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JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR  
LAW ENFORCEMENT INTEGRITY

**Reference: Annual report of the Integrity Commissioner 2007-08**

FRIDAY, 13 MARCH 2009

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**JOINT STATUTORY COMMITTEE  
ON AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY**

**Friday, 13 March 2009**

**Members:** Ms Parke (*Chair*), Senator Johnston (*Deputy Chair*) and Senators Carol Brown, Cameron and Parry and Mr Chester, Mr Clare, Mr Hayes and Ms Ley

**Members in attendance:** Senators Cameron and Parry and Mr Clare, Mr Hayes and Ms Parke

**Terms of reference for the inquiry:**

To inquire into and report on:

Annual report of the Integrity Commissioner 2007-08

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**Committee met at 9.04 am**

**CHAIR (Ms Parke)**—I call the committee to order and declare open this public meeting of the parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity. Today's public hearing is for the committee's examination of the annual report of the Integrity Commissioner, which on this occasion covers the 2007-08 financial year. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

Before I welcome our first witness I remind members of the committee that the Senate has resolved that government officials should not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions asked of an officer to a superior officer or to a minister, if that is appropriate. This resolution does not include questions asking for explanations of policy or factual questions about when or how policies were adopted.

[9.05 am]

**BACHE, Mr Peter, Acting Executive Director, Australian Commission for Law Enforcement Integrity**

**MOSS, Mr Philip, Integrity Commissioner, Australian Commission for Law Enforcement Integrity**

**SELLARS, Mr Nicholas, Manager, Policy and Research, Australian Commission for Law Enforcement Integrity**

**VINCENT, Mr Anthony, Principal Lawyer, Australian Commission for Law Enforcement Integrity**

**CHAIR**—I now invite you to make an opening statement, at the conclusion of which I will invite members of the committee to ask questions.

**Mr Moss**—I would like to make an opening statement. There are some key issues that I would like to cover. Context: the 2007-08 annual report is the first to cover a full year of ACLEI's operations and also covers a period for which I was Integrity Commissioner for all but the first three weeks. It is a report that records much of what we learned in our first full year and also the evolution of what I have come to call the unique ACLEI model, that is, an integrity system that is integrated with the agencies it oversees but which retains the key element of independent authority.

Achievements: the 2007-08 report gives a glimpse of what ACLEI is aiming for. In ACLEI's first six months, fundamental procedures were put in place to assess and deal with corruption issues. All parties—ACLEI, the Commonwealth Ombudsman, the ACC, the AFP and the state integrity agencies—started to come to terms with the new agency and its role and to incorporate its existence and functions into their own roles. In 2007-08 ACLEI set about strengthening its operating procedures, corporate governance and accountability arrangements. For instance, we set up an audit committee to advise me on the adequacy of ACLEI's financial accountability and integrity arrangements. We introduced our own financial management information system. In that year we also produced our first set of audited financial statements and successfully completed the certificate of compliance process.

The annual report you are examining today is another advance on previous performance. We want to use our publications to ensure that, among other things, people have sufficient information to conclude for themselves that they can bring their concerns to ACLEI with confidence. In a small agency, it takes a great deal of executive time and attention to produce a document like this but we judge that it is a good investment. We recognise there is a great deal more work to be done in raising awareness about ACLEI. In the operations area, we have been skilling ourselves to conduct solid, fair and reliable investigations and to produce high quality reports. We learned more about the ways ACLEI might operate more effectively, for example, in holding coercive information gathering hearings. We came to terms with the importance of the

need to protect reputations from unfair criticism. We are now looking to partner with other agencies to provide formal training in integrity studies to build on these foundations.

Also in 2007-08 we came to understand that we have a unique perspective to contribute about law enforcement and anticorruption policy. We began to see that what ACLEI learned from its investigations should be translated and communicated into practical suggestions that might make it more difficult for corrupt conduct to occur. We decided that there would be value in ACLEI's assisting the ACC and the AFP to review their anticorruption plans and we started a pilot project to do just that. In 2008-09 we built on this base and made submissions to the Australian Law Reform Commission's inquiry into secrecy laws and to the House of Representatives inquiry into public sector whistleblower protections. Also in 2007-08 we started to develop our role in the national and international integrity frameworks. The anticorruption movement is a worldwide undertaking—there is a United Nations convention against corruption. We began to engage with community organisations that have an interest in tackling corruption, particularly Transparency International. We saw that ACLEI was a key element of Australia's approach to fighting corruption and that the unique ACLEI model has something to teach a broad audience about applying specific resources to address high risk areas of government business.

Most importantly, the year saw the maturing of the cooperative relationship that ACLEI has fostered with the ACC and the AFP since its inception. Of the 10 corruption issues that ACLEI is investigating, four are joint investigations with the ACC, the AFP or a state integrity agency. It also means that ACLEI can use its legislative powers by gaining access to the resources of those agencies as circumstances allow. Building blocks: I now turn to ACLEI's current challenges. As the committee knows, ACLEI was not established in a context of doubt about the integrity of the Australian Crime Commission or the Australian Federal Police or any other Australian government law enforcement agency. At that time it was not known what workload ACLEI would face and, accordingly, it was not known with certainty what resources ACLEI would need to match its workload.

One observation that can be drawn from the 2007-08 annual report is that ACLEI's workload has exceeded initial expectations. As indicated in the annual report, the number of corruption issues notified or referred to ACLEI increased in the final quarter of 2007-08. This trend has since continued into the 2008-09 year. As of yesterday, ACLEI has now received 102 corruption issues. I understand that more notifications are in prospect before the end of March. I will provide you with a table of statistics that was prepared at the end of February so it only records 99 corruption issues at that time. This is the document that has been handed out to you already. You can see a steady trend upwards with quite a spike in the final quarter of the 2007-08 financial year and then after that a continuing upward trend and then the part-quarter, the last one on the right, January to the end of February, so there is still March to go on that column. On expectation that will exceed the one to its left.

How did we get here? At various points in my annual report I have referred to the challenges that face ACLEI as a result of an unanticipated workload. There are a number of reasons for this growing workload and it may be useful to review two of them here. First, as ACLEI's existence has become better known, ACLEI has attracted information from whistleblowers, other integrity agencies and from other government agencies. It appears that, but for the existence of a credible independent office, much of this information may not have been brought to light. Secondly, the complexity of some of ACLEI's work was not perhaps anticipated. As the committee knows

from its recent inquiry into law enforcement integrity models, law enforcement corruption investigation work is difficult because of the familiarity of law enforcement staff with traditional law enforcement methods and how to counter them.

Because ACLEI investigates corruption, not just criminality, it has access to special law enforcement tools to examine misconduct. The legislative framework is sufficient to perform this function but the work involved for a small agency to achieve it was, I submit, underestimated. Addressing workload: some of these issues, although not all, were remedied with the final tranche of additional funding from the 2008 budget allocation, being an appropriation for another five staff as of 1 July 2009. In 2008-09 for a second year, the Minister for Finance and Deregulation has approved an operating loss for ACLEI which is an approval to spend previously allocated but unspent moneys from past appropriations. This year the approved operating loss is \$392,000 compared with an actual operating loss of \$305,000 during 2006-07. We are using some of that money to pay non-ongoing staff to complete such projects as developing a certified agreement and other human resources policy documents, producing information handling guidelines and supporting ACLEI's government liaison role. These projects, while short term, reveal an ongoing need in the support area of ACLEI, namely corporate and policy. Given the need for ACLEI to address also its assessment and investigation backlog and to provide legal support for ACLEI hearings, the five new positions that will become available on 1 July will be keenly contested.

As the committee recommended in its report in its recent inquiry, there is now a case for ACLEI's base level resourcing to be reviewed, consistent with what has come to be known as the building block approach to ACLEI's funding. The committee also recommended that ACLEI expand in a modest way to translate its investigation experience into meaningful corruption prevention initiatives.

Conclusion: I would like to make three final comments. The first is this: I would like to outline how ACLEI manages its investigation and assessment workload. Under our prioritisation arrangements, ACLEI assesses each corruption issue as to its seriousness and the likelihood that intervention by ACLEI will be beneficial to detecting or investigating corruption. Cases are assessed and reassessed against this matrix and resources are allocated to where they will be of most use. Increasingly, issues are being sent to the ACC or the AFP to be dealt with, sometimes with oversight from ACLEI. This approach makes use of the flexibility inherent in the ACLEI model.

The second point is that there is potential disadvantage in this arrangement. I am aware of the inconvenience to individuals and of the stress that can be caused when ACLEI cannot act swiftly to finalise issues. I am also aware of the potential for damage to reputations of the ACC and the AFP and the difficulties they face in managing workplaces where corruption issues are not concluded quickly. That delay and its adverse effects are regretted. Nevertheless, I remain certain that there is good reason for confidence in the Australian government's law enforcement integrity system. Those in law enforcement who might be tempted or forced by a deteriorating world economy to engage in corrupt conduct should think twice. The combined forces of the Australian government and state based integrity arrangements present a formidable deterrent. Equally those who consider seeking to bring information to ACLEI about corruption should decide to do so. Finally, let me say that I am grateful to my staff for their genuine determination and commitment to meet current challenges and of their efforts to give effect to the capability

and level of excellence we are building to fulfil our charter, which is assurance that Australian government law enforcement agencies and their staff act with integrity. Thank you.

**CHAIR**—On page 27 of the annual report, the Integrity Commissioner has been concerned about delays that might be caused by a workload that has been larger than anticipated, and you also referred to this in your opening statement, and based upon the trend that you have indicated is likely to be the case. In your view, will the new operational positions that have been created this year be sufficient to manage the backlog of cases as well as the new matters that are coming up?

**Mr Moss**—My hope is that it will. I indicated that as of July this year five new positions have become available to ACLEI's permanent staff. That is a rise from 12 to 17. However, I have had the benefit of an additional three staff who are seconded or temporarily with ACLEI, and this has come from the operating losses that I also mentioned in my opening statement. As of Tuesday, that number will rise from three to four. Therefore, I will already have before July 16 staff. To some extent, although those staff are there for specific non-ongoing work—and this is the condition on which the operating loss was approved and Finance approved those additional moneys—they nevertheless add to the critical mass of ACLEI and can be to some extent assigned to other work as well as the specific work that they have been engaged to perform. In effect, as of July, it will go up by a very modest amount. It is technically five but really it is a lesser number than that. To come to your question, which is: will the increased staff that will come to me by July help me to address the number of cases that are still to be finalised? The answer is yes but whether it will be the complete answer I cannot be certain. As the graph indicates, there is a trend which is consistent. It shows that number of matters that are notified or referred to ACLEI, that is, corruption issues that are notified or referred to ACLEI are increasing, and should that trend continue then I could not be certain, as I said, that we could deal adequately with that workload.

**CHAIR**—I note on page 39 of the report that there is table about the sources of information about corruption issues, other people or government agencies.

**Mr Moss**—Before you put the next question to me, I can say that then puts the focus back on prioritisation and also perhaps on enhanced use of referral of those matters back to the agencies for them to investigate, either with oversight or management, or neither—they are the options available to me—by ACLEI. To that extent, I am in close contact with the AFP Commissioner and the new ACC CEO to talk about what the implications of that might be. I am sorry, you had another question?

