



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY

Reference: Operation of the Law Enforcement Integrity Commissioner Act 2006

FRIDAY, 23 OCTOBER 2009

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JOINT STATUTORY COMMITTEE
ON THE AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Friday, 23 October 2009

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

Members in attendance: Senators Cameron and Fielding and Mr Chester, Ms Ley and Ms Parke

Terms of reference for the inquiry:

To inquire into and report on:

The operation of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC) and its regulations. In particular:

- a. Provisions for the extension of ACLEI's jurisdiction including but not limited to:
 - i. The merits or limits of extending ACLEI's jurisdiction to other Commonwealth departments and agencies with a law enforcement function and/or coercive powers;
 - ii. an examination of the definition of 'law enforcement function' within the Act (section 5), including identification of the agencies to whom this definition applies;
 - iii. the administrative and operational practicalities of restricting the Integrity Commissioner's jurisdiction to matters pertaining to an agency's law enforcement function;
 - iv. the merits or limits of extending jurisdiction to other agencies by means of regulation or legislation; and
 - v. the expansion of the Integrity Commissioner's anti-corruption education and prevention role to all Commonwealth departments and agencies.
- b. administrative, policy, legislative and case law developments that may affect ACLEI's practices and/or legislation;
- c. the adequacy of ACLEI's reporting requirements with respect to performance and to investigation outcomes as set out in the Act and associated regulations;
- d. the strengths and the limits of the LEIC Act and regulations, and of other arrangements arising from the *Law Enforcement Commissioner (Consequential Amendments) Act 2006*;
- e. the resources required to perform the functions set out in the LEIC Act and, in particular, the resourcing implications of any extension of ACLEI's jurisdiction.

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Committee met at 9.20 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 and Integrity. Today's public hearing is for the committee's inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006.

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. 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. I welcome our first witnesses.

[9.22 am]

SMOLENSKI, Mr Richard, Private capacity

SPANSWICK, Mr Robert Grant, Private capacity

CHAIR—Mr Smolenski, the committee has accepted your submission as submission No. 11. Are there any changes you would like to make to it before we proceed?

Mr Smolenski—No. There was also a confidential submission which was supplied to the committee.

CHAIR—Yes. 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 Smolenski—I thank this joint committee of parliament and I acknowledge the traditional owners of the land on which this meeting is occurring. I introduce my friend Mr Bob Spanswick, who will assist me in introducing this. Mr Spanswick has 23 years in the Australian Customs Service and you may want to ask him questions relating to the matters we raise.

We believe that the submission that I have put to the committee and the confidential submission which only I have seen—Mr Spanswick has not—and the matters arising from them relate to the terms of reference for your committee's review of the legislation. We believe that the Australian Customs and Border Protection Service, commonly called Customs, should be brought within the scope of that legislation.

To give you the footing for that view, we need to give you examples of what has occurred in Customs over my last 25 years, including what is in the public record and things which are not on the public record. You may want to ask Mr Spanswick about some of those matters as well. I would like to acknowledge the time you are giving us. Thank you very much for this.

I had hoped that I could put together something better than what I just said, but unfortunately I spent the last four days in the Prince of Wales IC unit trying to get rid of a bug. If the doctor had not said yes, I could travel—doctors are wonderful; they say yes or no and you have to take notice of them. I also thank the committee for the opportunity to put my submission. I am available to answer any questions. There may well be questions which you ask me that I believe for law enforcement and national security reasons should go into camera—I understand what you just said, Madam Chair—and I will let you know because I feel you should be aware of that. I do not want the committee to be put in a position where it may put things out which should not be on the public record. Even though I am no longer an officer of the Customs Service or an employee of the Commonwealth, I am mindful of the things I worked for for 25 years. I would also like to thank my family, especially my wife, and colleagues who got me to this point because without their support I would not have had the courage to do this and get this matter before the parliament. Thank you.

Senator PARRY—Madam Chair, before we commence could I clarify the legal situation in relation to Mr Smolenski and the Commonwealth Director of Public Prosecutions. Is there a matter currently before the Commonwealth Director of Public Prosecutions that we may touch upon as we speak?

Mr Smolenski—Not that I am aware of; not in relation to me. There are matters arising out of what happened to me in the last seven years that the Commonwealth Director of Public Prosecutions may want to, out of any evidence that I give or other people give or any recommendation down the track—

Senator PARRY—So you are not currently a witness in any procedure at this point in time?

