

# **TRANSCRIPT**

## **INTEGRITY AND OVERSIGHT COMMITTEE**

### **Performance of Victorian Integrity Agencies 2020/21: Focus on Witness Welfare**

Melbourne—Monday, 16 May 2022

#### **MEMBERS**

Ms Harriet Shing—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Mr Jackson Taylor

Ms Vicki Ward

Hon Kim Wells

**WITNESSES** (*via videoconference*)

Dr Danny Sullivan, Executive Director, Clinical Services, and

Distinguished Professor James Ogloff, Executive Director, Psychological Services and Research, Forensicare.

**The CHAIR:** Good afternoon, everyone, and welcome to the hearings of the Integrity and Oversight Committee's review on performance of integrity agencies, with a focus on witness welfare. My name is Harriet Shing.

I would like to begin by acknowledging the traditional owners of the land upon which we meet today, which for us in situ are the Wurundjeri people of the Kulin nation. I pay my respects to Elders past and present, and I would also like to acknowledge any and all Aboriginal or Torres Strait Islander leaders or emerging leaders who have joined us today.

I also welcome members of the public gallery and any members of the public watching the live broadcast. I appreciate that some of the evidence that you hear today may be sensitive and disturbing. There are a number of support services on site that I will identify shortly, but if you need to talk, you can also call Lifeline on 13 11 14 or Beyond Blue on 1300 22 4636. For members of the public gallery, please note that there are a number of support services and resources on site today, including a mental health nurse identified by a name tag, St John Ambulance volunteers and a support room.

Please note that if you have a support person with you, they are not authorised to give evidence to the Committee. Only witnesses may give evidence at this hearing.

I also acknowledge my colleagues who are participating today: the Deputy Chair, Mr Rowswell; Mr Kim Wells; Mr Dustin Halse; and then, attending via Zoom, Mr Grimley, Ms Ward and Mr Taylor. A reminder to Committee members about confidentiality and other legal restrictions: the importance of maintaining confidentiality is of paramount importance here. I also ask that members not refer, whether in questions or comments, to any individual matters, including matters before the courts and those subject to current integrity agency investigations, criminal investigations or similar legal processes.

To witnesses: before you give your evidence, there are some formal things that I have to cover, so please bear with me. Evidence taken by this committee is generally 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 the privilege. I ask you to focus on witness welfare issues. I also ask that you not refer to any individual cases in any identifiable fashion, especially matters that are before the courts and/or subject to current integrity agency investigations, criminal investigations or similar legal processes. You must also comply with any legal obligations imposed on you by an integrity agency, including under any confidentiality notices.

Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence being given today in this hearing is recorded by Hansard. You will be provided a proof version of the transcript for you to check once available, and verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

Please mute your microphone if you are attending by Zoom and not actually speaking. We just want to make sure that we are minimising interference.

We are welcoming Forensicare this afternoon. Before I throw to you, in the interests of a number of matters that have been the subject of very public conjecture in recent days about this review and about the powers of the Integrity and Oversight Committee, I am just going to provide a little brief context.

This committee review, in accordance with section 7(1) of the *Parliamentary Committees Act 2003*, is about the general frameworks and systems of integrity agencies in relation to the management of witness welfare. It is part of the Committee's regular review and monitoring of the performance of the integrity agencies under that Act. As is the case with all parliamentary committees, the Integrity and Oversight Committee, in accordance with the Victorian Constitution and the doctrine of the separation of powers, acts independently. It is authorised

to set the terms of its own inquiries, review and proceedings in accordance with parliamentary law and custom and the *Parliamentary Committees Act*. These are not set, nor should they be, by any external person, organisation or agency.

While this committee oversees the integrity agencies, under section 7(2) of the *Parliamentary Committees Act* it is prohibited from investigating any matters being investigated by an agency, including reviewing any decision by an agency to investigate, not to investigate or to discontinue to investigate a matter. Further, it is prohibited from reviewing any findings, recommendations, determinations or other decisions in relation to particular matters. This includes complaints to agencies and agency investigations. Consequently, the Committee has no power, nor should it have any such power, to interfere with or overturn integrity agency determinations with respect to individual matters.

It is also important to note that under section 7(2) of the Act the Committee is prohibited from disclosing any information which may prejudice any criminal proceedings or criminal investigations; prejudice any investigation conducted by IBAC, the Victorian Inspectorate or the Ombudsman; or breach any secrecy or confidentiality provisions in any Act. That is why it is critical that the Committee, which is bound by section 7(2), not discuss individual matters that are before integrity agencies or currently subject to similar legal processes. It is also why confidentiality is so important with regard to these matters.

