

# TRANSCRIPT

## INTEGRITY AND OVERSIGHT COMMITTEE

### **Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies**

Melbourne—Monday, 7 June 2021

*(via videoconference)*

#### **MEMBERS**

Mr Stephen McGhie—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Ms Harriet Shing

Mr Jackson Taylor

Hon Kim Wells

**WITNESS**

Professor Fiona Haines, School of Social and Political Sciences, University of Melbourne.

**The CHAIR:** I declare open the public hearing for the Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies. I would like to welcome any members of the public watching this live broadcast. I also acknowledge my colleagues participating today.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us has gathered on today, and pay my respects to their ancestors, elders and families.

All evidence taken by this Committee is protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, those comments will not be protected by this privilege. Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

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I would ask everyone that is on Zoom to mute their microphones and make sure that your mobile phones are switched to silent.

I welcome Professor Fiona Haines from the School of Social and Political Sciences, from the University of Melbourne. We welcome your opening comments of 5 to 10 minutes, Professor Haines, which will be followed by questions from Committee members. So if you could state your full name, your position and the organisation that you work for. Thank you, Professor.

**Prof. HAINES:** My name is Fiona Haines. I am Professor of Criminology at the School of Social and Political Sciences at the University of Melbourne.

**The CHAIR:** Thank you. If you want to go on and just do your opening comments for 5 to 10 minutes, and then there will be some follow-up questions from Committee members. So thank you, Professor.

**Prof. HAINES:** Okay. First, I apologise: that is the landline I have no control over.

**The CHAIR:** That is okay.

**Prof. HAINES:** I would like to begin just by acknowledging that I am speaking from the unceded lands of the Wurundjeri people of the Kulin nation, and I would like to pay my respects to elders past, present and emerging. I would also like to acknowledge and pay my respects to any Indigenous peoples present on this call.

I also think it is important to recognise that my expertise is in corporate and white-collar crime and regulation, so my submission pertains most critically to business-government relations rather than the broader police corruption and those kinds of issues that I am sure you will be looking at. Basically there are three main points that I wanted to get across in my submission. The first of those is on education, the second on accountability and the third on oversight. One thing we know from the regulatory literature is that education is important but cannot replace other layers of accountability and oversight, so it should always be seen as a complementary element rather than a replacement for other initiatives and other regulatory processes. Secondly, in terms of accountability, as a criminologist we are always about punish and deter, but the point I wanted to get across in my submission is that in this area I think it is really important to take a broader and richer understanding of accountability, and accountability particularly in terms of government agencies and providing justification for decisions made—that we look at accountability in terms of the reasons given for a decision and the information that can substantiate those decisions so that you are providing those with an interest in a particular area or who are affected by negative conduct can actually look at that and basically come to the decision that the agencies have come to through a kind of reasoning process. I think that sort of broader and richer notion of accountability is actually really important when we are looking at integrity agencies.

Just very briefly in terms of procurement contracts, because this is obviously an area of interest in terms of integrity, it is kind of the difference between sort of just acknowledging that a service is being provided and then having a full contract available and openly accessible for people to come to their own decisions about whether that contract is appropriate. Now commercial in confidence can always apply, or may always apply, but different jurisdictions have a different level of tolerance when it comes to commercial in confidence, for example. If that is not possible, tender specifications should be publicly available so people understand what the criteria are that they are looking for. If that then is the decision made, then some kind of evaluation of whether those tender specifications have been met could also be made publicly available. So it is a matter of taking the greatest level of public accessibility as the norm and then working back so that people come on board when it comes to understanding the decisions that these agencies make.

Another aspect of accountability, and this sort of blends into oversight, is who is accountability owed to? In Victoria and in many other jurisdictions integrity is a fairly hierarchically organised process, so that the Victorian Inspectorate if you like is the ultimate agency as a trustee of the public interest. That may be fully appropriate, but having a broader notion of where oversight can come from—there is a stream of regulatory literature looking at bringing into the accountability processes those who are most likely to be negatively affected by a decision or negatively affected by a contract that has not been fulfilled properly. Braithwaite calls it tripartism. So you are looking for groups or individuals that are in a unique position where they may well be harmed should things go wrong, and you draw them into the oversight process. This can be quite difficult because you may have a very broad population of people who are likely to be badly affected; therefore representative organisations can be drawn on. And finally, and I notice a number of the agencies do this, the audit process can draw on information from those who are most likely to be negatively affected or who have been negatively affected by decisions or practices.