Mr Smolenski—No, no procedures, no tribunal, no inquiry, state or federal, or any court, federal or state.

Senator PARRY—Thank you. Not even a parking meter fine!

CHAIR—Mr Smolenski, based on your experience working with Customs—and perhaps Mr Spanswick would also like to add something—what do you consider to be the main areas of corruption risk in that organisation?

Mr Smolenski—That is a broad question. I think you have to step back from the premise of what the Australian Customs and Border Protection Service is. It is the prime border control agency for the Commonwealth of Australia, but it has broad responsibilities across the other jurisdictions.

As I said in my submission, it is the largest collector of actionable intelligence for the law enforcement community: federal and state police; the Australian Crime Commission; the Australian Commission for Law Enforcement Integrity, ACLEI; state jurisdictions; anticorruption bodies; and the normal processes of law enforcement at a state and federal level. It is also the collector of the largest amount of national security intelligence because every person that enters and leaves Australia has to go through the Australian Customs and Border Protection Service passport control areas. Every aircraft that enters or clears Australia has to go through an Australian Customs and Border Protection Service point, at one of 100 points around the country. Every passenger has to travel through a passport control manned by Customs officers. Every yacht that enters Australian waters has to report to a Customs control point and have contact with officials from the Australian Customs and Border Protection Service.

There is not one section or part of the agency which is not susceptible to corruption. That is not to say that every part of it has corruption in it. There is susceptibility because it is such a decentralised agency, and that is the only way that it can do its work for the Australian people, the Australian parliament and the Australian government of the day. It has to balance the twin aims of strict enforcement of the border against fraud, organised crime, terrorists and the illegal arrival of boats into Australian waters. It has to comply with commercial shipments of the goods that we as a nation, all of us here, enjoy; both imports for our businesses and what we export as a nation. Because of its responsibilities there are areas of potential everywhere.

The problem with the Australian customs service in my 25 years has been that there is no place where serving officers are able to take their concerns with maladministration, serious misconduct or corruption and have them heard. There are outside bodies but they do not have the jurisdiction. They have teeth but not the jurisdiction. The New South Wales Crime Commission, the corruption commission in Queensland and the anticorruption commission in WA do not have the reach because they do not have the legislative power. The ACLEI may not be perfect but it is the appropriate place for the head of the agency to the bottom and everything in between. As I said in the submissions, customs officers are some of the most powerful law enforcement and bureaucratic officers in the country. They have power over goods, persons, ships, yachts on behalf of all of us. Just as we arm police officers with firearms and powers we do so with some 5,000 customs officers. There is not a place where there is not the potential, but I believe there are some very key places where there is corruption and hopefully you will let us give you examples of where it has occurred and why the terms of the legislation should be varied to include the Australian Customs and Border Protection Service.

CHAIR—On that point I am assuming that if ACLEI's jurisdiction were expanded to include the customs service you would submit that it should not be restricted to those officials performing a law enforcement function but be extended to everybody in the customs service?

Mr Smolenski—Correct.

CHAIR—Is that because there is so much changeover and moving around of jobs in the customs service that at some point or another most people will perform a law enforcement function?

Mr Smolenski—That is correct. But the other reason is that many of the powers of customs officers from the Customs Act have now been delegated at a central point. I believe that is dangerous because it is not transparent for the machineries of government and for the oversighting of parliament. What I mean by that is that if you put the delegation of powers in certain SES positions or the chief executive officer—and I am not saying he or she should have their powers restricted—there is a large delegation of powers upwards and that has occurred over a period of time after a number of reviews, parliamentary submissions and what business has said. The problem with upwardly centralising the power is that you have no oversighting of the exercise of that power as is currently the situation. You create a climate conducive to corruption, serious misconduct and maladministration, which I believe—and I have given some examples—has occurred in the past and is occurring today.

CHAIR—Mr Spanswick, do you want to add anything there?