**CHAIR**—Yes, it just related to the sources of information about corruption issues, I note that there were 15 notifications from other members of the public in this table No. 5. Did any of those public notifications raise serious issues of corruption? What do you tend to do with those that come from the public? Do they come to you because they are not really aware of other mechanisms, or is it that they might be more appropriate for the Ombudsman, or are you getting really serious cases coming from the public?

**Mr Moss**—You identified the situation there that, indeed, some matters that are referred to me by members of the public are in fact looking for perhaps further investigation of an issue that they have raised already with other investigative agencies or that they have come perhaps

without full knowledge to ACLEI and then it is more appropriate that the matter be referred elsewhere. To that effect, for instance, I referred a matter yesterday to the Commonwealth Ombudsman because the matter was certainly a matter going to misconduct, or potential misconduct, by one of the agencies and that is clearly for him to be looking at, not myself. As to whether there have been any matters of substance—if I can use that term—that have come from members of the public that is a good question. In theory you would imagine that the most informed corruption issues would come from former members of the agencies themselves or from notification by the heads of the agencies. As to whether any significant issues have come by members of the public by their contact with AFP or ACC members is an interesting question. I might ask Mr Bache if he can think of any particular cases where we have had something of substance that has come through from that source.

**Mr Bache**—I might open by saying that in general the issues that come from members of the public relate more to the judicial process than anything else. Through our investigations, members of the public may well be contacted but I will say as a general statement that they relate to the judicial process as to unfairness, perhaps, or disagreement with the evidence being provided, and those types of things.

**Mr HAYES**—Of those that are cited as being from the public, how many of those sorts of complaints would be the result of a defendant in criminal proceedings?

**Mr Moss**—There really is several. Do you want a precise number?

**Mr HAYES**—No. I know from my involvement with the integrity regimes that apply elsewhere, particularly in New South Wales, that there does seem to be a lot of complaints laid against arresting officers. As a matter of course in defending in criminal trials, there are questions put to arresting officers: are you subject or are you being investigated for misconduct in a matter? I am just wondering whether that is now perpetuating itself into ACLEI based notifications as what we have seen elsewhere.

**Mr Moss**—Yes, I can confirm that it is. We have several matters that have been referred to me in that context. In fact, I can say that of the two reports that I gave to the Minister for Home Affairs last year, that is, that are reported in this annual report, one has not been made public for that very reason, that it involved ongoing court hearings—

**Mr HAYES**—I know it is a matter of opinion then, but ought we be starting to look at whether those questions should be admissible in criminal trials?

**Mr Vincent**—I have some experience in that perspective, the problem being that once the defence raises those issues, even though the judge may exercise his or her discretion in allowing the question, the seed has been implanted—

**Mr HAYES**—It is in the jury's mind?

**Mr Vincent**—Yes. Invariably the Crown would object to those types of questions but then it gets back to the first proposition I just raised. In a magistrate's court, the magistrate can exercise his or her discretion as they deem fit and basically disregard that remark, but it is problematic in a jury trial. It is a tactic which defence have been undertaking for a number of years.

**Mr Moss**—To follow up on that, we do look very carefully though at the matters put to us. There is no sense of our not treating them completely seriously and properly. It certainly does fall in a particular category and you have identified that category.

**CHAIR**—In its report on the law enforcement integrity models the committee highlighted the need for dedicated corruption prevention, research and education unit within ACLEI and a purpose-built hearing room. I would like to hear your comments on the committee's report on that?

**Mr Moss**—On both recommendations?

**CHAIR**—Yes.

**Mr Moss**—I welcome and agree with those recommendations.

**CHAIR**—I notice in your opening statement you referred to the deterioration in the world economic environment. Have you given any thought to the effects that the economic downturn might have on corruption?

**Mr Moss**—I have but it is a very preliminary view. I suppose you are dying to hear what I know, but it is not much. I was interested in a comment made by Chief Commissioner Simon Overland on his appointment as the new Chief Commissioner of the Victoria Police. It was on the front page of the *Age* newspaper. He talked about what he anticipated to be rising crime rates because of economic downturn but then put in a suggestion that, as a result, Victoria Police should be issued with taser guns. I do not think that there was much elaboration at that particular point in Mr Overland's statement but it did catch my attention. There are theories emerging that, of course, more corruption will occur as a result of the economic downturn and that corruption is most prevalent in 'bad times'. I understand that several state and Commonwealth agencies are working on intelligence reports on this topic but ACLEI is not specifically doing such work. The proponents of the theory say that, because of a corruption perfect storm, organised crime recognises and exploits the opportunities to gain access to information and to form other illicit collaborations. People are more vulnerable or susceptible to acting corruptly when they are under financial pressure. People are more prepared to cover up or not report misconduct in times of crisis; that is, the moral climate changes. There can be a cut to corruption control protection and deterrence programs in times of financial crisis; that is, the deterrence environment weakens. But my own view at this stage is that I am simply taking on board what people are contributing to the discussion and I really cannot add much more in terms of concluded thoughts on that particular topic.

**Senator PARRY**—Just following on from that you indicated you are not necessarily doing any work or not targeting a lot of effort into a possible increase in corruption because of the economic times. Do you think that is something that you will increase or have a greater tendency to look at over the next few months or not?

**Mr Moss**—I think it is more of a question of strengthening our processes and getting through our workload. In that context, I suppose we address that point in a general sense. But as to anything specific, I had nothing in mind and I do not believe I have the resources I want to allocate to that particular question now.

**Senator PARRY**—What about international collaboration and looking at trends from other similar bodies and other jurisdictions around the world?

**Mr Moss**—We are alert to both national and international trends and pick up on that in the normal course of our work, particularly through the work of Nick Sellars here, but in terms of making links, no, I did not propose to do anything other just simply stay tuned, as it were.

**Senator PARRY**—Do you have anyone dedicated on a permanent basis for international trends or is that something that just comes across the desk, so to speak, through just regular communication.

**Mr Moss**—That is a very nice suggestion.

**CHAIR**—You wish.

**Senator PARRY**—That could be a recommendation in the next report.

**Mr Moss**—It would be a very interesting job to do, I must say, in terms of the international trends.

**Senator PARRY**—You made a few comments in your opening address about the globalisation of corruption. I would have thought that would have been a prudent measure, to have someone, at least, dedicated to looking at international trends. Maybe that is something we could address in a future report.

**Mr Moss**—To the extent that Nick Sellars is tuned into such things, we are doing it, but I would not call it a full, wholehearted effort from ACLEI.

**CHAIR**—Presumably because of the lack of resources to dedicate to such a task.

**Mr Moss**—Yes.

**Senator PARRY**—On page 43 of the annual report there is a paragraph ‘Issues not investigated’ and there are some statistics there as to 12 cases where you decided after assessment to take no further action. What is the process for audit of your decisions on those 12 assessments you do not take any further action on? Do you report those to the minister? I suppose it is just a check on you as to how you make that assessment and what accountability you have for ceasing to take any further action?

**Mr Moss**—As such there is no check on my decision. There could be a representation from a person who referred a matter to me for me to reconsider my decision. I have had several instances of that occurring. The person may also raise dissatisfaction with my decision not to investigate by going to the Commonwealth Ombudsman or, indeed, this committee, and that has also occurred. But I am not required to report specifically to the minister or anyone else on matters that I decide to take no action with other than to report them in the annual report, as I have done.

**Senator PARRY**—Is it possible for you to receive a complaint or a file activated and only you know in your office and then you make an assessment not to proceed any further?

**Mr Moss**—No, that is not the case. We have developed an assessment process where matters are received and I see all matters that come in that are new. Then it is passed to Peter Bache for him to consider with the director of investigations. Then we have a dedicated assessments officer who independently does some background work, considers issues that might be relevant to our proceeding or not proceeding with an investigation, making checks with other issues that have come up on that particular topic or involving that particular person or that particular agency or a part of that agency. All of those considerations go into the assessment but then it comes forward in quite a formalised way in that there is a statement of the referral. Then there is an indication of jurisdiction by ACLEI and there is sort of a checklist and that is indicated there what provision or provisions of the LEIC Act are relevant. Then there is a recommendation from the assessments officer, a commentary by the director of investigations. I should say that term I use ‘investigations’—it is currently director of operations but shortly will change to director of investigations. I would just make that clear. Then the executive director, Peter Bache, makes a commentary and then I make a final decision. Sometimes there will be comments that add to previous comments, and even at the final point of decision I might decide to go against previous recommendations or to add another step prior to accepting a recommendation. In our agency there is considerable effort to determine how a matter should be dealt with and indeed whether a matter should be investigated.

**Senator PARRY**—It would be highly unlikely, in fact by the sounds of it, nigh on impossible for a matter to come before your agency and only be dealt with by one or two—

**Mr Moss**—It would be highly unlikely and highly irregular if that were to happen.

**Senator PARRY**—You sound as though you are satisfied with the process and that the checks and balances are there, in particular in relation to non-assessment or no further action being required on any of the investigations.

**Mr Moss**—Yes, I am satisfied. But even after that process has occurred, I will still very seriously consider any return of the issue to me for reconsideration.

**Senator PARRY**—In relation to the two financial items you mentioned in your opening statement, you mentioned \$392,000. Is that for the 2008-09 year? Is that an operating deficit?

**Mr Moss**—Correct. That is given as an approved deficit.

**Senator PARRY**—Because of savings or because of unallocated moneys in 2006-07 or 2007-08?

**Mr Moss**—In 2005-06 and 2006-07. This is because of the late start of ACLEI. It was originally thought that ACLEI might start as early as the 2005-06 financial year but in fact did not start until halfway through.

**Senator PARRY**—Basically that was a savings on operating costs?

**Mr Moss**—Yes, indeed.

**Senator PARRY**—Do you envisage that being continued into the next financial year?

**Mr Moss**—No, I think the good times finish as of 30 June. There is not much to fall back on.

**Senator PARRY**—That might be another matter we need to address. Are you satisfied that the legislative framework for ACLEI is robust and adequate enough for your purposes and the duties you undertake?

**Mr Moss**—I will make some comments and then hand over to Tony Vincent. I have been surprised by the framework given to myself as Integrity Commissioner and ACLEI through the Law Enforcement Integrity Commissioner Act. It seems as though someone has been there in theory before we have actually got there in practice and covered every option. There are one or two minor matters but it is a very good framework for the work we have to do. One of the good things that the Acting Integrity Commissioner, Professor John McMillan, did was in fact to bring on to the staff the person who instructed the drafting officer. That person works one day a week in our office and he knows where it all started. He is of great use so we have that advantage. But the basis is that it is a very good framework for us and I have no major concern with it. When the time comes for the three year review, which is approaching, this will be one of the things that that review will consider. I think the review will confirm my comments.

**Mr Vincent**—It is very robust legislation, particularly our coercive and intrusive powers for the Integrity Commissioner to have a very broad scope and depth in what actions or what processes he may undertake in investigating corruption or at the assessment stage. There are naturally some legislative matters which we are seeking a review of but they are more to do with an operational perspective rather than an overall strategic perspective. The Attorney-General's Department are considering those submissions currently.