Integrity agencies, like anyone else, can respond to any public evidence received by the Committee, which will be published on the Committee's website in due course. Confidential evidence, however, must, under the *Parliamentary Committees Act* and as a matter of fundamental principle, remain confidential. These provisions rightly protect the integrity and independence of Victoria's integrity agencies while subjecting them to necessary but properly limited oversight. It would be entirely inappropriate if the Committee were to become, or be seen to become, a platform for any person involved in an investigation to relitigate any aspect of that investigation.

As a committee empowered to review integrity agency performance, we exist to oversee the processes and systems of integrity agencies and not to perform their duties or give rise to any perception that this can occur. For the Committee to consider any detailed representations about a matter that is now or has been before one of our integrity bodies, or is or may be an unresolved subject of legal inquiry or proceedings, be it in public or private, would be a serious breach of the Committee's remit and, in some cases, the legislation that governs the independence of the agencies themselves. This committee has an important role in oversight, but I remind members, witnesses and the media that we have no role in litigating specific matters, and on that basis, I will continue to ensure that none are raised in the course of these hearings.

Thank you for bearing with me in relation to that statement, which will also be published on the Parliament's committee page.

Thank you very much, Dr Sullivan and Professor Ogloff. It is wonderful to have you here for today's hearing, and I appreciate your participation in this review. I would like to invite you to perhaps make some opening remarks of around 5 minutes in total, and then we will move to questions from the Committee. There may well be some questions that are taken on notice as part of today's process as well. So perhaps over to you to kick things off. Thank you, gentlemen.

**Prof. OGLOFF:** Danny will kick us off.

**Dr SULLIVAN:** Yes. Well, thank you very much and thank you for the invitation to this committee. Distinguished Professor Ogloff and I are speaking on behalf of Forensicare, which is the Victorian Institute of Forensic Mental Health, the statutory public mental health agency which provides, amongst other things, services to the courts, including clinical services such as court reports. We should point out that our services are for the criminal jurisdictions. We have no footprint in the integrity space, so we do not have any dealings with witnesses in this jurisdiction, but we hope that we can provide some information on the way in which we deal with the people that we are evaluating to provide independent court reports and also reflect a little perhaps on some good practice, such as that used by the Office of Public Prosecutions Victoria in managing vulnerable witnesses.

**The CHAIR:** Professor Ogloff, would you like to add anything to that very, very pithy summary by Dr Sullivan?

**Prof. OGLOFF:** Yes. So we have spoken, and there are a few issues we would like to bring before the Committee that I think will be pretty obvious, and they flow from what Dr Sullivan said about the good practices in the Office of Public Prosecutions. I guess the starting point, which the Committee needs to be mindful of, is that the majority of witnesses who are coming before the IBAC will be obviously stressed already and potentially have a degree of trauma and anxiety. Therefore I think this is very timely work, and there needs to be consideration given to how best to support witnesses in their welfare component. I think it is in everybody's interest to support the welfare of witnesses. In some of the work we have done in other jurisdictions—not before integrity commissions but before the courts—we have seen that people who are sometimes charged with offences are obviously and understandably distraught, and we have seen incidences of self-harm and suicide and other sorts of self-destructive behaviour.

So, in brief, we think that there needs to be a supportive team approach to support witnesses, and it is best done by health professionals—not by lawyers, not by police, but by people who understand and can work with people in the welfare realms. We also think that it is worthwhile having education and support to the IBAC staff and commissioners about similar matters. One of the things that it is important for people to note is that for most witnesses who are coming before these integrity commissions it may be for them the first time they have done that and they will not be used to the situation, whereas for commissioners and others who work in these systems it may be their everyday work. Therefore oftentimes I think it falls to the periphery—the importance of the welfare of the people who are in fact giving evidence before the commission.