Mr Spanswick—The short answer is yes. In my view it is appropriate for the committee to have a little understanding of the history of customs in relation to corruption, and I think that was the question you were putting in your first statement after your introduction, Madam Chair. In days gone past officers have been stopped from doing their job even though the Customs Act and particularly section 232 before the parliament amended it required officers to seize prohibited imports when they knew that they were in a particular place. The example I give is weapons that were specifically designed to kill people—that is, Armalite rifles and AK47s, weapons designed for the military to kill people. Officers found that they were on sale in gun shops and under their legislative responsibility they went to secure the particular weapons but

were not allowed to do so. I took the matter to the minister for customs at that time myself, and the minister for customs took my complaints on board and said that he would look at them but deferred at that time to the chief officer of the state of New South Wales where the matters were in question. His excuse was that we did not have the resources and that he would look at them. The very next day schedule warrants which allowed us to go and do our duty were withdrawn and none of the weapons were secured. The matter of selling those weapons into the future continued and, of course, the results were Hoddle Street, Queen Street, Strathfield Plaza and then Port Arthur.

Had there been a venue for officers other than the venue through me to the minister, which went nowhere—notwithstanding the legislation which required officers to do what they should have been allowed to do—to have the matter properly dealt with, it would have been handy, to say the least. Now that we are in 2009 there is a piece of legislation, albeit brought in in 2006, that would have allowed that sort of a situation to be properly looked at.

I will go back in history, and I will bring you up to date as we speak about other matters shortly. We had colour television importation by a minister of the Crown. Officers were browbeaten, coerced and bribed into changing their official diaries from the truth to something other than that. There was no venue to address that matter. I took the matter to the press and you may recall if you are nearly as old as I am—and I do not think any of you are—two ministers of the Crown and the Chief Executive Officer of Customs were sacked and an officer was out of the service on medical grounds. Had we had an opportunity then to go to an appropriate place other than the press, it would have been handy as well.

The worst part about that was the inquiry that was put in place at the time by the government did not have a term of reference to look at the colour television importation and subsequently it was thought that the matter would rest as it did prior to the inquiry's deliberations. However, when the inquiry was over both the secretary and the inquiring officer took me aside and told me that, notwithstanding their terms of reference, the matter of the colour television was looked at and examined by the inquiring officer, Mr Frank Mahoney. His opinion was that the television was pre-orchestrated to be imported by ministers of the Crown and chief officers of the Australian Customs Service for reasons not given to me. That was his view about the importation. Nothing was done about that.

Had there been at the time a venue other than the ones that were available then and still are today, quite frankly—they go to the Public Service Commission, the Merit Protection Commissioner and the Ombudsman as we now know them—it would have been helpful. They were inappropriate because, as you may understand, their activities deal with fairness of play in relation to matters; they do not go to the actual substance of the matter concerning the officer—that is, the importation of a television set.

We have pornography matters that went to, in days gone past, the seizing of a chest of pornography, including child pornography, as big as the table you are leaning on there, Madam Chair. We were required to return that to the people from whom we seized it. We did not understand why. We did some background information checking and found that one of the directors of the company concerned just happened to be on the day the Minister for Customs. Matters such as those were matters of corruption in my view in days gone past.

I will go to today while we are on the subject of pornography. I have been briefed by officers about this. When you us the questions I may or may not be able to tell you in public the names of the officers who have been briefing me. We go to the lockers of officers at Sydney airport and open them for reasons I do not want to discuss at the moment and find child pornography. We find that the officer concerned has a second locker at Sydney airport. We find in that locker there are bank books with considerable amounts of money moving to and fro, with other officers' names on the bank books. We find that there is a public service board of inquiry in relation to the original officer, who finally gets the sack for being in possession of child pornography, which he stole from the Customs special locker at Sydney airport. What we did not find and have not found it is whatever action was taken against the other officers and whether there was a proper investigation by anybody about the issue itself.

I find it concerning on more than one count, this one included, that one of the officers whose name appeared in the documents and the bank books dealing with the amounts of money is still a serving officer. Nothing is being done about it. I find it extraordinary that other officers currently serving have been—in my words—busted for viewing and distributing pornography on the Customs computer system and busted a second time for viewing and distributing bestiality on the Customs computer system. As we speak, these officers head up certain sections of the Australian Customs Service. I find it extraordinary. Should the committee here decide at the end of deliberations to amend the piece of legislation that you are reviewing to cover the Australian Customs and Border Protection Service, I think it would be appropriate that the organisation that has carriage of the charter of the legislation be given some information about that issue at least.