**Mr CLARE**—In your opening statement, you mentioned that you had learned more about the effectiveness of coercive evidence gathering activities.

**Mr Moss**—Yes.

**Mr CLARE**—Could you elaborate a little bit more on that?

**Mr Moss**—This is one of the extra powers that ACLEI has in its law enforcement investigation that, for instance, the AFP does not have. The ACC has it, as you know, and they have a number of examiners to do that work. But the things we have learnt, for instance, go to when you might have a hearing. There are various approaches to holding hearings and we listen very carefully to our colleagues from state and territory agencies and also from the ACC examiners themselves as to their experience. The question of when you might hold a hearing compared to investigation is something we are learning. That is, you might hold a hearing first-up once you have a corruption issue notified or referred to you and then test the evidence which is given on oath or affirmation in that forum with investigation. We are beginning to become familiar with those sorts of options in the use of hearings. We are also learning how to do them.

Tony Vincent has considerable experience as a prosecutor and as a law enforcement officer in New South Wales, and he acts as the counsel for those hearings. In the sense that he and I get our act together with my presiding and Tony Vincent posing the questions to witnesses, this has now started to form into a working procedure and routine. We are becoming more alert to the impact of hearings on witnesses. That is: the circumstances in which summonses are provided and the impact this might have on individuals, the impact of having to come to a hearing, what sort of personal actions might occur to that process. There was a discussion in a previous PJC on this very point, some of you might recall, and there was concern expressed from knowledge of what happened in the Wood royal commission hearings and I took note at that point and, as a result, wrote to my colleagues and asked for their procedures on how to conduct their hearings and what issues they bore in mind and what considerations they brought forward in this context. I got back some very useful commentary and guidelines from them, and we are in the process of working those up to statements we put on our website so that people who are engaged in this way will have a clearer understanding of what is there for them.

This question of a hearing whereby your right to silence or not to incriminate yourself is suspended is unfamiliar. Then how lawyers who are supporting such witnesses then work in that context also has to be appreciated, both by them and also by ourselves, just to the extent that you allow people to want to represent or support their client; that is, the witness also raises issues. We have not yet come to the point where there has been outright contesting of our approach or the law or how they are summonsed or those sorts of things, but I am sure the time will come and this process therefore will continue for us.

**Mr CLARE**—Is it fair to say that the Wood royal commission provided some new learnings or fundamentally shifted the way a lot of these coercive powers or hearings or investigations were conducted?

**Mr Moss**—Yes, it did. As is current practice in other jurisdictions, for instance, Victoria, it is holding, on a regular basis, public hearings. They have an approach which I agree with. They say: if possible, we will do all these things in a private hearing but, if necessary, if that does not work then we will take it into a public arena. They have clear standards which they apply on a first basis and then only subsequently if necessary. That is, you minimise the impact of these occasions on individuals. Just on that point, just for your interest, we have held 19 such hearings. I have held 13 and my predecessor as the Acting Integrity Commissioner held—I am sorry, I am being directed to some other figures. Can I just give the correct figures, please? There were 18 in total.

**Mr CLARE**—My other question had more to do with—

**Mr Moss**—Just to correct those figures I gave you, I am sorry, a total of 18 have been held of which the acting Integrity Commissioner held five and I have held 13.

**Mr CLARE**—My other question went to the legislative framework and future legislative framework and I am interested in the point you made about the upcoming three year review. In the last report that we presented, we talked about the prospect or the value of an integrity inspector model, subject to the nature of ACLEI in the future and the scope of its responsibilities. In the evidence that we took around the country, we identified the fact that there were different models about how that might work. In Queensland it seems to be a parliamentary inspector who

then acts upon the request of the parliamentary committee. In New South Wales, it is an integrity inspector model which acts independent of the parliamentary committee. Does ACLEI or the members before us today have a view about which model might be more effective were the committee to look at this in more detail in the future?

**Mr Moss**—I note recommendation 5 of the committee’s report into its recent inquiry that the government consider in the longer term the establishment of an integrity inspector, and hence your questions no doubt arise from that. Of the inspectors available, I have only met one of them, and that was my namesake, Peter Moss QC in New South Wales. We are not related. His is the independent inspector, as you indicated. I must say I was very interested in his role and his work. It is a part-time role. He deals with issues to do with some of the things we have discussed already, decisions that might be made by the Integrity Commissioner. Some of those matters are coming to the PJC so there would be a question of whether an integrity inspector would deal with those issues in lieu of this PJC. I cannot say I have sufficient knowledge of the other set-ups in Australia to say which are the ones that I prefer, but I was very attracted to the New South Wales model in terms of its independence from any committee. The term ‘parliamentary inspector’ would be a new concept at the federal level. We do not talk in those terms. I am not aware of any so-called parliamentary inspector. They have, for instance, formerly parliamentary commissioners for investigation, for example, Ombudsman, so it is linked to parliament where the reporting chain was straight to parliament. That would need to be taken into account when further thought was given to an integrity inspector. As I have said in evidence before your inquiry, I think in time it should happen. You just need a more mature ACLEI for it to be successful. Otherwise I think you will have oversight on oversight too soon from our experience.

**Mr HAYES**—On page 44 you deal with the issue of joint investigations. I am keen to know if there is a capacity for ACLEI to second investigative staff from other law enforcement jurisdictions or can they be loaned to ACLEI for specific operations?

**Mr Moss**—I have a number of secondees already who are on secondment to me but not from a law enforcement agency. For instance, Nick Sellars is seconded from the Ombudsman’s office. On Wednesday next week I will have on staff a secondee for a short term, 3½ months, from the Department of Immigration and Citizenship. As to secondees from law enforcement agencies, I certainly could do that. There is nothing to stop me. For instance, by comparison in New South Wales with the Police Integrity Commission, there is a provision in the law which says that you cannot have been a former member of New South Wales Police Force to work in PIC. No such bar exists in ACLEI’s legislation or for me to second such a person from any police force.

**Mr HAYES**—Also from other integrity regimes as they may apply?

**Mr Moss**—I would be free to do that.

**Senator PARRY**—Overseas as well?

**Mr Moss**—Yes, I do not see why not. My attention is being drawn to section 199 of the LEIC Act which provides for secondment of persons to assist the Integrity Commissioner. It goes on to say that the Integrity Commissioner may make an arrangement with the Commissioner of the AFP, the head, who will prescribe a police force of a state or territory or a foreign country.

**Mr HAYES**—In view of that legislative assistance, what are the skills of your officers who presently perform the investigative roles in terms of any investigation?

**Mr Bache**—Most people in the operations area, if you like—I will refer to it as such—because we consider that our investigations are multiskilled. We include our intelligence people in there as our investigators or operational staff. We draw on the skills of our legal team. There is a mixture. At present we have a non-ongoing person from overseas who has considerable experience in the British Metropolitan Police. I myself have over 25 years with the South Australia Police. Tony Vincent, our lawyer, has a considerable amount of experience with the New South Wales Police and on it goes. We also have investigation staff with non-police backgrounds because we believe it is important to have a balance or to have a different perspective brought to it. Those people have initially done what we call the equivalent to at least a certificate IV, so they have been trained as Commonwealth government investigators and they have government investigation experience in various other government agencies. It is spread across, but we do believe the high level investigation skills required in an agency like ACLEI are generally sourced from law enforcement background. The most likely people—there are very few non-policing agencies that utilise the types of authorities that we would have access to.

**Mr HAYES**—A little earlier Senator Parry was asking about the international trends and whether that required some dedicated officers looking at that. Apart from the good relations that exist right across the country in terms of integrity agencies, is there scope for having greater harmonisation of approaches? Whilst we might cooperate and lend staff to one another, should there be greater cooperation between integrity regimes as they apply across the country?

**Mr Moss**—I note, of course, the recommendation of this PJC and its inquiry report which talks about coordinating a body which would act as a national forum through which matters of national interest to state and federal law enforcement agencies could be addressed, and that is a very good recommendation. I welcome that one. There does exist already very good informal links between the state and integrity agencies and ourselves and we do to a remarkable degree, I think, share information and assist each other to the point now where recently we are having discussions to see if we cannot devise a formal course whereby there can be a course for integrity studies of the staffs of the various law enforcement integrity agencies, including other agencies like the ethical standards department of Vicpol and similar bodies. For instance, the Australian Taxation Office has investigators who deal with integrity issues and they, too, are involved in this early exploration of the possibility of such a course. To that extent, with the recommendation here in your own report and our own informal links and some of the initiatives we are taking, we recognise there is great value, as you suggest, in standardisation and learning from each other.

**Mr HAYES**—And move to harmonise perhaps?

**Mr Moss**—Yes. Harmonisation introduces an element, doesn't it, of state and federal relations, and just whether you can go all the way I do not know.

**Mr HAYES**—But it also has some direct impact in terms of ACLEI because, at this stage, it is only the AFP and the ACC. Presumably anywhere there is a sworn officer of the AFP that is seconded to another agency, whether it be Customs, immigration or taxation, you would still have power to investigate inappropriate behaviour of a sworn police officer there.

**Mr Moss**—Yes, indeed.

**Mr HAYES**—Even though he may be working under the directions of those other agencies.

**Mr Moss**—Did you want to comment further on that? We have authority in the office, have we not, that is ACLEI's and the Integrity Commissioner's power over seconded law enforcement officers to other agencies? Indeed, secondment of state officers to the AFP or the ACC.

**Mr Bache**—That is correct. You are correct in your statement that the Integrity Commissioner does have authority over an AFP or an ACC staff member who may be working with another jurisdiction. Equally, if a person from another jurisdiction is seconded to the AFP or the ACC, the Integrity Commissioner has jurisdiction, if you like, over those people as well. That jurisdiction is, of course, still shared with the head of the person's home agency so that any decisions made would be made, one would assume—certainly the head of the home agency is notified of those issues and one would suggest it would be a cooperative arrangement about how they would be dealt with. One of the options available to the Integrity Commissioner relating to seconded members from another agency is to refer the matter back to that agency for investigation if that is appropriate.

**Mr Moss**—In fact this has already occurred in one instance where I perceived a corruption issue with a seconded officer and I decided that in all the circumstances it was best dealt with by the home agency and the home integrity agency. That report will come back to me once completed.

**CHAIR**—ACLEI's approach is essentially to uncover and remedy serious systemic corruption, so in that sense it is not a complaint handling body where the primary purpose is to address all complaints and respond to the individuals making those complaints. How do you manage the potential expectation of individuals who bring forward information to ACLEI who may view themselves as aggrieved complainants rather than informants?

**Mr Moss**—We are seeking to improve our performance in this particular area. As members would know, you have received some matters from people who feel aggrieved or frustrated with the response that ACLEI has provided to them in relation to their particular corruption issue. I think as we go along we have a better appreciation of the distinction between an anticorruption agency, which we are, and a complaint handling body. There was a written submission which you considered in your recent inquiry which I thought explained it very well. I have taken on board those comments in my thinking in relation to the subject you are asking me about now.

