the committee the likely impact of the budget on enhancing any delivery in relation to productivity and achieving efficiency gains within this portfolio? In relation to that, could you please indicate how you intend to monitor the portfolio's effectiveness in maximising improvements in these areas?

Mr McINTOSH — Thank you for the question. The government's integrity reforms agenda will see the entire public sector subject to the oversight of an anticorruption commission for the first time in Victorian history. IBAC, by exposing, investigating and preventing corrupt conduct, will provide assurance of the integrity of public administration in this state. IBAC will contribute to community confidence that service delivery occurs fairly and in the public interest and is not influenced by corrupt conduct.

Victoria's new integrity system will directly create efficiencies within the public sector by enhancing the sector's capacity to prevent corrupt conduct and by educating the sector and the community about the detrimental effects of corruption on public administration. Indirectly, the new integrity system will create efficiencies by helping to foster a culture within the public sector where corrupt conduct in any form will not be tolerated.

The government has also designed an efficient integrity framework. It will have a single body, IBAC, which will have oversight of Victoria Police and the broader public sector. IBAC will be able to refer matters to other integrity bodies where appropriate and may conduct coordinated investigations. Furthermore, the Victorian Inspectorate will build upon the special investigations monitor's powers, so there will be a single body monitoring the use of special covert investigations and coercive powers by the Victorian investigative agencies and also the power to ensure that these powers are exercised appropriately and proportionately.

Similarly, the current administration of FOI in Victoria is fragmented, with different oversight tasks undertaken by different bodies, including the Department of Justice and the Victorian Ombudsman. This means there is no centralised body to oversee the governance of Victoria's FOI regime.

Mr PAKULA — Yes, there is — Don Coulson!

Ms HENNESSY — Yes, he does a pretty good job at it too, from your perspective.

Mr McINTOSH — The establishment of a new independent FOI commissioner's role will promote greater government accountability and transparency by putting measures in place to assist the improvement of the administration of FOI requests. The key benefits of the reforms include improved consistency in FOI decision making and streamlining of the FOI processing, which, combined, are expected to eventually lead to lower costs per FOI request.

Independence is a key in all of this, and the Victorian Inspectorate and the FOI commissioner as well as IBAC will be independent from ministerial direction or control. On top of this, of course, robust oversight is a key feature in these integrity reforms. IBAC, the inspectorate and the FOI commissioner will each be subject to oversight by a joint house committee —

Mr PAKULA — For which there is no money, as the presiding officer — —

Mr O'BRIEN — Let the minister finish his answer.

Mr McINTOSH — and the annual reporting obligations under their own acts and the Financial Management Act — —

The CHAIR — Can we allow the minister to conclude his response?

Mr McINTOSH — This will provide transparency and thus insurance that the new integrity bodies deliver high-quality services.

The CHAIR — Very briefly, Minister, can you advise the committee of any likely impact on the community as a result of these initiatives?

Mr McINTOSH — Public confidence in the operation of government and government agencies is a critical factor in our community. Any loss of confidence can have a significant detrimental effect in the broader community. Essentially the government should be setting the example for integrity. What these bodies do is provide the mechanism not only to investigate and prevent corrupt activity but also to assure the people as to the mechanisms that are in place for determining and rooting out this sort of corruption. Essentially it can lead to significant benefits within the community.

Ms HENNESSY — Minister, speaking of public confidence in government bodies, public confidence in your IBAC is at an all-time low. Yesterday in the media it was exposed that there has been corruption in the processes to set up an anticorruption body. Why were we only told about this yesterday — —

Mr MORRIS — On a point of order, Mr Chairman, I do not think corruption has been demonstrated; it is alleged.

Ms HENNESSY — Certainly the statement that came out of the media — —

Mr MORRIS — It is alleged — —

The CHAIR — Ms Hennessy, I am taking a point of order on my right. If you would allow the member to complete the point of order, you may have the opportunity to make some comment.