Then—and I might just finish on this while I have it in my head; I am getting old and Alzheimer's is creeping up—we have Mr Kessing, an ex-officer. A more disgraceful piece of investigative work I have never seen—awful. The man was stitched up to the extent that he finally told the truth, as he should have done in the first place, but, because he was advised by his counsel not to, he did not. I find it extraordinary, setting aside the fact that he has been—in my words—done and stitched up by a court, that we now hear he has committed another offence against section 70 of the Crimes Act, namely, speaking to members of parliament who were in opposition at the time. Nothing is being done about prosecuting that matter. I would love that matter to be prosecuted. Notwithstanding the future, where the Law Enforcement Integrity Commissioner Act may apply, a further investigation through prosecution of a colleague officer, Mr Kessing, would in my view pick up the stones, open the can and have something constructively done about problems that exist in the Australian Customs Service—in particular, the application of section 70 of the Crimes Act, which I do not think was intended to be exercised and used in the way in which it was.

Having spoken about Mr Kessing in the way I have and the failure of the Australian Federal Police to continue what should be, in my view, a matter-of-course prosecution, I think that, in relation to his matter, the best thing for all concerned would be to grant him a pardon, give him back the money he spent, expunge his criminal record and then go about rectifying section 70 of the Crimes Act and, in doing so, examine the reasons he was singled out and prosecuted in a fashion that I say was nothing more than stitching him up for political reasons.

Sorry, Madam Chair. There are just a few issues there; there are plenty more, I must say. But, as I said in my opening remarks, we only have three-quarters of an hour, not three-quarters of a week or a year.

CHAIR—In relation to the matter of the pornography that you were talking about, is there some reason why the Australian Federal Police are not looking into that?

Mr Spanswick—As I understand from the list of proceedings here today, the Australian Customs and Border Protection Service will be appearing. It could be a good idea to ask them.

CHAIR—We also have the Australian Federal Police appearing.

Mr Spanswick—They may not know about it.

CHAIR—Has the matter been reported to the Australian Federal Police?

Mr Smolenski—I may be able to elaborate. The case my colleague Mr Spanswick talks about occurred in 1994. I was an officer stationed at Sydney airport. My duties then were as a Customs delegate—unpaid. I was called by management to witness the opening of lockers in the old terminal. Customs would notify staff that they were going to clear all the lockers—open up those lockers and move them to a new place—because of the construction of the new terminal. If you know Sydney, there is a second terminal called ITC, which is the southern terminal at the international terminal building.

I happened to be on duty and also happened to be a union delegate. They wanted someone independent from management to make sure that whatever was taken out of the lockers was verified by a management person as well as a serving officer. There was not a view that they were going to find things that should not be there but was more about accountability of the property of officers, some of whom were on rec leave, some were on holidays, we did not know the names of some and some had been transferred. These things fall through administrative cracks.

At a particular time in the morning we came across one particular locker. I had another officer with me and I will give the name of the witness, who is now retired.

CHAIR—I would prefer you not give any names.

Mr Smolenski—There were two witnesses. We opened the first locker and I asked that officer, who is now retired, to drill those lockers for which we did not have keys. We had the permission of management to do it. He drilled those ones where we did not have the keys as sometimes there is no second key around and there is nothing sinister in that.

He called me to a locker. In that locker were about 22 books of child pornography. They had been stolen from a special locker at Sydney international airport a number of months previously. They were in the name of an officer who is no longer with the Customs Service. As Mr Spanswick said, he was dismissed under the old DAC, disciplinary appeals committee, under the Public Service Act 1922.

The officer then proceeded to open another locker further down and I was called to that locker. It was the same officer's locker but it was not the listed number that we had. It was listed as vacant. With my law enforcement background and my investigative ability, this raised my superstition as to how did he get the second locker if it was not accounted for as there was no

name on the side of it? I then called a senior officer and secured the area as I had reasonable grounds to believe there was now evidence of a criminal offence. I am required as an officer of the law to preserve that evidence and the continuity of that evidence. I got the two officers to continue, contacted the senior officer and the director at the time who is no longer with the Customs Service but works at the ANU in Canberra. We then secured the evidence and I was given the job to be the case officer.

CHAIR—We are running out of time here, so you might want to speed this up a bit.

Mr Smolenski—What happened was it was photographed, sealed as per procedure, statements were put together and they were handed to the Australian Customs Service director. The internal affairs unit took that box and I never saw another thing of it until a year later when I was called from Melbourne, while I was in training for the new mobile X-ray vans, and directed to attend Sydney for a DAC hearing. I said, ‘Why?’ They said, ‘That senior officer in Sydney—who is no longer with the service—is now going to be dismissed and you need to give evidence.’ I said, ‘Wait a minute, where are the statements and where is the investigation?’