**The CHAIR:** Thank you.

**Dr Sullivan** interjected.

**The CHAIR:** Sorry, Dr Sullivan. Back to you.

**Dr SULLIVAN:** Professor Ogloff and I are an experienced tag team, so we can just continue. If I can just say that obviously the management of witnesses is somewhat at odds with the purpose of an integrity commission, and it may not fall naturally to the staff involved there. Just to emphasise the difference, when a clinician is dealing with someone in a situation, our clinicians will begin by building rapport with the person who they are about to perform an evaluation on. They will provide an informed consent procedure, where they explain what will occur, where the information will go, the limits to confidentiality, but, also, situations in which they might notify a third party, such as if they form a concern that the person is at risk of self-harm. Then finally, as an integral part of all assessments, a clinician will be gauging whether or not there are risks or acute issues which warrant some degree of immediate escalation. Now, I do not think for an integrity body that would be a task performed by legal or other members of the oversight committee, so it may well be that that would require either a separate clinician, a welfare body or a place for referral that could routinely be provided for all witnesses appearing before IBAC with a clear understanding of the confidentiality of that information and that it is a separate process from the deliberations of the integrity body.

**The CHAIR:** Thank you very much, Dr Sullivan and Professor Ogloff. I have one question for you both. I am keen to understand how—to go back to the point that was made earlier—these processes, which for people unfamiliar with them will inevitably involve a high level of stress and possibly anxiety, can be managed against integrity agencies' obligations and powers to investigate matters and how psychological safety might be incorporated, to your understanding, in best-practice approaches to the way in which hearings and investigations are undertaken.

**Prof. OGLOFF:** I think, just following on from what we have said, it is useful to have the support service separate to the actual work being done by the commission, and that means while it could be part of the service, it is actually done, as Dr Sullivan said, independently, with clear understandings of confidentiality. You know, one thing that is not sufficient is just to give statements or Lifeline/helpline sorts of numbers. That is simply often too little, too late. There is a lot more detail about how those services can be provided which might go beyond your interest at the moment, but essentially it is doing two things simultaneously: one is assessing and checking in with the welfare of the individual, and at the same time it is familiarising them with the process and the situations that occur. I should say we have really good models already. Victoria Police does this well; the Office of Public Prosecutions does this well. So there are existing models we can look at.

**The CHAIR:** Should that extend beyond a hearing and into the process of an entire investigation, including up to and after the issuing of a report, to your mind?

**Prof. OGLOFF:** From my mind, yes. And again, just to use an example from many, many years ago—

**The CHAIR:** Not any specific matter, if that is okay, Professor.

**Prof. OGLOFF:** No, I will not. Online child exploitation offences—when they first came to the fore in Victoria in the early 2000s, Victoria Police were suddenly bombarded with a number of incidents where people were accessing child pornography online. And there were early investigations, and no attention was initially paid to the welfare of the individuals identified, most of whom did not have a criminal history and some of whom had high-profile positions. And so the police did come to Forensicare to have us assist in this area. And it is just an example that right from the investigation stage and throughout the process it is useful to have the welfare lens available and the opportunity to provide supports either directly or indirectly along the way.

**Dr SULLIVAN:** Just to add as well, in the criminal jurisdictions, both the *Evidence Act* in Victoria and the *Criminal Procedure Act* offer routes by which vulnerable witnesses or people with mental disorders or cognitive impairment may have a modified legal procedure or may be excused from giving some sorts of evidence. Certainly I am aware that those sorts of procedures have been invoked before integrity bodies in such a way that either people with mental disorders or whose distress is extreme can somehow be exempted from presenting in person or their evidence can be taken by alternate methods. So once more, so long as those strategies exist for this particular jurisdiction, that can also support those who are struggling with the process.

**The CHAIR:** Thanks, Dr Sullivan. Thank you, Professor Ogloff. That has used my time. Over to the Deputy Chair, Mr Rowswell.

**Mr ROWSWELL:** Thank you, Chair. Gentlemen, thank you for your time. I will take you to IBAC's *Welfare Management for IBAC Investigations* policy document—I do not expect you to have this in front of you. Page 2 of that, point 7, relates to welfare risk and monitoring. And, as part of their welfare services, IBAC officers determine if a registered health practitioner or welfare support service should be notified of a witness's welfare risk. My question is: do you think that that judgement should be made by an IBAC officer who is not appropriately medically trained, or should there be someone with appropriate medical training involved in that decision-making?

**Dr SULLIVAN:** I think in general someone with a clinical background or a professional background in counselling or in health care is more likely to be able to make that distinction and perhaps also gain the trust of the person being evaluated. We certainly see that when, for instance, Victoria Police are tasked with identifying and supporting vulnerable witnesses. They may exercise their duty responsibly, but as non-trained clinicians they do not necessarily have the focus or the links to be able to do so as effectively as a clinician would.