**CHAIR**—Do you recall the name?

**Mr Moss**—Yes, I do. It was Don McKenzie. I think in our initial contacts with complainants, as they see themselves, the term in our legislation is someone who refers a corruption issue, that they would see themselves as a complainant expecting resolution of their matter and for some process to result from the corruption issue that they have raised. In our initial contact in our written responses we would seek to make it very clear as to what our aims were and also, I think where appropriate, to increase the personal contact if we could. If a person were local or if we were making a trip interstate and that person was in that locality, we would seek a face-to-face opportunity if they wanted to and in a place that was acceptable to them. I think it is the quality

of that contact whereby you are able to fully understand what they are seeking and then to also convey to them what ACLEI's role and purpose is and to try and get a concordance there and understanding that is acceptable to both. And to be able to say to people: look, we will take your matter but it will not be investigated, but it will perhaps be considered back on information that ACLEI holds and maybe brought forward in some other context but perhaps not specifically in relation to you or provide a specific resolution for you.

**Senator PARRY**—You mentioned in your opening statement about reviewing the anticorruption plans of the AFP and the ACC and then further on in your opening statement you used the words 'cooperative relationship' or developing or building on with AFP and ACC. What management techniques or policies do you have where you do not become too close to the agencies that you will eventually be investigating corruption allegations into?

**Mr Moss**—It is an important question and I thank you for it. As to that pilot project we are undertaking, I will deal with that separately. But to this other question of how to keep the relationship appropriate, at arm's length where it should be, but at a cooperative level nevertheless, I think the key understanding here is that agency heads must notify me of any corruption issue that they become aware of as soon as practicable. Then it comes to me as an external reference point. They no longer have that ability to do with the matter as they see fit. That is, they might say, 'I will get someone to do that inside', or 'I will get an external consultant to look at that'. It comes to me and I make the decision. That is always the arm's length dimension. I make that decision as to how to deal with the corruption issue and I have that range of options available to me under section 26 of the LEIC Act and I must take into consideration such factors as are outlined in section 27. You can look at those later or I can go through those now if you wish. That is the first arm's length aspect of the relationship.

Then there is the question of whether ACLEI investigates, whether it is referred back for the agency to investigate, et cetera, or whether we go into a joint investigation. All of those options, except for the first one, allow for cooperative approach to the investigation of a corruption issue. We work more often than not with the professional standards area of both agencies rather than the agency per se. If you like, agencies and heads of agencies have an interest in their own integrity. It is not just my responsibility. It is also theirs. To that extent they are alert to ensuring that any issue that raises a corruption question or goes to the question of integrity is properly investigated. That is in their own interests. I am there to give that external dimension. The cooperation tends to be with those professional standards areas which are themselves vigilant and which it is their role to be investigating corruption issues and questions of integrity. That is where the link is. That is where the cooperation occurs and good cooperation occurs, but it is nevertheless in that context of arm's length that these matters are brought forward externally to me for me to decide how they should be dealt with. I cannot be influenced and I will not be influenced in those decisions.

**Senator PARRY**—Can I just add a final comment as to the quality of the annual report. I think it is very good so I commend you on that.

**Mr Moss**—Thank you very much.

**CHAIR**—Just for the sake of completeness, given the nature and complexity of matters before ACLEI, what are the impediments, if any, to the timely completion of cases? Is it simply a question of resources or are there other issues?

**Mr Moss**—Yes. As indicated by this chart, we are receiving a steady increase of corruption issues or notification or referral for assessment. As these matters come in, we apply our assessment and prioritisation arrangements to these issues, and sometimes the issues that are coming before us might raise matters of real priority or concern that might supervene the priority given to some previous matters. To that extent, I think ACLEI has developed a tail of matters that we have looked at partially and kept moving with our workload as it has gone in that direction, gone to the north-east. I think that is one explanation of where we are. We also have phases in our work and the phase for completing reports, if you like, is the final quarter of the financial year, in other words, to ensure there is something to report on come 30 June. But also we are free from other pressures such as we are just coming through what I call the accountability phase where Senate estimates and appearances before this committee and other committees, the PJC on the ACC, in a couple of weeks' time will be out of the way so that we can then as a group focus on these matters to finalise up 30 June. Once you get past 1 July, it is annual report season and then that is the focus of the office. For a small group to produce that is not insignificant. After annual report it is budgeting and funding time, and then there is the holiday period.

All these phases only become clear now in the routine of ACLEI year by year. I think if that question were to be asked of me say in July you might find that the number of matters to be finalised would be significantly reduced. That is certainly my clear hope and aim between now and the end of the financial year. Certainly you have raised complexity. Certainly the question of new issues arise which might take priority or precedent over matters that have yet to be closed. To some extent it will be just first rate to be able to deal with it as we go along but so far it has been a question of moving where we think our priorities should be drawn.

**CHAIR**—I would also like to echo Senator Parry's comments concerning the quality of the annual report. Thank you for that. Thank you for the responsiveness and the comprehensiveness with which the commission has responded to queries from this committee during the year. It has been much appreciated.

**Mr Moss**—I said this the last time we met but that was a private meeting, so I would like to say how much ACLEI and I appreciate the work that the committee and the secretariat has put into this report and that it has been received very well by a range of individuals and agencies. In particular, I single out my state counterparts and what pleasure they derive from your recommendations and some of the comments you make in that report and how they felt strengthened in their own work by the fact that a federal committee has looked at this and has heard from many witnesses and considered many submissions. It was very gratifying to them so I do thank you for that.

**CHAIR**—That is good feedback, thank you. I understand you have agreed to make yourselves later today should issues arise during the course of the committee's examination of other witnesses.

**Mr Moss**—Would you give us guidance on that point? Should we stay in the room or what is the wish of the committee?

**CHAIR**—You are welcome to stay. It is a public hearing. But it is not required.

[10.09 am]

**BROWN, Ms Frances, Acting Assistant Secretary, Law Enforcement Branch, Attorney-General's Department**

**SMYTH, Ms Gemma, Acting Director, Law Enforcement Policy Coordination Section, Attorney-General's Department**

**CHAIR**—Do you wish to make a short opening statement?

**Ms Brown**—I think very short in that the department is still considering the report of the committee and a government response is being prepared so I am a bit constrained in that I cannot really express a whole lot of views about the report until after the government response is settled. I wanted to make it clear that we would be happy to come back after the response has been finalised because there may well be things that arise from reading the response that you might want to talk to us about then.

**CHAIR**—It seems clear to the committee from the increasing number of corruption issues coming to ACLEI which has been identified in the annual report that ACLEI's workload is far greater than originally anticipated and that more funding is urgently required to meet this demand beyond the additional funding provided for in 2008-09 budget. What is the department doing to ensure that ACLEI is able to fulfil its functions as set out in the LEIC Act and has the department undertaken revised costings based on this growing workload?

**Ms Brown**—The department is aware of the concerns and will address the funding issue in the normal budget process.

**CHAIR**—I appreciate that the department is looking at the report from the committee. In its report on law enforcement integrity models, the committee highlighted the need for a dedicated corruption prevention research and education unit within ACLEI and a purpose-built hearing room. These are seen by the committee as priority building blocks for ACLEI. Are you able to comment on that and on the department's priorities for ACLEI?

**Ms Brown**—Unfortunately I cannot comment until after the government response on those recommendations has been finalised.

**CHAIR**—Have you observed any problems with ACLEI's existing legislative framework that present or could present problems for ACLEI's operations?

**Ms Brown**—I have not. It would be something that we would work with the commissioner about and, obviously, if those issues became apparent we would discuss them with the commissioner with a view to finding a solution.

**Mr HAYES**—In terms of the increased number of corruption issues coming before ACLEI, obviously the department is certainly aware of that. You have been asked what would be the response in terms of resources and you indicated they would be considered in terms of the

budget. I would like to ask the department, in terms of the increased number of notifications of corruption coming to ACLEI, do you know the proportion of those that emanate out of criminal trials?

**Ms Brown**—No, I do not, I am sorry.

**Mr HAYES**—Is that something the department thinks that they should inquire into?

**Ms Brown**—It would be an interest. It would be something I could talk to the commissioner about.

**Mr HAYES**—It would not be following a similar pattern of state and territories where it becomes a tactic of defence lawyers to have clients make complaints against law enforcement officers?

**Ms Brown**—As I do not really know the statistics, I could not comment but it—

**Mr HAYES**—Would that be something the department might want to look at?

**Ms Brown**—It is certainly an interesting issue and one that is relevant to law enforcement policy, so yes.

**Mr HAYES**—I would just request that the department review that. I do note that there has been a significant increase of notifications to ACLEI from the public but I would be concerned if we have provided a vehicle by which a new legal tactic could be deployed in respect of defence litigation in criminal trials.

**Senator PARRY**—It will save me asking you a lot of questions if I ask you questions about direct funding the response is going to be: it is the normal budgetary process.

**Ms Brown**—Yes.

**Senator PARRY**—I will scrap those. We heard from the Integrity Commissioner and officers at the table that the legislation appears adequate and robust and well structured. The framework is good for the operation of ACLEI. Do you have a view on that?

**Ms Brown**—I do not really. As I said before, if something arose that made the commissioner think that there was an issue, we would work with that and have a look at that in the normal way that I would expect to look at any kind of legislative framework and see how it was working from time to time and deal with any issues that came up, which is not to say that you necessarily have to go and change the legislative framework but you certainly need to always have a look if there is an issue. But I am not aware of any.

**Senator PARRY**—It just appears as though there is not a great depth of knowledge or interest in ACLEI from your perspective or do you have any comments about ACLEI at all? There was no opening statement I noticed, as such. Apart from the fact that we have just got to wait and see after reviewing reports, is there any comment that you can make about ACLEI? Is there anything you want to say? Are there any constructive comments that the committee could consider?

**Ms Brown**—I think my opening statement was to indicate that I cannot say anything that would commit the department to a view in advance of the government's response to quite a wide-ranging set of recommendations. As far as a view on ACLEI, we have a great commissioner and ACLEI carries out an important role and it is clearly an important part of the law enforcement framework.

**Mr CLARE**—Can you give a little bit of information about what the process and what the timetable would be for further consideration of the committee's report, just as to how it would be considered by the department and I guess the process and the timetable that we can expect?

**Ms Brown**—The department looks at what the recommendations are and obviously considers that across a range of policy and practical issues, which in practice means that there are quite a lot of people who have a view one way or another; then puts together a response that takes into account those wide-ranging views, bearing in mind that the department has a role in bringing in and coordinating some of the views from the law enforcement agencies as well. Then it is a matter of putting it together into the appropriate form for a government response. As I am sure you are aware, there is a Public Service process that takes its time to make sure that everyone concerned is happy and that it is authorised and signed off at appropriate levels before it goes to the minister for approval and recommendations about where to go from there.

**Mr CLARE**—I presume there is a project manager or similar type of position that has a coordinating role in managing the department's consideration of the report?

**Ms Brown**—The coordination is managed through my branch and that process has been afoot for a while. I am hoping that it will be drawn to a conclusion fairly soon. It is reasonably well advanced.

**CHAIR**—What does 'fairly soon' mean?

**Ms Brown**—I am not sure I can put an exact time frame on it.

**CHAIR**—Are we talking about weeks or months?

**Ms Brown**—Probably a couple of months.

**Ms Smyth**—Essentially we would want to ensure or we have ensured throughout this process that there has been adequate consideration by law enforcement agencies, adequate consultation within the department in relation to the recommendations. We also need to look at what we can put in train from the recommendations from the PJC report. As Ms Brown has said, it would then have to undergo the process of clearance which we are obviously not in control of, but I would say it would be a matter of months not weeks, to answer that question.