Mr MORRIS — I just make the point, Mr Chairman, that simply because something is reported in the press does not make it fact. I am happy for Ms Hennessy to indicate that it is alleged but not to suggest it is fact, because that is not demonstrated at this point.

The CHAIR — Thanks, Mr Morris. I actually do not think there is a point of order. It is an observation. Ms Hennessy will advocate her own case, I suspect. I will allow the minister to respond to the suggestion that there is some matter to respond to.

Mr PAKULA — Can she finish her question?

Ms HENNESSY — I have not actually finished my question.

The CHAIR — You have not completed it?

Ms HENNESSY — No, I have not finished my question.

The CHAIR — Ms Hennessy, proceed.

Ms HENNESSY — In relation to corruption in the setting up of your anticorruption commission, why were we only told about this yesterday through the media, and how much public money had been expended on the tender process before it had to be suspended because of this corruption?

Mr McINTOSH — I understand there is a police investigation that is ongoing in relation to this matter, so I will perhaps confine my remarks very briefly. But I will also perhaps ask the secretary to make a comment. My office became aware of this. The matter was then provided to the secretary, and as far as I am aware the secretary has dealt with — —

Ms HENNESSY — In December? Is that correct?

Mr ANGUS — Let the minister answer.

Mr McINTOSH — At some stage — —

Members interjecting.

The CHAIR — Ms Hennessy, allow the minister to proceed to give the answer that he is able to give, and then you can ask a follow-up question.

Mr McINTOSH — The information was conveyed to the secretary, and since that time the secretary has taken the matter further. The disciplinary process as reported is a matter for the secretary, but essentially my office has had no further involvement in that process.

Ms ARMYTAGE — I will add some details in terms of what occurred in relation to this matter. In December 2011 a request for tender was for quotes to come through from a selected tender process for a specialist security adviser to provide us with advice in relation to a range of matters, and those quotes were received. As the minister indicated, on the last working day before Christmas, in the afternoon, I became aware of the allegations that there were concerns about ethical and probity issues associated with that tender. We commenced an investigation straightaway in relation to that on 23 December, and I engaged our director of risk and audit to make sure that that matter was followed up as a matter of urgency. Because it was ethical and probity issues that had been identified with the tender process, it was felt that we needed to deal with that decisively.

The allegation was that a VPS 4 officer in our major procurement area had engaged in dialogue with a colleague in another department in relation to that tender. As a result of that, the tender, which was estimated to be worth about \$100 000 in terms of that tender process, was of concern in terms of what that exchange had been and then ultimately what the colleague in the other department had done in terms of contact with potential people with an interest in this. As soon as, as I said, those allegations became know to me, our director of risk and audit commenced a very proactive investigation to make sure there was no compromise to that tender process. As a result, I received a briefing on 10 January in relation to the investigations that had been conducted in the department and terminated the tender process on 11 January.

We also made a decision that, in light of the concerns about the conflict of interest that had not been declared by the contractor — that VPS 4 officer on contract to us — and in relation to the compromise that had occurred, his employment with the department should cease, and that occurred on 17 January. There were other processes

obviously put in place to make sure that there was strong communication with the Department of Primary Industries in terms of their investigation into the allegations made in relation to their employee, and ultimately they concluded that it was not possible to substantiate some of the allegations that had been put.

A number of requests were made for any supporting documentation to the company that had been contacted by that officer and anyone else who had other material that might assist in a more comprehensive investigation of the matter. None of that material was forthcoming, and as a result the actions that I took, as I said, on 11 January in the first instance to conclude the tender process and then ultimately to terminate the employment of that contractor were in our view an appropriate and proportionate response to make sure there was no compromise, and then further work has been done to make sure that other arrangements have been put in place. I can detail what the other arrangements are if necessary, but it is clear that there was no compromise ultimately to that tender because no work was done in relation to the tender because we concluded the process.

Ms HENNESSY — Minister, when did you become aware and why did you not inform the Victorian public?

Mr McINTOSH — I became aware pretty much at the start of the process.

Ms HENNESSY — Estimate of time?