I demanded, before I got on the plane back to Sydney, ‘I want to know what happened to the statements because I am not going to a hearing without finding out what happened.’ I flew to Sydney and was told that the head of Australian Customs Service at the time, Mr Lionel Woodward, the then Director of Public Prosecutions and the Australian Federal Police had decided that the matter would not be prosecuted on the basis of the public interest.

Madam Chair and members of this committee of the parliament, I know that what I saw in those lockers, the bank accounts and the addresses, was enough for a judicial warrant for a federal judge or state magistrate to have at least three premises in the Sydney metropolitan area raided that day and at least three officers arrested, interviewed and at least two charged and for the Commonwealth Director of Public Prosecutions to put matters before the court or consider those matters. To this day, nothing has happened. It did not stop there. One month later I saw this gentleman out on the street working in a public area in Birkenhead Point. As a private citizen, I was concerned and I notified the local LAC command of this person’s background because it was public information after the DAC hearing.

In 1997 I was the shift intelligence officer at Sydney airport. When I placed an alert for a person who was convicted and caught in New South Wales of paedophilia, their conviction was not recorded. I placed that alert as a shift intelligence officer and I then went on days off. The person flew back into the country in the company of a minor, a 12-year-old from Belize in South America, and the alert never went off. When I came back to work I was told that the alert had been pulled by a director in Canberra. I hit the roof because under the procedures of the Australian Customs Service set by the CEO or the CG, alerts cannot be altered—changed—unless the originating officer, unit or task force—state or federal—puts them on.

When the director told me that the matter was Project Mandrake AFP, I said to them, ‘Since when? This is still a Customs matter and until Customs investigators assess the matter it does not leave Customs.’ We had a long argument and I said, ‘When the inquiry or the royal commission comes, you can answer why you took it off.’ I then archived the information and the name of that director into the Customs computer. When you archive it into the NIS it cannot be extracted; it will be there forever, even if it was not transferred into the National Intelligence System. You

can ask the present CEO, Michael Carmody, if that information is there; it will be under my code name and my reference, C1RPS. It was highly protected.

Three hours later, I got another phone call from the same director wanting me to put the alert on. I said to him, 'You want the alert on, you put it on.' My view is that that paedophile group is operating still in the Customs service. That is one of the reasons why, under the terms of reference, the legislation should be amended to cover the Australian Customs Service from the highest office—the chief executive officer—to the lowest ranking officer, and everybody in between.

Senator CAMERON—You have answered my question on the terms of reference we have before us about whether we should extend the coverage of ACLEI into the Customs area. Mr Spanswick, do you take the same view that there should be an extension?

Mr Spanswick—At least that view. Particularly, as was first mentioned, as a building block. The short answer is yes.

Senator CAMERON—I do not really want to debate any of the issues that you have raised this morning because I am not sure whether they have been aired in other public forums, whether those issues, on the face of them, are extremely serious or whether they have been taken up any authority. If it is on the public record I assume someone will look at that in the appropriate law enforcement area. But I am quite satisfied with your submissions and your genuine concerns about the operation of the Customs Service. I cannot judge the efficacy or otherwise of the submissions you have made. However, I believe you are genuine in your position and you are asking for the extension.

Senator PARRY—Time does not allow us to interrogate further in relation to the merits or otherwise of ACLEI being an agency that has jurisdiction over Customs, although you have given a very clear case. We now have a lot of information in *Hansard* and I want to clarify the matters you have raised. Has every single matter that you have raised here this morning been reported to either a senior Customs official or the Australian Federal Police?

Mr Smolenski—Every one of them would have been reported to a senior Customs official, all the way to the chief executive's office. Whether it has been sent to the Australian Federal Police—because of the delegation of powers upwards in some places—we may not know. In relation to the 1994 incident, it was reported to the Australian Federal Police. The 1997 incident, I do not know, but because of project Mandrake that would have to have gone to the Australian Federal Police.

Senator PARRY—So one of the allegations you are making is that—in the issue with the alleged paedophile returning to Australia with a 12-year-old boy—that matter was currently under investigation by the Australian Federal Police?