**Mr CLARE**—Does consultation take place outside of your department with, say, Treasury or other departments because some of our recommendations go to resources, funding and infrastructure as well?

**Ms Brown**—The government response itself will be coordinated and will be a response that comes through the department. Clearly there are other issues that were meant to be taken into

consideration. The response itself, though, is unlikely to directly address financial issues because they need to be addressed through the normal budget process.

**CHAIR**—If there are no further questions I thank you very much for taking time to give evidence today and we look forward to having you back to respond to the committee's report and when we can get much more information we hope.

**Proceedings suspended from 10.20 am to 10.52 am**

**JEVTOVIC, Assistant Commissioner Paul, National Manager, Human Resources, Australian Federal Police**

**WALTERS, Commander Mark Adrian, Manager, Professional Standards, Australian Federal Police**

**WOOD, Mr Andrew John, Chief Operating Officer, Australian Federal Police**

**CHAIR**—I remind the committee that the purpose of this hearing is to examine the annual report of the Integrity Commissioner. AFP is one of the law enforcement agencies under ACLEI's oversight and questions to the AFP will be restricted to matters that relate to the annual report of ACLEI. Do you wish to make an opening statement?

**Mr Wood**—I appreciate that there are a number of new members of the committee and there has been some turnover from the last time that we had a visit from the committee to the AFP. If you wanted me to take about three or four minutes to talk about the integrity structure we have around the AFP then I would be happy to do that and then we can lead on to the questions from there.

**CHAIR**—Please.

**Mr Wood**—Under part 5 of the AFP Act there is a legislative provision for the approach to professional standards within the AFP and that legislative basis then drives a number of commissioner's orders and in particular Commissioner's Order No. 2 which sets out amongst other things a code of conduct and a set of values for the organisation. There is quite a formal legislative and internal governance structure that flows through from the AFP Act. The core values and the code of conduct are an area where the organisation has spent particular investment in the last 12 months when we had the committee come and pay us a visit over at the AFP last year. We mentioned that the two deputy commissioners and myself were going to visit every AFP site across Australia and talk about the values and give examples of acceptable and unacceptable behaviour but also talk about the role of our confidant network, talk about the role of the ACLEI commissioner, the role of the Ombudsman and the role of our own internal discipline and award and recognition processes for where we do observe behaviours that are obviously in concert with our values. Those presentations have now occurred across every site in Australia and so I did want to sort of close the loop on the fact that we had said that we were going to do that in the second half of last year and those were completed, from memory in January this year, so we have now carried that out. As Commander Walters mentioned, he is the manager of the professional standards area.

The organisation has about 81 FTE or staff in that area at the moment, so it is a significant investment in the organisation, not just in terms of investigation where we have a particular issue raised through an open channel or through the confidant network which is a particular important part of our integrity arrangements, but also to have a role in monitoring what is going on across the organisation and also in terms of proactive education and prevention of issues that are inconsistent with the code of conduct and the values of the organisation. I think the executive of the organisation has stepped up to the mark in terms of ensuring there is an ongoing integrity

conversation in the organisation and that the relationship therefore that flows through with the Integrity Commissioner—and I think it is reflected in the annual report—is very positive and the relationship with the Ombudsman is one where we have invested. Commander Walters will be able to talk about some of the workshops we have been conducting with the Ombudsman's office just to make sure that the flow of information in relation to his role of reviewing our administration of part 5 of our act is in fact the most effective way of administering that part of the legislation. There are several layers to the integrity infrastructure that we have in place but the most important one in my view is that we actually have the executive out there talking about it and then we have the protocols and structures underneath to reinforce just why we regard it as so important.

**CHAIR**—Can you elaborate on AFP's working relationship with ACLEI, particularly during the reporting period?

**Commander Walters**—I believe that the relationship we have with ACLEI is a very productive, very effective one. I have been in the role for eight months now. I have regular meetings with the Integrity Commissioner, the executive director and other members on a range of issues that impact on our referral of category 4 matters to ACLEI. There are two joint investigations that we are involved in at the moment, so there is a lot of dialogue in play there as well. We are also supporting a pilot review by ACLEI into the AFP anticorruption plans so there is a very high level of engagement that we are just starting to put into place there in relation to that review as well. In my time in the role, I have seen an increased engagement between the AFP and ACLEI. The level of interaction, as I said, is quite high. We get terrific support right from the Integrity Commissioner through to all the staff of ACLEI in all aspects of the work that we do within Professional Standards.

**CHAIR**—Are you able to elaborate a bit more on the corruption plan review by ACLEI?

**Commander Walters**—That review was agreed between the commissioner and the Integrity Commissioner in June of last year. A proposal was put forward in December last year in relation to four phases: establishing a board of reference and evidence-gathering phase; analysis; and then reporting on all the anticorruption risks that exist within law enforcement agencies. The same review is being undertaken with the Australian Crime Commission. ACLEI just commenced the evidence-gathering phase so we are working closely with ACLEI to provide all the information they need to look at the risks and what measures the AFP has in place to mitigate those anticorruption risks within the organisation. That will cover off a range of some of the documents that Mr Wood spoke about—obviously the AFP Professional Standards policy, commissioner's orders, to a range of national guidelines and practical guides that cover a diverse range of issues within the AFP that impact on our functions but also have an impact on our anticorruption risks.

**CHAIR**—On page 50 of its annual report, ACLEI provides a summary of its investigation reports and there is a recommendation to the AFP which is outlined as follows: that the AFP review its arrangements for handling politically sensitive matters to ensure the AFP's independence and effectiveness is seen to be free from potential compromise in relation to investigations concerning possible criminal conduct by members of parliament. The committee understand that the AFP is reviewing relevant guidelines and procedures accordingly. Are you able to provide an update on this review?

**Commander Walters**—Yes, certainly. In relation to that recommendation, the AFP undertook a review of its arrangements for dealing with politically sensitive matters. On 17 February of this year the commissioner wrote to the Integrity Commissioner providing a copy of that review. There were several recommendations or conclusions in the review, but there were numerous AFP protocols in relation to politically sensitive matters that would be reviewed following an Attorney-General's Department review of the Commonwealth Fraud Control Guidelines and the AFP protocols will align with those Commonwealth guidelines. The current AFP arrangements for handling politically sensitive matters are sufficient to allow for the investigations to be undertaken in a legal, competent and appropriate manner and a minor clarification to AFP guidelines is required to specify oral briefings as being a ministerial briefing tool available to the AFP executive. I understand that the Integrity Commissioner is looking at the report into that review and considering that at the moment and will undertake further consultation with the AFP once he has had time to consider the recommendations and conclusions.

**Senator PARRY**—In your opening statement you said that the 'relationship with the Integrity Commission is a positive one'. I did ask this of the Integrity Commissioner in the previous session. What steps does AFP take to ensure that the close relationship does not become too close so it is a healthy and respectful working relationship and not a cosy relationship? Would you like to comment on that?

**Mr Wood**—I think it is a feature of many of the relationships that we have to have with other agencies that work within the law enforcement environment or different aspects of our responsibilities where we need to achieve the balance of a relationship where the business is conducted professionally and with integrity and smoothly, so there are no hiccups in protocols and those sorts of things, but as you say not getting so close that inappropriate influence over the progress of matters might occur. I think if we come back to the values of the AFP itself, one of the things we do emphasise is that under the integrity measure the misuse of our office is an absolute offence against the organisation and against the commissioner and people's colleagues. The culture of the organisation of not misusing one's position as a member of the AFP either as a sworn officer or an unsworn officer is something we actually spend a fair bit of time right from recruitment and induction through to maintenance of professional capabilities throughout a member's career. With ACLEI in particular, Commander Walters might be in a better position than I to talk about some of the particular relationship management approaches there but it is not unique in terms of other relationships that we have with other bodies, and it is something we are cognisant of and it is something we overtly discuss within the organisation about not misusing our position of power and responsibility that we acquire under the AFP legislation.

**Commander Walters**—I think that is also influenced by the ACLEI legislation, which provides some very strict parameters around confidentiality of information. We are very cognisant of that so any discussions we have very much have those legislative requirements in mind, as well.

**Mr HAYES**—I think I am relatively au fait with the professional standards that apply to police across the country. However it does seem to me that the AFP is in a unique position because while you, commander, are the head of Professional Standards, I imagine that applies throughout the whole organisation, not just sworn police officers?

**Commander Walters**—Yes, it does.

**Mr HAYES**—For the police officers I understand that a lot of activity went on as to professional development in terms of levels of recruitment and the significance of the code of conduct as opposed to just being a code of conduct as it applies to the office of constable. A lot of professional development took place in terms of point of recruitment and as you progress through the ranks, if you like. How is that actually repeated at a similar significant level to the non-sworn staff of the AFP—the clerks, the typists and admin officers and everybody else out there—

**Mr Wood**—And the chief operating officer.

**Mr HAYES**—I was not going to actually put that in there but how do we reflect that? Because of the ongoing nature of policing and the emergence of the professional model of policing, the significance of integrity is actually pretty supreme. How do we actually reflect that in non-policing areas of the AFP?

**Mr Wood**—I will give one example and then let Commander Walters go through it. Certainly Assistant Commissioner Jevtovic would have a fair bit on that sort of approach, too, about how we manage the entire workforce as an AFP workforce. My personal performance agreement starts off with: I will be a model of and behave in accordance with the values of the organisation and it then lists them out. One way is that it is right upfront in terms of the performance agreements of the executive members of the organisation and across team leader agreements, supervisor agreements, et cetera. It is seen to be a critical aspect not just of what people do in their job but how they do it, and if they do not do it in accordance with the values of the organisation then they are in breach of their contract with the organisation as to what they are about. Just as one example, it is the headline issue in the performance agreement for me and also for my two colleagues. That applies to an unsworn member as much as it does to the sworn members.

**Mr HAYES**—Further to that, there has been a significant increase in the number of referrals from the public concerning the AFP. Presumably they are not going to be referrals about admin officers, the chief executive officer or anybody else; they are going to be about operational police officers?

**Mr Wood**—In terms of the public, they would generally have contact with sworn members. Obviously other members of the public such as contractors that do business with us may well observe things that is more dealing with some of our contracting people, et cetera, so not entirely. But there are members of the public who would deal with our unsworn members as well.

**Mr HAYES**—There is something I have asked other witnesses today. Is it true that the growth in complaints against AFP officers is in fact operational police officers and they come about against arresting officers in criminal matters?

**Assistant Commissioner Jevtovic**—I think there is a balance again in the context of arresting officers being more likely to attract complaints given the nature of what they are executing and the reasonable use of force, et cetera, is likely to attract that kind of attention. But the increase in complaints has two sides to it. I think there is a positive side to it. The positive side to it is, of course, the fact that people are prepared to report complaints, that they feel comfortable that

there is a process in which their complaints will be heard, so there is a positive side to it. In the context of complaints themselves, we examine any patterns of complaints. If as an example we found a host of complaints that related to the way use of force was being applied, we would have our specialists in the use of force area examine the nature of complaints from PRS and we would look at whether there was a learning and development issue that we needed to address, whether the training regime was actually preparing our officers appropriately. We have a cycle of learning that comes from the complaints. We actually see complaints as a positive in the organisation because we see them as an opportunity to continue to learn.