So I guess the tenor of my submission was in terms of working backwards from key principles: the principles of justification, accountability and oversight. I just want to conclude: we know from the research that there is an increasing level of distrust between the public and the government and the public and public agencies. I guess I would say that I think some of these accountability and oversight processes can increase compliance but also can increase public trust in the agencies under review. I think I will leave it there so that I have got plenty of time to answer any questions you may have.

**The CHAIR:** Thank you, Professor Haines. Let us open it up to the Committee members for any questions of Professor Haines. Who would like to go first?

**Ms SHING:** Alright, Chair.

**The CHAIR:** Ms Shing.

**Ms SHING:** Thank you. It will surprise no-one, Professor Haines, that I have got a couple of questions for you after that really excellent presentation. I am interested to know a little bit more about that multilayered approach to corruption prevention and how that approach applies to integrity agencies, particularly given the focus that you have had on ownership from within the community around what accountability looks like and how that might apply in this scenario around, I suppose, emboldening our communities, public sector bodies and cultural engagement perhaps to achieve that accountability improvement overall.

**Prof. HAINES:** I guess in terms of investigation reports, often the questions of accountability in terms of public hearings and public reports tend towards that kind of punishment model—you know, that people come before commissions and therefore they are tainted or somehow they are likely to be punished or whatever. That may well be a part of it, but the issue here is that these public hearings are an opportunity for people to be held to account in that broader sense so that they provide a justification, and the evidence to back up the justification, for their behaviour. I think in terms of the reports of IBAC also, in a sense the reports are a form of accountability of that agency, so they are holding that agency to account by making the reports publicly accessible and as much as possible the information that is fed into those reports.

Now of course there are issues of confidentiality. This is not an easy area. I always tell my students that there is no decision where there is a clear demarcation between right and wrong. You are in a position to make a considered judgement on how best you can maximise the benefits and how best you can minimise the harms, but a total separation is not possible. I would say in terms of IBAC, for example, starting from the point of view

that more information and increased accessibility of information is always preferable, then you work through what the risks are associated with that and say, 'Okay, we can try and reduce those risks as much as possible', but ultimately we have to get to a point where we say, 'These goals are in tension with one another', so where do we draw the line? There is going to be a harm whatever the decision that is made, and the issue is where to draw that line. I think that is the very difficult task that you have in the Committee and the agencies have themselves.

**Ms SHING:** Just further to that—if I may steal a bit more time, Chair—Professor Haines, you have talked about a range of themes that might inform an improvement in achieving accountability across the board, and I note from your credentials that you have worked across a number of international jurisdictions in assessing the way in which different integrity frameworks operate to achieve accountability. In your experience are there any jurisdictions that stand out to you as doing this particularly well not just in terms of the systems that are established and maintained over time but in terms of the social licence that then leads to an increase in that price? There is a fair bit in that, but to the extent that you might unpack that by referencing your experience, I would welcome that. Thank you.

**Prof. HAINES:** I think it is important to say that I have not specifically looked at integrity and oversight in terms of generalised business corruption in different jurisdictions. I have looked at business and human rights in India and Indonesia. I have looked at health and safety in industrial disasters in Thailand and some work in Cambodia. The thing that I would say from that international work is that the integrity of a range of agencies is important rather than just one, so the integrity of the court system is one component together with the integrity of government departments.

One of the things we often talk about in the regulatory literature is regulatory space: trying to understand what agencies or what institutions are likely to have an influence or can enter that space and then understanding the role that each play, recognising that you cannot expect one agency to do the work of all the others or one method of oversight to do the work of all the others and that actually it can be of assistance to agencies to know that they are under scrutiny. I remember—and this is slightly tangential—health and safety managers in businesses liked having a strong regulator because they liked being able to say to their bosses, 'Well, you know, there's a threat here'. So I think that kind of layering can be important in improving the integrity of oversight. I guess that is what I would say to that one.

**Ms SHING:** Thanks, Professor Haines—no, that was incredibly insightful. I really appreciate your answer. Thanks, Chair.