**Mr ROWSWELL:** Just to that point as well, currently if a witness who is subjected to a confidentiality notice wishes to relieve themselves of that confidentiality notice for the purposes of discussing matters with another party, that is a determination made by an IBAC officer. Do you also think that the IBAC officer that makes that determination should do so in conjunction with an appropriate person of medical standing or training?

**The CHAIR:** Are you asking just about IBAC or all integrity agencies?

**Mr ROWSWELL:** I am asking specifically about IBAC, but it does apply to other integrity agencies as well.

**Dr SULLIVAN:** Certainly from my clinical experience dealing with matters in perhaps the national intelligence domain I think there are ways in which people can be exempted from those requirements in order to speak to a health professional about those issues, but it often requires an undertaking to be made by the health professional to ensure that the information is not disclosed. And certainly in my experience when I have done that, it is signing an undertaking which has a fairly extensive list of penalties should there be disclosure of those matters. That means that the health professional concerned is exempted from those issues and can be satisfied that, so long as they do not disclose relevant information, they are protected from other involvement from the integrity body.

**Mr ROWSWELL:** Thanks, Dr Sullivan. Chair.

**The CHAIR:** That is it, Mr Rowswell. Thank you very much for that. We will go to Mr Grimley.

**Mr GRIMLEY:** Thank you, Chair. Thank you, gentlemen, for your presentation. I have just got a question, and speaking generally rather than in relation to any specific matters of course. How does Forensicare support employees who are compelled to give evidence or who are otherwise involved in any external investigations or any court-related processes?

**Dr SULLIVAN:** Certainly we have a range of internal processes—the standard one, such as employee assistance programs. We have welfare officers who are perhaps a little more proactive in addressing those issues, but also clinical staff receive clinical supervision. That is a part of the practice in most disciplines. It means that they have a nominated person who is the avenue for them to discuss any matters which might be impacting upon their work which might be causing them distress. To give again some non-identifying examples, we have certainly had some staff who have had stressful times giving evidence in court cases recently, being cross-examined at length and perhaps feeling that their professionalism was impugned or challenged. In situations like that, we are very responsive to the needs of our employees and we ensure that they are proactively monitored and supported. Now, that is something that perhaps is a little easier to do for a healthcare agency with numbers of clinical staff, but it also I think is good practice which is found in a number of different employment settings that extends beyond an externally sourced EAP provider. But it is particularly relevant for clinical specialties.

**Mr GRIMLEY:** Wonderful. Thank you, Doctor. Thank you, Chair.

**The CHAIR:** Thanks, Mr Grimley. Mr Wells, over to you.

**Mr WELLS:** Thanks. I guess my question has been asked, but I am going to ask it in maybe a different way. The issue for IBAC is whether to have a hearing in public or in private—so public/private—and most witnesses would probably argue, ‘Well, my case should be held in private because I don’t want it to be held in the public domain’. The IBAC Commissioner, I suspect, would argue that there needs to be some in public because it sends a clear message to the public service: ‘Don’t do this because this is what is going to happen’. But on the other hand, if every witness claimed mental health issues and that it should be in private, won’t that undermine the educative role of IBAC if we went down that path? Where is the line on when you accept that all witnesses have a mental health issue and they rely on that to be cross-examined in a private hearing rather than a public hearing?

**Prof. OGLOFF:** I think the starting point is what we have said and you have just echoed really. You can expect that all witnesses will have a degree of anxiety and obviously discomfort. I think the line would be a difficult one to identify, but it would be where it crosses from what would be a normal expectation for anxiety and discomfort to a person who, for example, develops a clinical illness or is clinically unwell for a period of time, at which point there would even be questions about the capability to give evidence in a meaningful way.

I think that just speaks again to the need to have, just going back to the previous question too, essentially a starting point where everybody who is going to be identified as a witness has some general degree of support or at least awareness. That would then increase where a person is more vulnerable, and under I think more exceptional circumstances then exemptions could be made from public. It is the same again in the criminal jurisdiction and in civil jurisdictions, and those decisions need to be carefully considered with clinical understanding and support.

**Mr WELLS:** Thank you.

**The CHAIR:** Thanks, Mr Wells. Mr Halse.

**Mr HALSE:** Thank you, Chair. Just taking you back to something that you mentioned—I think it was you, Professor Ogloff—the establishment of a central welfare body that might service a whole range of organisations or integrity bodies. Is there an example of this that you can think of that you might be able to bring to light to this hearing? And—I will leave it there.