**Mr HAYES**—John Lawler was sitting in a similar position not all that long ago and sort of indicated that there was a pattern and that a pattern was emerging with ACLEI's jurisdiction in respect of serious criminal matters. It was a pattern of the defendant actually making a complaint against police officers so that that matter could be raised in a trial, simply to be able to ask whether you were subject to an investigation. Is that still being seen as a pattern? I am not quite sure that is positive.

**Assistant Commissioner Jevtovic**—I do not know if we will say there is a pattern of it but it is clearly an opportunity for people to utilise that process for their means, yes.

**Mr HAYES**—The point I am trying to get to is that obviously there is a great emphasis on the actual operational policing here and as one of the key things in terms of the emergence of a police profession that must be taken seriously from the point of recruitment through to commissioner level.

**Assistant Commissioner Jevtovic**—Yes.

**Mr HAYES**—Is that the same calibre of professional standards that is then applied throughout the whole organisation?

**Assistant Commissioner Jevtovic**—Yes.

**Commander Walters**—In terms of the training and awareness programs, as you mentioned, we start right at recruit training but there are a number of programs that are run throughout the AFP that are attended by both sworn and unsworn officers—our team leader development programs, our coordinator development programs. The same PRS training and awareness programs and ethics are delivered on those programs so there is very little differentiation between a sworn and unsworn person in relation to the delivery of those programs.

**Mr Wood**—All the commissioner's orders, including in particular Commissioner's Order 2, apply to every appointee under the AFP Act. Our staff are not employed under the Public Service Act. All staff are employed under the AFP Act.

**Mr HAYES**—There are historical reasons for that as I recall. Why would your non-sworn staff of the AFP be any different to the non-sworn staff of Customs or anywhere else, because you have AFP officers seconded to Customs and I think you have some people seconded in the department of immigration and the department of taxation? They are sworn officers. Should that sort of regime apply to all of those organisations as to that standard of integrity?

**Mr Wood**—Yes. With those organisations under the Australian Public Service Act there are codified in legislation the values of the Australian Public Service and their code of conduct—

**Mr HAYES**—But not applied at the same levels as they apply to law enforcement.

**CHAIR**—No, it is pretty vague.

**Mr Wood**—I do not want to answer a question that perhaps Lynelle Briggs should answer but I do know that this a favourite topic of Lynelle Briggs. She recently conducted a seminar for SES right across the Public Service which I actually attended here in Canberra to talk about her approach as the Commissioner for the Australian Public Service to the issue of ethics and integrity right across the service and of getting a harder edge to what is currently in the legislation, acknowledging that the legislation itself may or may not be amended at some time. She has as a primary priority within her organisation, the whole of the Public Service, the whole SES, engaged in getting a harder edge to those integrity issues and ensuring that if there is any ambiguity in the legislation—I used to run ethics programs under the Public Service Act in a previous life. I actually do not believe there is ambiguity there. I think it is a good tool if managers are determined to use it properly but it is something that the Public Service Commissioner takes quite seriously and is advocating very forcefully right across the senior executive ranks at the moment. Having worked in places like FaHCSIA, where Jeff Harmer as the chief executive took ethics and how the business was being done not just what was being done quite seriously, I think the individual CEOs across the Commonwealth do take it very seriously. We, particularly our sworn members, do have some unique roles in the community and a unique relationship with community in terms of the law enforcement aspect, so I do think there are differences but the fundamental importance of integrity I think is well recognised by the Public Service Commissioner and her colleagues.

**CHAIR**—Do the officers in the professional standards unit rotate out of that unit into the regular staff?

**Commander Walters**—Yes, they do. Within Professional Standards we have three business areas. One is our investigations area which under the part 5 of the AFP Act is referred to as ‘the unit’ so officers are actually instrumented by the commissioner or me as his delegate into the unit for a two year period. There is scope or discretion to extent beyond that two year period if they are involved in operational or other important issues but primarily they do two years within the unit then have to move on. We are quite keen given the nature of the work that we do to bring investigators into the unit who have had extensive investigations experience. That is as a combination of people who have not only worked within ACT policing but also in the national and international arena so we have a good blend of experience within the unit. We also have our awareness and prevention area which looks after our integrity assurance programs. We also have an operations monitoring centre. There is no legislative requirement or period of time for people to serve in that area but we try to get a good rotation of people through Professional Standards. We have some people who have been in the latter two areas a little bit longer than the two year period, but two years is about the norm that we would have people working within Professional Standards.

**CHAIR**—Would you say that AFP officers generally are aware of ACLEI's role and the process for bringing information to ACLEI. Is that something that Professional Standards educates staff about in the AFP?

**Mr Wood**—The sessions that the two deputy commissioners and I ran right across Australia in the last eight or nine months we made specific reference to our confidant network, the PRS, our own internal processes, the Ombudsman and ACLEI, so we reinforced those roles. If, say, in ACT policing, you speak to a constable in the street and rattle off the acronym, will they know what you are talking about, maybe not, or somebody in another part of the organisation operating as part of the NT intervention, or something. But what they should know is that there are structures in place, go back to the website, and that is where the reference material is. They know enough to know that PRS exists, absolutely. I think everybody in the organisation knows PRS exists. Everybody in the organisation knows that the hub has got information about those other agencies that they can also engage, and that is where the information is. I do not think 7,500 members and seconded members from other services, other police forces, et cetera, would immediately know what the ACLEI acronym stands for, but they do know that there are provisions, systems and protocols in place and where to get the information, and in particular they would know the PRS, which is our centre of excellence in the area, does exist.

**Commander Walters**—We do have ACLEI staff present on ACLEI to recruit training programs and also the confidant network. Also the Integrity Commissioner was the guest speaker at the Interagency Integrity Investigators program that the AFP ran last year, which was multijurisdictional, attended by other jurisdictions and international jurisdictions, and we also had presentations from ACLEI on that as well. We have also just commenced preparing an article for the AFP *Platypus*—it is our quarterly magazine or periodical—which is on the AFP and particularly PRS relationship with ACLEI and the Commonwealth Law Enforcement Ombudsman, so that would be a three or four page article that outlines the relationship and the role of those oversight agencies.

**Mr Wood**—But I think the other thing is that every staff member would know about CRAMS which is the system by which things are reported. Whilst they do not have to make that decision, when an issue is recorded into the CRAMS reporting system that falls into the category that needs to be notified by ACLEI, it is not the individual who makes that decision. That decision at the level that ACLEI should be involved is made by the experts who are well aware of all of the procedures, et cetera. The actual reporting of an incident will not be inhibited by the fact that somebody may not know about ACLEI or exactly what the acronym stands for. But once they have reported it, the system then picks it up as to what category it falls into. If it falls into what we call category 4, it needs to be referred to ACLEI rather than dealt with internally.

**Senator PARRY**—Do you think though the officers prefer to step outside that system and go direct to ACLEI?

**Mr Wood**—Yes, they can. Again that is the sort of information you can gain from the hub process. If they are not sure what they can do, information is available to every member through our website.

**Senator PARRY**—With the commissioner and the staff this morning I asked a question about international relationships and collaboration and monitoring international trends, and we had a

bit of a discussion about that. There is no full-time dedicated international desk, if you like, in ACLEI. Would you see value in having a full-time dedicated monitoring of international trends and events in ACLEI? Would you see value in that?

**Mr Wood**—I was not listening to see what they said. I would not want to contradict ACLEI's own views. I suppose more importantly: what do we do? We have quite a strong network with the significant workforce development areas of other organisations such as UK policing, such as the FBI, et cetera, Royal Canadian Mounted Police, where we know what trends are going on. As but one example, we are interested to come across the best practice at the moment for integrity testing within an organisation and so we are doing a fair bit of work at the moment with ACLEI about what might be an approach for the AFP to take. We are looking at best practice across jurisdictions both domestically and overseas. It is something that we do. We are obviously in a better position in that we do have members of the AFP located within the UK Met, with the FBI, et cetera, where they can actually go and talk to the people on the ground about what their best practice is, so we can use our own international network to tap into that. I really think it is probably a question for ACLEI about whether they—

**Senator PARRY**—A very diplomatic answer, very good.

**Mr Wood**—But we certainly take the international experience seriously across all our business but, in particular, or in the context here, around workforce issues and integrity issues.

**Senator PARRY**—Being one step removed from ACLEI and being a law enforcement agency that is subjected to ACLEI, do you have a view as to where ACLEI stands on an international platform as to how robust the model is; how good do you see it; or do you have any other comments about ACLEI fitting on the international scene?

**Mr Wood**—I think as a general comment standards of integrity within Australia are seen as being very high in Commonwealth agencies such as the AFP. It is because of mechanisms like ACLEI that we are able to make a statement like that, that we do have that independent confirmation but also an independent mechanism to deal with issues when they do arise. As Commander Walters mentioned, there are a couple of matters at the moment under investigation so that there is a system to deal with those things. I think they are an important part of us being able to stand up internationally and say we are in a position to help other agencies develop their police forces, whether it be the Solomons or Timor or Iraq. We are in that position because we have a reputation for integrity and professionalism. In my personal view, but also the view as the chief operating officer, the existence of the commissioner is an integral part of us being able to say our system has checks and balances and the checks and balances are working to an international standard.

**Senator PARRY**—Do you feel as though the timeliness and the response that ACLEI gives to your cases forwarded are appropriate? (a) Is it timely and (b) are you satisfied with the way it works and the responses coming back?

**Commander Walters**—I think the timeliness comes down to prioritising the referrals from the AFP. Obviously we have visibility on those matters if we refer across but not on matters that might come from the public or any other agencies that involve AFP personnel. As you know, the commissioner in referring a matter to the Integrity Commissioner is required to identify whether

he believes it is a significant corruption issue or not so our focus would be around making sure that those matters that we view as being significant are prioritised accordingly. That would be our perspective, to make sure that those matters have precedence.

**Assistant Commissioner Jevtovic**—I think another priority step is we are in the process of finalising arrangements for ACLEI officers to have access to our case management system. They will have that real time ability to access those cases and make their assessments so I think that is an important step forward.

**Senator PARRY**—Who is going to monitor the integrity of that process? You have two agencies accessing fairly or very sensitive material? Who is going to be monitoring the integrity of all that information?

**Assistant Commissioner Jevtovic**—I think our existing framework is fairly robust. Obviously those processes will continue to be implemented as they are today.

**Senator PARRY**—I gather a tagged access every time someone accesses any information is recorded?

**Commander Walters**—With our system we have within AFP PROMIS, which is our Police Real-time Online Management Information System, but we have a PRS version of that. The only people who have access to that are people who are working within Professional Standards. There are some other people who do have access, so the access by the ACLEI staff will be to PRS PROMIS and we can lock down cases to individuals so the only cases they would have access to would be those category 4 matters that they would have some involvement with. Then of course we can audit all of our IT systems but particularly PROMIS.