Mr Smolenski—No, by the Australian Customs Service. We had the charter at the border and the alert was never instigated. The person went through the airport; through baggage. I went back to do the report, as you have to do for every alert. You have to substantiate by legislation and by policy why the alert goes on. You then have to put an intelligence report in. That intelligence report will be given a classification. It will then be sent to the various agencies or

inside Customs. It will be assessed and then distributed. If there are children involved you will scale-back any identification of children but you will identify the adults for the purposes of ongoing investigation or possible prosecution. In this case it never went to the Australian Federal Police.

Senator PARRY—But it was reported to the highest level in Customs Service?

Mr Smolenski—Exactly.

Senator PARRY—So your strong case to us this morning is that there is systemic corruption within the Australian Customs Service. This is your allegation to us this morning?

Mr Smolenski—At SES level, including in the CEO's office; yes.

Senator PARRY—Finally, you made an allegation that you believe a paedophile ring is still operating within Australian Customs Service today. Do you still maintain that allegation?

Mr Smolenski—I still maintain that because nothing has been done in relation to the 1997 incident or the 1994 incident.

Senator PARRY—Is that the only basis—I am not saying that is not significant—of your allegation, those two matters in 1994 and 1997?

Mr Smolenski—No, I have some others here which relate to my confidential submission.

Senator PARRY—That is fine; I do not need to go there. So there is other evidence you have that makes this allegation still relevant today?

Mr Smolenski—Yes.

Senator PARRY—Finally, you reported that matter to the appropriate channels within the Customs Service when those matters came to your attention?

Mr Smolenski—Correct.

Senator PARRY—You have given us an archive reference, which I believe we will pass back to Customs, where some of these matters are still detailed.

Mr Smolenski—Correct.

Senator FIELDING—Do you have any other information that we need to have? Those claims you are making are very serious. That is the first I have heard of it and they are very, very serious. If you have any more information and it is confidential you can make a confidential submission but I am very keen to get to the bottom of this. They are claims that I do not think this Australian parliament could ever let reside and let go of. We need to get to the bottom of them so I would encourage you to bring forward any other information you have. What I have heard today bowls me over, frankly. The lack of follow-through—that you are claiming—is the reason why I wanted to get onto this type of committee, of integrity; to make sure that the right

thing is being done by those people in authority and by those who have power. As I said, I would be keen to know any other information you have in regard to those matters or any other matter.

Mr Smolenski—In answer to that, Senator, I have two examples in relation to non-prosecutions of persons involved in national security matters. One is Operation Headlock. You should ask the question of the CEO of Customs ‘What has been done about the first person on that operation?’ because that operation was initiated by me. It dealt with an Australian national of Indonesian background who was involved in organised crime. He was detected by the Australian Customs Service. He had come to the notice of the Australian Customs Service for organised criminal matters and importations and was never prosecuted. When he came across the scope in 1999 I initiated an operation—Operation Headlock. That operation then triggered upward intelligence through to Defence and intelligence areas.

The second one is an operation of black flights into Australia. Customs file N02/02028—from February 2007 Bankstown airport—details black flights of undeclared aircraft passing into Australian territory in regional areas and the Sydney metropolitan area. Interiors were stripped. By the time Customs found out, it was too late, because the contents were gone. Worse still, the Australian Customs Service refused to prosecute in this case. I was the case officer and I requested that the information be transferred via Canberra to the United States FDA—the US Customs service—because it involved a US registered aircraft from one of our closest allies. We have an obligation as law enforcement to report. The aircraft was ordered out of the country, but what happened to the two other aircraft which had already entered the country? There was a quarantine risk as well as a Customs border control risk.

To this day the individuals and the informant who rang me have never been brought forward. I was removed from that area, but the informant continued to contact me. I was directed to have no further contact with that informant. To this day I do not know what happened to that informant. But the informant feared for his life, because in that file you will find links to corrupt officials in CASA and corrupt officials in the police force. These are matters that the ACLEI should be looking at and referring to the appropriate mechanisms within the jurisdiction of the administration of justice in our country.

I have only got 45 minutes, but I have a page of stuff here in relation to my confidential submission. I believe that you need to hear at least some dates and examples so that you can ask some questions of the Australian Customs Service about that.

CHAIR—Can I just say at this point that it is not this committee’s role to carry out investigations or pursue investigations. You have raised some very serious matters, which we are happy to bring to the attention of the Australian Federal Police and the Customs Service; although, as you have submitted, the Customs Service is already aware of these matters. We do take everything that you have said today seriously, but it is not our role to investigate.