Mr McINTOSH — My office became aware. That was immediately transmitted to the secretary's office, and we have had no further involvement with the process at all since then.

Mr MORRIS — Minister, I refer you to budget paper 3, page 40, and in particular the 'Public sector integrity' output there. Can you provide further detail on the funding for the public sector integrity measure?

Mr McINTOSH — We are introducing a broad range of legislation over many issues, including the IBAC legislation, the Victorian Inspectorate legislation, the Public Interest Monitor legislation and the FOI commission legislation. In last year's budget we provided for over 170 million for IBAC-related measures and 7.9 million for the FOI commissioner. Over the next four years there is expected to be approximately \$200 million available for the government's new public sector integrity measures. As promised, the ongoing budget of IBAC will be in excess of \$40 million per annum and will come from both the current OPI budget allocation and the additional funding committed by the government in the previous budget.

In this budget we have provided an additional 12.3 million over the forward estimates for the ongoing operation of the Victorian Inspectorate and the Public Interest Monitor. The \$34 million in the 2012–13 budget is for a range of activities related to achieving high standards of public sector integrity through the establishment of new bodies and new powers. The \$34 million will be augmented by the unapplied appropriation from 11–12, which will make the total in 2012–13 in excess of \$40 million. This is significant funding for significant reforms — and, I have to say, significant reforms that the Labor Party utterly failed to do when they were in government.

Mr PAKULA — Minister, you have referred both in your presentation and your answer to other questions to the FOI commissioner, and you have talked about the educative function and some of those other functions that the commissioner will need to carry out. You made a very clear commitment in your pre-election material that one of the functions of the FOI commissioner would be to set enforceable standards for departmental officers — FOI officers — to meet. When the legislation appeared before the Parliament that power had been granted to you rather than to the FOI commissioner. I would like you to explain to the committee why you made that change, why you did not give that power to the FOI commissioner as you undertook to.

Mr O'BRIEN — On a point of order, Chair, this is a question that does not really arise from the budget estimates. It may be a question for the legislation, but it is not really an estimates question.

Mr PAKULA — Can I deal with the point of order, Chair?

The CHAIR — Yes.

Mr PAKULA — First of all, I am not sure that the minister is really all that keen on the assistance he has received, but the fact is that the funding for the FOI commissioner is contained within the 2011–12 budget, and it extends over the forward estimates period, including the current year, and the minister, in his presentation, has

gone to the functions of the FOI commissioner. All I am asking him is why one of the functions of the FOI commissioner that was committed to has not been delivered on.

The CHAIR — Thank you, Deputy Chair, and thank you, Mr O'Brien. Do you have anything further on the point of order?

Mr O'BRIEN — The question does not relate to the budgetary allocation; it relates to a question of whether it should be in legislation rather than — —

Mr PAKULA — Every question you have asked in the last two days — —

The CHAIR — Thank you. I have heard from both members, and it is evident to me that the functions and activities of the commissioner do relate to the appropriation for that role. It is a matter for the minister, I think, to respond to the question in the way that he sees fit, as all ministers are able to do. I understand the point that Mr O'Brien has made, but I think on this occasion I will allow the question.

Mr McINTOSH — Ultimately the FOI commissioner will be responsible for monitoring standards. It is the government's intention to promulgate those standards made by a minister, and, after some consideration, it was felt that a minister — namely, me — will set the standards in relation to FOI. It will then be the FOI commissioner's responsibility to monitor those and indeed ultimately report to Parliament in relation to those standards as to whether they are being achieved or otherwise.

In developing the standards, of course, we have taken into consideration a number of propositions, but essentially we think that the person who sets the standards should not be the person who monitors those standards. Ultimately the FOI commissioner can make recommendations to Parliament in his annual report suggesting alterations or changes, and the government, of course, will consider those as appropriate. But most importantly, we think it was a much better way of developing this — which is that the government sets the standards and it will be the FOI commissioner who will monitor it and indeed make any recommendations as to changes or otherwise.