**Prof. OGLOFF:** No, there are not examples that I know of that are specifically like that. It just does strike me again: the need to keep the support to some extent independent but related to the work that is being done might speak to at least the need to consider this in our state; for example, whether there might not be a body that performs these sorts of services for all of the public agencies that engage in these areas rather than having each service essentially set up their own system. There just may be some efficiency in that. That was what I was referring to.

**The CHAIR:** Great. Thank you, Professor Ogloff. Thank you, Mr Halse. Ms Ward, we will go to you before finishing with Mr Taylor. Thank you.

**Ms WARD:** Thank you, Chair. I guess going along a similar theme to what Dustin Halse has just done, do you see support services embedded within agencies or again this need for potentially a centralised agency so that there is a distance between the two and trust can be developed, if you like, between a supporting agency versus the interrogatory agency?

**Dr SULLIVAN:** I think that is a very good point. It is important that the person sees the clinicians as supporting them and not simply as an outgrowth of the integrity agency and perhaps as someone with divided loyalties. The benefit of what Distinguished Professor Ogloff has proposed is obviously one of efficiency as well as skill and scalability as appropriate, but I think the separation from the agency is a really critical part. We certainly find that it is very rare that a person being evaluated for the courts does not participate reasonably openly and does not maintain a degree of courtesy. I think part of that is the reflection that the clinicians they are seeing are not a functionary of the court, they are independent and separate. As a result I think they can maintain that ethical separateness which encourages people to be trusting.

**Ms WARD:** So across agencies then there is a different approach or methodology around determining where a witness sits in terms of their mental health and in terms of their ability to go through this experience publicly or even go through this experience at all?

**Dr SULLIVAN:** A good example is perhaps the way that the Office of Public Prosecutions supports complainants in sexual abuse cases, recognising that many of them have very significant trauma histories and are understandably highly anxious about the prospect of being questioned and cross-examined and having their integrity, their honesty and their reliability questioned in a court. Now, the protections that the criminal jurisdictions offer to those witnesses encourage them to be able to give the best evidence they can. And perhaps coming back to the honourable Mr Wells's commentary, it is worthwhile noting that perhaps the interests of getting the best evidence and the interests of having a public hearing are necessarily at odds with each other, and the best evidence may well come if the person's humiliation is minimised, noting that the outcome of the integrity commission can still make adverse findings. So if the process is seen as demeaning or humiliating, a person is likely to decompensate or seek to avoid that option.

Coming back to your original question, I think that the idea of having it separate from the body—like the Office of Public Prosecutions. It is located within the building, but there are clinicians, who are usually social workers; there is a therapy dog, there is a homelike setting, there is a place where the victim-complainants who will be giving evidence can seek support and also perhaps step back from the court system. So it is certainly appreciated by them as something which supports them and provides the best opportunity for them to give their evidence.

**Ms WARD:** Thank you very much for that.

**The CHAIR:** Thanks, Ms Ward. Mr Taylor, lastly.

**Mr TAYLOR:** Thank you, Chair. My question is—I am not sure who it might be best to address this to, so I will ask it and we can go from there perhaps—in your experience, and of course speaking generally rather than, again, in relation to specific matters, do you have any observations regarding identifying witnesses who may require additional support?

**Prof. OGLOFF:** I think that we are talking about a stepped or tiered approach—so, first of all, people who are working in the system generally having an increased awareness in these realities. Again, one of the things I have experienced over many years in the legal system is lawyers and legal practitioners develop a dulled sense for these things, because they are very used to it. I have done a lot of work in the jury space, including in

Victoria, and that is a really good example, where jurors were really not given much support previously. That has changed a lot.

So I think the starting point is this sort of tiered approach, and then it is really identifying people, to answer your question, who would be more vulnerable—and some of them would be, again, people who have already some sort of disability or other adversity. But then beyond that it is very difficult clinically to determine who will be more affected or less affected by someone. That is why I think, through the stepped approach, having the ability to see a counsellor or a clinician at some point is very helpful to assist in that determination. A lot of people who are more stoic and less emotive might be those more affected.

**Mr TAYLOR:** Thank you.

**The CHAIR:** Thank you very much for appearing today. Dr Sullivan and Professor Ogloff, your attendance has been really important and really valuable. There may well be members of the Committee who have questions on notice, so on that basis we would seek your forbearance to receive and indeed respond to those questions on notice about some of the matters that have been raised today or more generally the question of witness welfare within the integrity and legal frameworks. But otherwise we will provide you with a transcript in due course and proceed from there.

So I will declare this hearing closed, and I thank you both for your attendance today.

**Witnesses withdrew.**