**Senator PARRY**—Will this access be remotely accessed? I do not want to micro-analyse this but would it be remotely access from ACLEI headquarters or is it done on site in your establishment?

**Commander Walters**—On site at this time so we actually have a dedicated room. The Ombudsman's office is actually using it at the moment to undertake its review of our administration of part 5.

**Mr Wood**—That is the other part of the answer to your question, that the Ombudsman has a specific responsibility for reporting regularly to parliament on the administration of part 5 of the act under which our professional standards arrangements all sit.

**CHAIR**—Following on from that, you just said that you can shut down access to all matters except for category 4 matters. Are you talking about for ACLEI's viewing?

**Commander Walters**—We could, yes, it is more—

**CHAIR**—Wouldn't it be in ACLEI's interest to be able to see all of the complaints and then they could decide for themselves?

**Assistant Commissioner Jevtovic**—Exactly. It was more an answer to the senator's question as to what capabilities do we have to monitor. Commander Walters' explanation was more the technical aspects that we can have complete access. We can shut down if there is a particular reason.

**CHAIR**—But you would not do that—

**Mr Wood**—In terms of ACLEI's access, we do not.

**Commander Walters**—Part of the rationale for the access is for analysis, looking at trends around corruption issues within the organisation, so access to PRS PROMIS and the data contained therein. We will also look at access to CRAMS, as well, which would support that.

**CHAIR**—Are there any other issues arising from the ACLEI Annual Report that you would like to comment on?

**Mr Wood**—No.

**CHAIR**—Are you aware that the committee has done a recent report on its inquiry into law enforcement integrity models? There was a recommendation that the Australian government review existing obligations on employees of Commonwealth law enforcement agencies to report misconduct and the review should consider whether these arrangements need to be strengthened including by legislative means and whether there are sufficient measures in place to support and protect whistleblowers. Do you have any comments about that recommendation?

**Mr Wood**—We already report through our annual report on the cases that we are handling and we get questions on that in Senate estimates in terms of misconduct, et cetera. In terms of whistle blowing obviously there is a whole of government process underway there at the moment. Internally, again coming back to the confidant network, it is a mechanism by which people quite confidentially can escalate issues within the organisation, and to me is relatively unique if not totally unique from my experience around other Commonwealth agencies that I have worked in. I should think we have got some really good practice approaches to enabling people who are not comfortable with what they are observing going on in the workplace to escalate those issues without themselves even being identified, let alone a real fear of whistleblowers being victimised as a result. I think that, in terms of where the government goes with recommendations they have currently got on broader whistle blowing procedures, obviously the AFP will be a party to the policy line that the government decides on those. But internally we have got pretty strong mechanism that as I say I believe are unique within the Commonwealth to allow people to escalate issues if they otherwise feel that their immediate supervisor is not dealing with them.

**CHAIR**—I understand that there is a duty to report misconduct within the guidelines.

**Mr Wood**—Yes, commissioner's orders, so at that level, there is a requirement that if an individual observes inappropriate behaviour—a breach of the code of conduct I think are the actual words—then they are obliged to report it. It is not optional.

**Commander Walters**—If they fail to then it is also a breach of the commissioner’s order which would then instigate a category 3 serious misconduct investigation by PRS.

**Mr Wood**—Again, in briefing all staff over the last few months, the deputy commissioners and myself, that is one of the areas we particularly spoke about as well, that they have an obligation to report things they observe that they consider are inconsistent with the organisation’s values and code of conduct.

**Senator PARRY**—Have you had a spike in reports since the briefing period?

**Mr Wood**—It might be a bit early for the stats to reflect that. As we mentioned earlier there has been a general increase in reporting anyway as the organisation has grown and as we have raised awareness more generally. I do not believe we have had a particular spike in reporting, partly because all sorts of other mechanisms were communicating this material. What I have observed, though, is that people are quite comfortable in the middle of a meeting to suddenly bring one of the values in and say, ‘Hang on. Is that really demonstrating the professionalism or the community trust that the organisation actually expects of us?’ One of the changes I have observed is that the values are becoming an integral part of team meetings and discussions that are occurring around the organisation as a legitimate way of measuring the best way to move forward, so that has become the litmus test of whether we should go in a particular direction, more so than perhaps I observed when I first joined the organisation.

**Assistant Commissioner Jevtovic**—Within the confidant network, it is not uncommon in the language people will use when making referrals to the confidant network that they base it on the values. They will often say that ‘I observe such which I think is inconsistent with the values’ so I think it reaffirms that the values are prominent in people’s thinking in the organisation, which is something we want to continue to reinforce.

**Senator PARRY**—Are the values on screensavers?

**Mr Wood**—That is correct.

**Commander Walters**—I think another point in the previous financial year of 2007-08 is that 4.13 per cent of our complaints are actual self-reports, members who have actually effectively reported themselves, either in the course of their duty they have received a complaint about their conduct, so rather than letting it go they have actually reported it themselves. I think that is a direct impact of the values presentations and the awareness programs that we have had. If you look at the source of complaints, 41 per cent were internal from AFP appointees about other AFP appointees, so I think there is a very strong awareness out there of the framework and also the reporting, what the values are, what the obligations are and the various commissioner’s orders and national guidelines.

**Assistant Commissioner Jevtovic**—It is interesting that only a very small percentage choose to stay anonymous. Only 1.3 per cent—14 out of some 1,000—actually chose to stay anonymous, which I think is indicative as well of a positive culture of standing up when you do not believe something is right.

**CHAIR**—If there any no further questions I thank you very much for taking time to give evidence today.

**Proceedings suspended from 11.29 am to 11.42 am**

**BAILEY, Ms Jane, Executive Director, Organisational Services, Australian Crime Commission**

**LAWLER, Mr John, APM, Chief Executive Officer, Australian Crime Commission**

**CHAIR**—I remind the committee that the purpose of this hearing is to examine the annual report of the Integrity Commissioner. The Australian Crime Commission is one of the law enforcement agencies under ACLEI's oversight. Questions to the ACC are restricted to matters that relate to the annual report of ACLEI. Do you wish to make a short opening statement?

**Mr Lawler**—I do, just a short opening statement which I hope will assist the committee. Can I say firstly that it is a pleasure to be here with you this morning and I am looking forward to the discussions. Indeed, I might be able to talk in broad terms but if it comes to matters of substantive detail Ms Bailey will have a lot more history than I will, so I will be relying heavily on her. When I started with the ACC on 1 March, I issued a message to all staff and I thought it might be useful in the context of the committee's focus to go to a paragraph of that which gives an indication of where I see integrity and, indeed, how that links into the work of the ACC and ACLEI as an organisation. With you indulgence, I would like to do that. I went on to say:

Another important focus for us all needs to be organisational performance. This means enhancing the outcomes and performance of others working in the law enforcement environment. Even exceptional outcomes will be worthless if achieved with poor governance or without proper regard to our code of conduct and values. Failure to follow due process and maintain a strong governance framework damages your standing and our organisation immeasurably. Examples can include unlawful access and/or disclosure of ACC information; failure to secure accoutrements or assets; failure to protect information; conflicts of interest; improper associations, to name a few. You should not allow this to occur.

The message then went on. In that context the ACC is committed to maintaining a workforce and work practices that are above reproach. In line with this commitment, the ACC does not condone unethical behaviour. I have met already twice since the announcement of my appointment with the commissioner of ACLEI, Philip Moss, and indeed I had a strong relationship with the commissioner prior to his appointment. During the 2007-08 period the ACC have referred two matters to ACLEI and ACLEI have advised the ACC of four matters it has received relating to the ACC, and there have been references by individuals. In 2007-08, ACLEI did not finalise any of the ACC related inquiries. However, it has recently advised the ACC of the outcome of two matters and has made no adverse findings against the ACC or ACC staff. Importantly, in relation to another matter I have asked the Commonwealth Ombudsman, Mr McMillan, and he has agreed, to conduct an inspection of ACC intelligence holdings and information to provide the key stakeholders of the ACC with assurance that the ACC's holdings are being gathered and stored appropriately and in accordance with its statutory function. Mr McMillan has advised that he will report to the parliament on his inspection and, indeed, I have encouraged and he has agreed to continue that as an open process going forward.

I have been impressed in the short time I have been with the ACC with the processes in place to support the ACC's overall integrity regime. If I may, two significant examples: a new drug and alcohol policy which is currently being implemented across the agency is a key anticorruption strategy and one to be supported and endorsed; and a comprehensive ethics

awareness training program, which has commenced, and will be delivered to staff but importantly as a compulsory part of their activities and duties so it will be compulsory for every staff member of the ACC to undertake that program over the next 12 months. Four training sessions have been delivered to date with a further 10 planned nationally prior to 1 May. There is a lot of energy behind ensuring that occurs. But training seminars and drug testing and a range of other anticorruption measures need to be influenced by a change in culture or by an enhancement of culture, and that is something in the context of the ACC, given the diversity of the workforce that comes to join us, that has to be constantly reinforced in my view. I have noted some of the committee's recommendations from its recent inquiry into law enforcement integrity models which, if implemented, will greatly assist the ACC and I would be happy to talk about some specifics about those should the committee wish. They are the opening comments. Ms Bailey and I will be happy to answer any of your questions.

**CHAIR**—I would very much like to hear some specific comments about the recommendations made by the committee in its recent inquiry report, if you could elaborate on that?

**Mr Lawler**—Yes, I would be delighted to. There were some very good recommendations, I would have to say in my view, but one that immediately struck me as being important—and I need to say this in the context that I have had no consultation with staff or, indeed, the organisations that might represent the staff so I preface what I am about to say in that context—but recommendation 8 was that the committee recommended that:

The Australian government review existing arrangements for the suspension and dismissal of Commonwealth law enforcement agency employees believed on reasonable grounds to have engaged in serious misconduct or corruption, and that the government take action as appropriate, bearing in mind the need to respect the rights of employees.

The latter part is very important. But I have come from a background where I have had exposure to and seen such arrangements in operation and it is an undeniable fact that the Australian Crime Commission has been entrusted with very significant powers by the parliament and the community. Indeed, it has access to and the storage of, as I have spoken about, very significant intelligence holdings so the thresholds around accountability and integrity and responsibility are naturally higher with the ACC than they might be in other walks of life. My view is that, if we are entrusted with those powers, with those authorities or with that information, we need to have in place robust mechanisms whereby those people who would abuse those trusts can be dealt with in a way that protects the integrity of the organisation and what parliament designed for it. I have to say that some of the current arrangements do not provide the mechanisms to do that in the way that they should. I do not know that I need to elaborate much more than that.

**CHAIR**—The committee did take it as being to that effect during the inquiry and that was quite a strong feeling that there needed to be some other arrangements put in place.

**Mr Lawler**—And arrangements that sensibly protect employees' rights and rights of appeal are very important.

**CHAIR**—There are those sorts of arrangements in place within other agencies so we do not have to reinvent the wheel here.

**Mr Lawler**—But where we find ourselves currently is in situations where there may be instances where the Chief Executive Officer of the ACC may have lost confidence in staff members but is in fact unable to do anything about that.