Mr PAKULA — Just to follow up, obviously, I am sure you would agree that there is a big difference between monitoring a standard that you set and setting the standard yourself, in terms of the robustness of the system. You also talked before about how this was going to be a great improvement. At the moment you have got 45 days to respond and then there are 14 days for internal review, and if at the end of that period the document is to be released, it is released — so you have 59 days, potentially. Under the new system 45 days, then 30 days for the FOI commissioner, so we are up to 75, and then if there is a document to be released, departments have 60 days to consider that, so we are up to 135. How is a 135-day process better for the applicant than a 59-day process?

Mr McINTOSH — The critical thing here is that the FOI commissioner, unlike what occurs at the moment, will obviously have an education function as well. That is important. But also the FOI commissioner will have a role to try to conciliate the outcomes in relation to all these sorts of documents. That conciliation process can be as simple as getting a quick agreement out of the parties right through to perhaps a bit more of a formal process, but that matter will be entirely for the FOI commissioner. The essential thing here is that rather than having an internal review that is conducted by an internal officer, 99 per cent of the time — and I do not know what the statistics are, but I would imagine they would be very great — he is just going to agree with the other officer. At least you have a process where there will be an independent person making that decision in relation to the first-stage reviews. On top of that, if it is to go any further, then people have their rights to take it to VCAT.

Members interjecting.

Mr McINTOSH — But rather than getting arbitration on a decision on an internal review at day 1 or day 14 or otherwise, there will be a process of trying to conciliate that decision-making process.

Mr ANGUS — Minister, I refer you to budget paper 3, page 177, and also to a matter that you raised in your presentation. Can you outline what steps the government is taking in relation to anticorruption education and prevention?

Mr McINTOSH — Education and prevention is recognised by experts as being a key component in any effective anticorruption commission. While most people may concentrate on the investigation and exposing the corruption — and no-one is underplaying that as an important role — there is also a role to undertake that process of education and prevention by way of education. In many cases it can simply be that people do not necessarily understand, and indeed while IBAC can concentrate on some of the more serious elements of corrupt activity, it may well be that the genesis of corruption could be something quite simple at the lower level of ignorance or otherwise. Indeed that education process is a significant process that we think the IBAC Commissioner needs to go through.

The relevant objects, of course, in the act require it to assist in the prevention of corrupt conduct and to facilitate education of the public sector and also to improve the capacity of the public sector to prevent corrupt conduct and police personal misconduct. That assisting of the departments is essentially really about trying to implement or assist in the prevention mechanisms and also the education of public sector workers. It is a significant step. It is a significant process that we want IBAC to go through. Ultimately it will be a decision for the IBAC Commissioner, but we have specified in the legislation that education will be a key activity.

Mr ANGUS — In relation to the performance measures surrounding that, Minister, can you just give us some ideas about the corruption education prevention performance measures?

Mr McINTOSH — On page 177 of budget paper 3 the government envisages there will be corruption prevention initiatives to be delivered by IBAC in 2012–13. Further, performance measures envisage that at least 90 per cent of the recipients of those corruption prevention initiatives will be satisfied.

Mr SCOTT — This in part follows on from an earlier question regarding budget paper 3, page 40, and the output under ‘Public sector integrity’. If I understood your answer previously, Minister, you stated that the output, which starts in 2014 and then goes across the next two years, is for the ongoing operations of the Victorian Inspectorate and Public Interest Monitor. My understanding is that those two bodies are required to provide oversight of IBAC and in fact are required for it to operate in terms of conducting investigations. Therefore, can you confirm that the IBAC will undertake no investigations into matters of corruption until at least 1 July 2013 because the budget does not make allocation for the operation of those two bodies which are required to oversee such investigations?

Mr McINTOSH — In relation to that matter, this is ongoing funding from 2013–14 and onwards in relation to both PIM and the Victorian Inspectorate. This year’s funding for the inspectorate and the Public Interest Monitor will be part of the IBAC budget. As you know, there has been a specific allocation of \$34 million in the budget this year for IBAC. Some of that money from last year will be rolled over to next year’s financial year, which is 2012–13, and that will enable the operation of both the PIM and indeed the Victorian Inspectorate. There will be sufficient funds to allow that to occur. There will be no impediment to both of those bodies starting up next financial year by lack of funds in any budget.