**The CHAIR:** Thanks, Professor. Thanks, Ms Shing. Mr Grimley.

**Mr GRIMLEY:** Thanks, Chair. Thanks, Professor Haines, for your submission and your time here today. I have just got a question in relation to your submission, which highlights the importance of empowering and involving employees and citizens at large in preventing public sector misconduct. How do you see it as working in practice, and can you elaborate to us at all in terms of other jurisdictions perhaps that are doing this well?

**Prof. HAINES:** I would say that there are a couple of things going on in that. One of them is actually the education function with respect to the public—so that actually where inquiries and where reports are public, where information is readily accessible, it assists in generating the public conversation around these very difficult issues. Now, there are always counteracting factors. So in terms of naming individuals who may be involved in corrupt conduct or may be suspected or maybe have done it in the past, there is a risk to them as individuals. That is a difficult decision to make. And I would say, well, then you need a process to ensure that those decisions are made fairly and appropriately, recognising that there is going to be a difficult decision to be made.

In terms of other jurisdictions, I think ultimately it is the jurisdictions that are—and examples do not readily come to mind of jurisdictions, but in terms of practices—ensuring that with those who work for integrity agencies there is some separation between their role there and when they can take work outside in terms of working for those who may be under scrutiny. The issue of regulatory capture I think is relevant here. One process that I really appreciated was actually a process that APRA [Australian Prudential Regulation Authority] had—this is going back some 10 or 15 years. They had a process called the grey path, and what the grey path was was they would approach individuals—in this case in insurance companies and superannuation—who were close to retirement and they would say, 'Do you want to serve the public in your final five or 10 years of

your working life?', with the understanding that they would come to the regulatory agency with their expertise and then they would not return to the private sector after that point. Their expertise is very important in providing much-needed information to the regulatory agency at, not the twilight of their career, but the autumn of their career. So I think there are employment practices, there are obviously funding practices—there are all sorts of practices—that you can look at and say, 'Is there a way of designing these so that the negative consequences can be minimised?', and the very important level of experience and expertise in the private sector can then come into the public sector. Because we also know that sometimes a lot of rules deter good behaviour as well as bad behaviour, so oversight that is incredibly rule-bound can actually backfire in terms of the capacity of individuals and businesses to make good decisions as well as bad decisions.

**Mr GRIMLEY:** Thank, Professor. Thanks, Chair.

**The CHAIR:** Thanks, Professor. Thanks, Mr Grimley. I notice the clock. We have probably only got another 2 or 3 minutes to go, so are there any other questions for the professor? No?

**Ms SHING:** It has been really useful, actually. I just want to say, as a gratuity, very, very interesting, and I may yet have a couple of questions on notice, if that is okay.

**Prof. HAINES:** Yes, no worries at all.

**Ms SHING:** Thank you.

**Prof. HAINES:** I do wish you all the very best with the Committee because what you are doing is really, really important. So thank you.

**The CHAIR:** Professor, I have a brief question for you. You raised the issue of commercial in confidence and whether that be through tender processes or even through reports.

**Prof. HAINES:** Yes.

**The CHAIR:** With redacted documents and the perception by the public that they are not being informed fully and not having access to more of the information, how do we educate the public, I suppose in some degree, in regard to that, there are legitimate reasons for why documents are redacted?

**Prof. HAINES:** Yes, yes. Look, I think that is really important. I have not seen this done anywhere, but I could imagine, for example, an annotation on a redaction that actually gives a little bit more information—that it is not just three-quarters black page and this and when—that people can read, that there is actually some kind of nuance in the redaction.

I think also education on what constitutes commercial in confidence: what are the considerations that go into commercial in confidence and what are the consequences if information should become public—are there anonymised case studies or examples that could be made public to show how these decisions are made? A way of breaking down confidentiality and a way of justifying confidentiality I think would actually play a very important educative function too.

**The CHAIR:** Yes, okay. Good. Thank you, Professor. If there are no further questions, I just want to thank you, firstly, for providing your submission to the Committee and also for presenting your oral submission today and answering the questions today. There may be some questions on notice, as Ms Shing has indicated. I just want to thank you for your time and presentation. If there are questions on notice, we will get that out to you as soon as we possibly can. I declare this public hearing closed. I thank you again, Professor.

**Witness withdrew.**