Mr Smolenski—I understand that.

CHAIR—We do understand your general point as well—that you would like to see ACLEI’s jurisdiction extended to the Customs Service so that these kinds of matters can be appropriately investigated by ACLEI.

Mr Smolenski—From top to bottom. I have one thing I would like to read. This is an email from a Customs officer. I will be very quick. It was sent on Thursday 22 October 2009. It reads:

Hi Richard

Good Luck in the Senate Enquiry in Canberra on Friday 23rd October 2009.

Unfortunately I can't make it due to Mum arriving back and family commitments, ...

I do however will submit a submission to the Committee as soon as I can get the witness statements and other evidence for you. so I need you to go ahead and mention me in your statement.

That I have RESIGNED from Australian Customs due to the following and had no choice BUT to leave ...

1. I was setup by Customs and accused of removing a "top secret" document which was sent to me from Canberra and destroyed the day I resigned. (You were the witness that instructed me to destroy it along with other documents as required by Security protocols)

This was on the day he resigned.

2. I was discriminated against whilst in Customs due to my stand against failures by International Branch

3. I was accused of promoting jobs in Customs overseas based on a false accusations made against me, which I knew nothing about

4. The Management of the Information & Cargo Systems Assistance Call centre have been involved in "corrupt" and "nepotist" behaviour against me during my time in Customs, and that they did conspire along with Senior Executive Management to have me removed from Customs whilst under NSW Region (I can name those people and their roles)

5. That ASIO/Customs has continue to harrass my family, my friends, my neighbours and my church, (listening devices, surveillance, intercepts) and many other tactics are being used to harrass and keep my from talking or telling anyone about my situation

6. I am unable to be re-employed anywhere either and have proof of it due to the overwhelming FALSE INTELLIGENCE against me caused by the "witch hunt" about China and Tonga which is not true

7. That Customs officer have been seen on many accession near my partners place of residence and I have no doubt this is harrassment by Customs and Invasion of my privacy and rights as a citizen

8. These matters have never been heard in court nor have I ever been charged with any offence under the Commonwealth or Acts. Why?

9. That I have never committed any act or been involved in conspiracy to commit espionage or any other act of terrorism as indicated by Customs

10. That as an Australian-Tongan I have always lobbied for the rights and living standards of Tongans. Pacific peoples and will always continue to advise the Tongan Monarch its not just a right it is a responsibility and been doing so since my birth.

My submission will be made to the Senate Committee once ALL the statements come in ...

The gentleman is Andrew Fifita. He resigned in 2008. He was forced to resign because of harassment by senior officers of the Customs Service—from the very top of the service, the CEO's office—because he dared to stand by me in relation to my matters. This was an officer of 16 years. He was awarded the Australian police medal and was part of one of the largest operations—the FBI US Customs—where 400 kilos of cocaine was stopped coming into this country. They smashed an organisation and 96 people were arrested. He cannot even get a certificate of service. That is another reason why the ACLEI should be covering this agency and the terms of the legislation should be amended. Your committee should recommend to the parliament of Australia, to the government and to the people of this country, and you should do it, with all due respect, before the end of the year.

Mr Spanswick—Yesterday I received some very disturbing information about the trial of Allan Kessing. I have to do some more background work but I am flagging it to you, Madam Chair, through the good services of the committee secretary, Dr Clough. I will discuss the matter with your secretariat. But it is a matter of concern that I cannot talk about publicly at the moment. I am just forewarning you about what I am intending to do.

Mr Smolenski—I would like to give you this document as well. It is the charter of the Australian Customs internal affairs unit. It will support my document. It is not a restricted document. It has been handed to Customs officers over the years. It is dated 2002, and it goes to the heart of the reasons why the internal affairs unit also needs to be reformed with regard to the way in which I put in my submission.

CHAIR—We will accept that document as additional information. Thank you both for taking the time to give evidence today.

Before I welcome our next witnesses, 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.

[10.09 am]

JEVTOVIC, Assistant Commissioner Paul, Acting Chief Operating Officer, Australian Federal Police

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

WHOWELL, Mr Peter, Manager, Policy and Planning, Australian Federal Police

CHAIR—I now welcome witnesses from the Australian Federal Police. The committee has accepted your submission as submission No. 10. Are there any changes you would like to make before we proceed?