Mr SCOTT — Could you provide clarification of when those bodies will actually be operational?

Mr McINTOSH — As we said, we will be making announcements in relation to all of these positions in due course.

Mr O’BRIEN — Just following up in relation to budget paper 3, under ‘Public sector integrity’ it says that the output group contributes to the department’s objective in ensuring the integrity of the public sector. Can you outline the new measures to ensure the effectiveness of the government’s anticorruption and public sector integrity reforms?

Mr PAKULA — I am not sure that amounts to a budget allocation question.

Ms HENNESSY — You have changed your tune, Mr O’Brien, on budget relevance.

Mr McINTOSH — There are three new measures in the budget, Mr Chairman. The first is corruption education prevention initiatives to be delivered by IBAC. This reflects the government’s priority of preventing corruption and ensuring public sector integrity. Corruption education prevention initiatives are recognised by experts, as I have said, as a key component in an effective anticorruption system. The government has long been

on record about the importance of ensuring that IBAC is focused on education prevention as well as investigation.

As I have outlined in the context of my crime prevention portfolio, prevention and early intervention measures are very important. The IBAC legislation provides a broad remit to IBAC to undertake education and prevention roles. There is also the budget measure of recipient satisfaction with corruption prevention initiatives. This measure relates to the first measure and is designed to measure the quality of the corruption prevention initiatives delivered by IBAC. While it will be up to IBAC to determine how this is measured, it may include things such as surveys, questionnaires or other forms of obtaining feedback. The performance measures listed in budget paper 3 on page 177 envisage a recipient satisfaction target of at least 90 per cent in relation to corruption prevention initiatives to be delivered by IBAC in 2012–13.

The final measure is compliance by IBAC with statutory and other agreed time frames. This measure is designed to ensure that IBAC's compliance with statutory time frames and other measures as agreed. Given the significance of IBAC, one would expect there should be a 100 per cent compliance with statutory time frames.

Mr O'BRIEN — In answer to the interjection, I confirm that these measures are contained within the budget papers, on pages 177 and 178. Specifically in relation to the one on page 178 on statutory time frames you have said they are at 100 per cent. Could you provide some of the examples of the time frames that will apply to IBAC in relation to that measure?

Mr McINTOSH — Just by way of example, the IBAC has to report to the inspectorate within three days of the issue of a witness summons, including as to why the summons was issued. The IBAC is also required to inform the inspectorate within three days of the issue of an arrest warrant, including the warrant that was issued. Just by way of further example, IBAC has to notify the Chief Commissioner of Police of the acquisition or disposal of firearms within seven days.

Ms HENNESSY — Following on from Mr O'Brien's question, all of the OPI measures have been junked in respect of how many police corruption investigations they have conducted. I note that there are no output measures for the number of investigations that IBAC will conduct, yet we are measuring how satisfied people are with their anticorruption education. Why have you not committed yourself to an output measure around the number of corruption investigations?

Mr McINTOSH — The Department of Justice output structure has been revised to reflect the establishment of IBAC of course, and the previous performance measures have been discontinued given the impending establishment of IBAC and the winding up of the Office of Police Integrity. The new performance measures for anticorruption and public sector integrity reflect the government's recognition of the importance of corruption prevention and education of the public sector. Effective education and corruption prevention will be a vital part of IBAC's work.

Ms HENNESSY — Are you serious?

Mr McINTOSH — Is that the follow-up question?

The CHAIR — Ms Hennessy, I am sure you would like to follow-up.