**CHAIR**—Did you have any other comments about the report?

**Mr Lawler**—I did highlight a whole range of areas in the recommendations—

**Mr HAYES**—Were they good or bad?

**Mr Lawler**—They were all positive. I thought it was a very good report but that was the key one that I wanted to just amplify with the committee.

**CHAIR**—Could you expand on the issue of the ACC's working relationship with ACLEI? I know that you have not been there that long yourself but you would be aware of the arrangements and how you intend to go forward?

**Mr Lawler**—I think the message I sent to staff sort of underpins that as a basic principle and that is that we need a very strong and practical working relationship with ACLEI and particularly the commissioner. My sense is that that relationship has already been in place and continues. There is a default position with the ACC where matters referred to it are reported promptly and comprehensively to the ACLEI commissioner. There is discussion as to how the ACLEI commissioner might wish to move forward with those, there being a variety of ways to do that. The need where we can to ensure that matters that relate to the ACC are expeditiously as possible resolved one way or the other, because in my view justice delayed is justice denied. Whilst from my own experience as the former director of the AFP's internal security and audit area, they are very complex matters, often very difficult and often take quite a long period of time to resolve, the more we can enhance that process I think the better outcomes are achieved for everybody involved. The issue of timeliness is something that the commissioner has raised with me and is working hard to try and give effect to but it is not always easy.

**CHAIR**—Do you have any concerns about the way that ACLEI is handling matters notified by the ACC?

**Mr Lawler**—No, I do not. But I just make the point that the commissioner and the commission are working in a very complex area, an area that has a whole array of different dimensions to it. One of the ways that these matters are advanced is to refer them back to the ACC for further examination, and I speak in the context of seven days of experience so I caveat what I am going to say, but the ACC does not have a strong and deep internal investigations or code of conduct capacity. We have quite a large number of matters that fall into that category and limited capacity and experience to deal with the complexity of these matters. Indeed, the ACLEI commissioner and ACLEI are finding a growth in the number of matters referred, and I see the committee has made recommendations around resourcing. I note the ACLEI commissioner's comments in the front of the annual report, but they are real and practical problems to resolve; one, in relation to resourcing; but, two, in relation to experience, to actually have the experience and the infrastructure to advance matters in a timely way. These are competing with a range of other resources and resourcing issues within law enforcement but within the broader government that we would all be aware of.

**Senator PARRY**—Congratulations on your appointment. I am sure you will be a fitting CEO to the organisation.

**Mr Lawler**—On behalf of the Australian community I will be trying hard to tackle serious and organised crime and if we can do that well then everyone is a winner.

**Senator PARRY**—That is very good. You mentioned a few moments ago that your internal system for investigating matters that are either referred back or do not need to be referred to ACLEI is not necessarily that strongly resourced. Do you have any views about rectification of that or of implementing a better system or a bigger area of work to handle the workload?

**Mr Lawler**—I do. There are some plans underway to re-examine just the capacity that is available. That is driven by two things. It is driven by, one, what should be referred in the first instance, so is the workload that has been taken on being taken on with the right capacities. To give the committee an example, some of our work, because of the lack of capacity is actually being performed by contract investigators from the broader public area. My view is that, without reflecting in any way adversely on the competence of that capacity, I do not know that that is the best way for those matters to be advanced. I think they need to be advanced by government instrumentalities or the ACC in its own right. But because of the complexity involved and the experience around investigations and, indeed, the number of investigators that the ACC has and what they are involved in, that is where I think there needs to be some adjustment. I have had discussions with the ACLEI commissioner about that and we have some embryonic ideas as to how that could be usefully improved upon.

**Senator PARRY**—Are you satisfied that the number of matters that are referred back are referred back appropriately again, bearing in mind your lack of longevity in the organisation to date? Are you satisfied that the reporting mechanisms are good and that you are getting the right cases referred back, and likewise the ones that you compulsorily need to refer, are you satisfied that the level of referral is where it should be?

**Mr Lawler**—That is my understanding at the moment. As I have said, we will tend to err on the side of conservatism, if I can use that term, so that even though there might be matters that may not on their face appear to be matters that require to be referred, we would refer those in any event and see that that is checked and have those matters referred back to us so that there is visibility, and, indeed, the ACLEI commissioner might see some of those matters connecting elsewhere. That has been our default position and I think that is a sensible default position to have. As far as the matters being referred back, I am probably not in a strong position to answer that, given the time I have been in the role.

**Ms Bailey**—The system works reasonably well. If you understand, under the legislation, if we do not believe it to be significant corruption, we will continue to do our own internal investigation, anyhow, while the commissioner was considering what he wanted to do. We have a very connected relationship so that I know when it has gone there. I have spoken to someone there to say that they have received it. I get an early indication of what their thinking is and then we can keep the process moving, so I think it works reasonably well. For them I guess we are not their only client referring things to them, so on a daily basis what I think to be a matter of the utmost importance—but we have a very open communication at my level and with the commissioner if I need to. I think so far, because it is somewhat uncharted waters, as we have

unfolded this and how each case is slightly different as to how we would do it, I am reasonably satisfied.

We have had a focus on just not letting anything sit. If it is a matter of significant corruption that is with them I know that they are dealing with it. If it is of a lesser threshold we will keep doing our own internal matters so we can keep feeding more information to them and then hopefully come to a conclusion. I guess our premise has been, as the CEO said, to take an expansive view of corruption. What would the community expectation be around our staff on what might be corruption, and then to make sure that we are keeping on top of it. It is true, however, that all investigations whether they are internal or external, necessarily take time and that is fair because you have got to get all the facts in line. No doubt if we had a much larger staff—they are the issues. I kind of run a checklist usually once a week about where things are. I do not think I have ever had to ring up and just ask, ‘It has been ages since we heard about this. What is happening?’ To that extent, to that level, I am reasonably satisfied that we manage within the resourcing pools that both of us have to keep things prioritised and under scrutiny.

**Senator PARRY**—Do not answer if you do not want to because it might be difficult, but I am reading into this that there is a lack of resource in ACLEI and a lack of resource internally in ACC in relation to internal investigation matters or case load. I do not know what comment you are prepared or would like to make on that.

**Mr Lawler**—Can I say this? Firstly, I note the committee’s recommendation and I have already made comment that I thought it was a very good report and the recommendations were very sound. I also similarly note the commissioner’s foreword and commentary where he speaks about resourcing and he talks about if he needed to go to government he could do so and he feels that he would be received very sympathetically, and that is pleasing and I have noted that. It is probably not appropriate for me to comment beyond that on the resourcing of ACLEI. As far as the resourcing of the ACC goes in the context of dealing with anticorruption matters, it is something that we afford a high priority to, and again I go back to the message that you can have the best operational outcome but if it is actually not done properly it is worthless. That means that you need to invest and have a strong support behind those arrangements. But there is a question in my mind in the issue of resourcing as to where that might best be done.

There has been a view, and I do not criticise that view, to have some of these matters dealt with by contracted consultants, investigators, from the broader public sector. But I wonder whether that delivers the best outcome for the organisation, and going forward I would be hoping either to increase the capacity of the ACC to deliver on the outcomes of these matters as quickly as we reasonably can or to enter into arrangements with others that have that capacity and experience and leverage off their capacities. Where we have agencies that have well resourced or very experienced internal investigations mechanisms then is there the capacity for the ACC to leverage that capacity rather than trying to rebuild and reinvent? My sense is that there is some potential to do that with agencies and they are the sort of matters that I wish to continue a dialogue with the commissioner, Philip Moss, and others.

**Senator PARRY**—Would those agencies be like the Australian Federal Police?

**Mr Lawler**—They would be.

**Senator PARRY**—Would you probably consider other state jurisdictions if that became a necessity?

**Mr Lawler**—I would and I note more importantly within the ACLEI Act it gives the commissioner the power to do that. As I say, the commissioner has the power to do it, so the commissioner can elect in his or her own right to do that. But as the CEO of the ACC, it is something that I think is worthy of exploration if we are observing these things within the organisation.

**Mr HAYES**—I am very keen to hear your views in 12 months' time, after 12 months in the job, to see with a fresh set of eyes over the ACC perhaps, but congratulations on the job. We will obviously look forward to having further discussions with you.

**Mr Lawler**—I look forward to having further discussions with the committee not only in this context but in another context and look forward to building strong relationships where we can service the committee's needs and what you need to do to fulfil your responsibilities.

**CHAIR**—Thank you very much for that. To what extent are ACC staff aware of ACLEI's role and the process for bringing information to ACLEI?

**Ms Bailey**—I think in general and as I understand it relating to ACC, everyone was very supportive of ACLEI when it was established and I think people saw that it was a really independent agency that was set up to deal with these issues. My general awareness of the staff was that it was very supportive of it being established. We have worked on a range of information since we have a professional standards regime in house as to information sessions, and the previous CEO put out a number of all-staff messages. I think they have a reasonably good understanding of it. The commissioner and other staff of ACLEI tend to come to functions or issues that we have. They are an important stakeholder for us. I understand it. I understand, too, I guess that we have the Public Service Act and the ACLEI Act and so we are in a complex framework and we make a lot of effort to get our people to understand it. Our secondees, of course, are subject to their own home force corruption regime. There is an element of complexity, but I guess I am satisfied that we are working through it with the staff and raising their awareness over time. I have not done a survey of them but we are going to do some staff surveys so it would be an interesting question. Certainly in the current ethical awareness training we are rolling out, we very much focus on their role and our relationship with them and how important they are.

**CHAIR**—Does ACLEI ever come and give presentations to staff?

**Ms Bailey**—They have come to our senior management meeting, yes. The commissioner came to our last senior management meeting which all our managers attended and made a presentation. We put that up on our intranet site. We do make that relationship clear and we talk about it and there is certainly a reference, so I think over time awareness rises, but the commissioner has certainly been to the senior management meetings and given us presentations.

**CHAIR**—What about other staff?

**Ms Bailey**—The senior management meeting he was at was all of our executive level 2 managers who manage all the teams, so he presented to all those. Their mission was to take that back and talk to their teams about it. We put his presentation up on the internal intranet site so I think generally spreading the message out there.

**CHAIR**—Are there any issues arising out of ACLEI's annual report that you would like to comment on?

**Ms Bailey**—Of course, as we deal with the commissioner, he made us aware of what was in the report and a couple of case studies, but I think we understand the issues in there that he has highlighted. Some of the complexities are the legal issues surrounding who can do what when. It clearly is an issue that we are very supportive of him moving through that in a planned way. I guess it was substantially bigger, I thought, last year than this time, but it reminded me that the world must have changed. There was not anything in there in particular that came out. I observed that it was almost the same as ours this year. As to what was in there, I remember last year's was much smaller to scan through what were the key highlights, so that was it. It was very detailed, I thought, and had lots of quite good case studies. It was good reading and we talked about it in our executive teams about some of the issues they are facing.

**CHAIR**—If there are no further questions, I thank you very much for taking your time to give evidence today. I also thank you for your comments about the committee's inquiry report. That was very useful. I would like to thank all witnesses who have given evidence to the committee today and I commend the Australian Commission for Law Enforcement and Integrity for producing an informative annual report 2007-08. I now declare this meeting of the Parliamentary Joint committee on the Australian Commission for Law Enforcement Integrity adjourned.

**Committee adjourned at 12.11 pm**