Ms HENNESSY — Yes, I would, and I suppose it is related to the number of investigations that IBAC will conduct in the next financial year, given that there is nothing in the budget papers about that or in respect of the OPI. Last year you gave evidence to this committee that you were conducting an international search for the IBAC Commissioner, and since that time you have broken your election promise around bipartisan approval for the inaugural one. We have had an OPI report talking about the engagement of Ken Jones in the process. We have had the qualifications lowered in the most recent bill in respect of acting IBAC commissioners, so I would really like to know how much money have we spent on the recruitment — on this international search for an IBAC Commissioner?

Mr McINTOSH — We have made it abundantly clear that we want the best possible candidate to be the inaugural commissioner of IBAC. That is still the government's intention. As I said, there is an executive search — and I have said this before — under way to secure the inaugural chairman in that process — —

Ms HENNESSY — Or chairwoman?

Mr McINTOSH — Sorry, commissioner. That process is still extant, and we will be making the announcement as to the inaugural commissioner at the appropriate time. In relation to the amendments to both potential deputy commissioners and acting commissioners, it was done on advice, so it just streamlines the process and effectively makes the body easier to manage. As you know, for example with the deputy commissioner's role, we are only requiring one of the deputy commissioners to be an Australian lawyer because we believe that there are other skill sets that might be sought after by a commissioner. It will be entirely a matter for a commissioner if he wants to have all his deputy commissioners as lawyers; that is a matter for him. All we are doing is providing an opportunity for the commissioner to take on board. At the end of the day we think that it is sensible that one of the deputy commissioners should be an Australian lawyer, but thereafter it will be a matter for the — —

Ms HENNESSY — Chair, could I just ask if — —

The CHAIR — No, you cannot, I am sorry, Ms Hennessy. The minister has answered your question — —

Members interjecting.

The CHAIR — He has answered the question in the way that he has chosen. If you wish to follow-up later, Ms Hennessy, you may.

Mr McINTOSH — Chair, perhaps I will offer: I will take that matter on notice.

The CHAIR — Thank you, Minister. I refer you to BP 3 at page 40, the Department of Justice output initiatives, and I ask in relation to these output initiatives, can you outline the steps the government has taken to ensure IBAC's use of its powers is both appropriate and proportionate?

Mr McINTOSH — This has been a matter of profound concern for a number of years in this state, and particularly in relation to the jurisdiction of the OPI. I am not being in any way critical of the outcomes; that may be for another day. The point about this is that even with a limited body like the OPI, which only dealt with police personnel, of course what you have is inconsistent with effectively every other state, if you include that South Australia is now to go down this path of an anticorruption commission and certainly Tasmania most recently, but most importantly New South Wales, Queensland and Western Australia have genuine anticorruption commissions.

One of the things that has always concerned me is the operation of the special investigations monitor — indeed not being in any way critical of the personnel there, because they are constrained by the legislation — the only thing that the special investigations monitor can oversight at the OPI is essentially to go through and tick the boxes; that is, you applied for the warrant, you swore the affidavit, you got it on such a day and all of that has been reported. One has to be constrained in the reporting mechanism, and there is no doubt that this has been the subject of reports. It is the technical aspects of this.

One of the things that has concerned the government, and our government, is to ensure that our oversight mechanisms should be exactly the same if not better than elsewhere in Australia, one of which was the establishment of the oversight committee of Parliament, but also to have a body that truly can carry out ticking the boxes and saying you have got all the warrants and affidavits — you went to court, you did all that at the right time and that is all ticked off; we cannot report it, but we can tick it off to say you did it all appropriately — and to have a mechanism to ensure that the community and indeed the parliamentary committee can be assured that these powers are used appropriately and proportionately.

We need to ensure not only that they are done legally but that they are done appropriately and proportionately. That does not mean the inspectorate sits as an appeal court and a mechanism of review, but it can report on the exercise of these powers as to whether or not they are appropriate and proportionate. Is it appropriate that you have telephone intercepts, search and seizure warrants, even the exercise or potentially the use of firearms for someone stealing 10 bob out of the tea money? As serious as that may be, these powers have to be used appropriately and proportionately. Unlike New South Wales, Queensland, Western Australia and the models developed elsewhere, we now for the first time will have a body that can genuinely tick the legality boxes but also guarantee the people of Victoria that these powers are used appropriately and proportionately. A body like

IBAC that has these significant coercive powers will now have the oversight, so the community can rest assured that these things are done legally, appropriately and proportionally.

The CHAIR — That obviously leads to the question: could you expand on what the powers of the Inspector are in relation to this oversight?

Mr McINTOSH — The Inspector is empowered to take a broad range of actions and make a broad range of findings, including relating to IBAC's processes and arriving at a finding or a recommendation. The inspectorate could recommend that IBAC reinvestigate or reconsider a matter or finding. The inspectorate's role is to ensure that IBAC exercises, as I said, its powers lawfully, appropriately and proportionately. The inspectorate will have broad-ranging powers to investigate and inquire into the appropriateness and proportionality of IBAC's investigation. This includes the power to commence investigations. This is most important: it could actually commence that investigation notwithstanding that there is a current investigation on foot. Obviously, there are significant fences and blockages as to what can be done with that, but certainly that matter can commence even though there is an investigation on foot.

It will be empowered to take a broad range of actions in relation to IBAC investigations and IBAC personnel, including making recommendations to the IBAC Commissioner or indeed to the parliamentary committee. As I said, the Inspector will report directly to Parliament and make his findings available to the Parliament, indeed including those recommendations for oversight by the Parliament or the committee.

Mr PAKULA — Minister, you have indicated to the committee that IBAC will be funded, I think you said, at around \$40 million per annum. The thing about IBAC is what we do not know is it might have a lot of matters to deal with, it might have a few matters to deal with or it might have no matters to deal with. Hopefully it is very few. If you look at the FOI commissioner's annual report from last financial year, it indicated there was something like 400 internal reviews carried out, so if you draw a straight line to the FOI commissioner, you will probably have something like 400 matters a year to deal with — maybe more. You have also indicated that the FOI commissioner has to do the educative work, monitor the enforceable standards and a whole range of things. You have funded the FOI commissioner at \$2 million a year.

Mr McINTOSH — Two point two.

Mr PAKULA — Two point two million dollars a year. That has got to include the salary of the FOI commissioner, all the staff et cetera. How on earth is the FOI commissioner going to conduct 400 internal reviews per annum with two and a bit million dollars worth of funding per annum?

Mr McINTOSH — We believe this is an appropriate level of funding. Can I just say in regard to the FOI commissioner, yes, it is a significant reform, and it is certainly undertaking the internal review process. Certainly there is a significant education function there, but we think that the funding of the FOI commissioner is at an appropriate level — \$2.2 million.

Mr PAKULA — Can I say, Minister, as part of my follow-up, you might think that, but nobody else thinks that. Everybody I have spoken to says it will be horribly underresourced and may indeed have to contract out many of its functions to others.

Mr McINTOSH — Who have you been talking to, because you never did it yourself, did you?

Mr PAKULA — At \$2 million — —

Mr McINTOSH — You had the opportunity of doing it, but you never did it. You know all about it, but you did not do it.

Mr PAKULA — That amount to conduct anything like 400 internal reviews — nothing like it.

Ms HENNESSY — Why do you not go and have a look at the Auditor-General's report and look at — —

Mr ANGUS — You had 11 years to do something, and you did nothing.

Members interjecting.

The CHAIR — Thank you. One at a time.

Mr McINTOSH — As I was saying, the government believes this is an appropriate amount of money to allocate to the FOI commissioner. This is a brand-new body that you had your opportunity in government to deliver. You did not do it, notwithstanding the fact that it is replicated around this country in a variety of different forms — —

Mr PAKULA — Much better funded than that \$2 million a year.

Mr McINTOSH — The most important thing is that you had your opportunity, you did not do it and now you are criticising us for doing it. That is a bit rich, I reckon.

Members interjecting.

The CHAIR — Deputy Chair and Ms Hennessy!

Mr MORRIS — Minister, I refer you to budget paper 3, page 181, which is headed ‘Protecting community rights’. I am wondering if you could outline for the benefit of the committee what steps the government is taking to protect community rights through the transparency measures that are identified there.

Mr McINTOSH — Sorry, could I just get that last bit? Could you repeat the question? I am sorry.

Mr MORRIS — What steps the government was taking to protect community rights through these transparency measures.

Mr McINTOSH — I know we have been criticised in relation to the FOI commissioner, but can I just get to IBAC for a moment? The most important thing about this is the community is being protected in this regard because it is being assured that decision making in government has been done with integrity and without other undue influence.

Critically IBAC is a body that has pretty strident powers. It has the capacity to tap your phone; it has the power to get a warrant to enter your premises and take material from your premises; it can put surveillance devices in your premises, your office, or otherwise to capture all sorts of conversations. These are significant powers. We think that Victoria, for the first time, can be brought in line with the other states and territories around this country, not just limiting it to one particular group of people. Anybody who thinks that corruption begins and ends with Victoria Police has got rocks in their head. Now it is across the entire public sector, and it is about the integrity of the public sector and guaranteeing that.

Likewise it is a case of who is guarding the guard when the guard is guarding you? These are significant powers, and the community has a right to expect that these powers are used in appropriate circumstances. That is why we are establishing both the Public Interest Monitor and the Victorian Inspectorate. As I said, the Public Interest Monitor is about appearing — whether it be in a court or a tribunal — at the first stage when these things are applied for by IBAC. What will happen is the public interest monitor represents the public interest at these applications and can act as a contradictor — that is, can look at the material and question that material. It cannot be done publicly in a public forum; all of this is done in camera. But for the first time you have somebody who can actually question the material that is being produced by IBAC.

As I said, this is an idea that came from Queensland. We think it is a very sensible idea, and why should we not have this here in Victoria, given that we think we can do this better. But rather than sitting back on our laurels and just professing to do it, we are doing something about it. On top of that, you have the Victorian Inspectorate that can undertake not just the ticking of the legality boxes but can also undertake the process of ensuring that those powers are used appropriately and proportionately as well as in accordance with the law, and indeed can do it at any stage of that investigative process. Again that is something that occurs interstate but for some reason we have never had it down here in Victoria. Yes, we have had a special investigations monitor, but only with limited powers. We are replicating what we think is best practice around this country by having a body that can actually undertake these sorts of investigations, again to assure the public, not the investigation of corrupt behaviour, but looking closely at the exercise of these functions and powers of IBAC to ensure that it is done appropriately and proportionately. Ultimately, again, for the first time in this state’s history you have a body like IBAC that would be overseen by a parliamentary committee, its own dedicated parliamentary committee.

Ms HENNESSY — Set it up.

Mr McINTOSH — Now I hear Ms Hennessy mocking again.

Ms HENNESSY — No, no, I am saying set up the parliamentary committee. It has been law for six months.

Mr McINTOSH — For 11 years, they could not do it, completely out of kilter with New South Wales, Queensland and Western Australia.

Members interjecting.

The CHAIR — Order! I have to say it is a little disappointing that members at this late hour have run out of discipline. Minister, I will ask you to conclude your answer before I conclude the hearing.

Mr McINTOSH — Thank you, Chair, just very briefly. We think this is best practice. Victoria deserves best practice in relation to its integrity bodies, and we are delivering on it, rather than some bodgie, dodgy scheme that is concocted. This is world best practice, and we think this will suit the Victorian environment and that will guarantee integrity in the Victorian community. We think that is in the benefit of the entire Victorian community.

The CHAIR — Thank you. Minister, I am sure you are as sorry as I am that we have run out of time for this hearing, so this concludes consideration of the budget estimates for the portfolios of corrections, crime prevention and the responsibility for establishment of an anti-corruption commission, and I thank the minister and departmental officers for their attendance today. It has been a useful session. A number of matters were taken on notice. The committee will follow up with you in writing at a later date, and the committee requests that written responses to those matters be provided within 21 days. This concludes the hearing.

Committee adjourned.