Assistant Commissioner Jevtovic—Commander Walters has appeared a number of times before the committee, and the AFP's operations particularly around its professional standards, I think, are well known to most committee members. That said, if anyone would like us to expand or explain any aspects of what our professional standards work does, and I am sure through questions and our relations with ACLEI we would be more than happy to do that. We thank the committee for the opportunity to appear and to provide responses as necessary.

CHAIR—So you do not feel the need to make an opening statement.

Assistant Commissioner Jevtovic—No, thank you.

CHAIR—In your submission you have noted that the absence of a definition of 'corruption' in the legislative framework creates an element of uncertainty in relation to matters that AFP is obliged to refer to the Integrity Commissioner. Could you expand upon that, please.

Cmdr Walters—This is an issue that we have been engaging with ACLEI on in recent months. The act itself provides a definition under section 6(4) 'engaging in corrupt conduct'—and there are three subsections there. In very general terms I guess that refers to whether there is an abuse of office or something to pervert the course of justice or whether that opens up into broader terms or corruption of any other kind. I do not think that there is any universally agreed definition of corruption, and I think there is commentary around the pros and cons of having a definition of corruption.

In recent times ACLEI, the ACC and the AFP have been discussing a broader understanding of what types of conduct might fall into corruption. I guess where there has been a bit of, shall we say, tension is a view around what should be notified to the Integrity Commissioner in terms of conduct and what might fall within that broader definition of corruption. Some things are quite clear and fall within the definition of engaging in corrupt conduct. But there is other conduct that we have referred to us in Professional Standards, that probably falls into a grey area, and there would be some interpretation around whether it is in fact conduct that would require notification to the Integrity Commissioner or it would be investigated by AFP Professional Standards.

I know that under section 17 of the act there is provision for the Integrity Commissioner and the CEO of ACC to enter into agreement to give a broader understanding or clarification of what

would be defined as ‘significant corruption’ and ‘non-significant corruption’ in terms of the notifications. So I think that the work we are doing at the moment with ACLEI in trying to understand or get better clarity around what should be notified is probably heading in the right direction. Whether we need that definition of corruption is a matter that probably has some advantages and disadvantages. But if we can in a collegiate way come up with a framework that allows us to give interpretation to corruption and what should be notified, that is probably the best outcome for the current situation.

CHAIR—I note that the AFP in its submission supports this committee’s recommendation in its previous inquiry for ACLEI to have a dedicated secure hearing. Could you comment on why you think this is necessary?

Cmdr Walters—I think the very nature of the corruption matters that ACLEI would investigate—and certainly the Integrity Commissioner would be involved in such coercive hearings—requires some confidential or some secure hearing room to allow those hearings to take place with a degree of security and also confidentiality or privacy around those hearings particularly in terms of entering and exiting such hearings. I think that the lack of those facilities for ACLEI does present some difficulties in terms of their fulfilling their obligations in a very effective way.

Ms LEY—I notice that in your submission you talk about the AFP considering introducing integrity testing. Can you explain how that would work in practice and whether there is actually a time line for that to happen or whether it is really only at the consideration stage?

Assistant Commissioner Jevtovic—One of the things that we are very careful of is not to become complacent about our integrity regime. We are constantly looking at ensuring that we have all the tools to ensure that the organisation responds to the requirements of delivering an organisation free of corruption and that integrity is at the forefront of our thinking. It is now well known amongst many jurisdictions in Australia and overseas that the integrity testing concept and regime is something that is practised. It is something that we have looked at in the context of further complementing the framework that we already have. We think that there is merit in it. It allows us to focus more proactively on prevention. I think the key element of an integrity testing regime is that proactive, preventative approach to ensuring the processes themselves do not encourage or make corruption easier to carry out. So integrity testing regimes actually help us focus on that area of prevention.

We have been working on this for the better part of 12 months and we have had some consultations with some key stakeholders, including the unions that are relevant to the AFP. We have given them some in-principle outlines of what we are thinking. That work is ongoing. We do not have a time frame as to when it will be completed. We see ACLEI and particularly the commissioner having a very important role in whatever that regime will eventually look like. I would say that within the next 12 months the AFP will reach a position on our integrity testing regime.

Ms LEY—Where there is integrity testing in comparable jurisdictions, for example overseas, how does it work?

Assistant Commissioner Jevtovic—It is very much proactive, as I said. We have been given some scenarios to look at where, for example, you might have drug handling procedures and there might be a number of reports of an administrative nature that suggest that there might be some flaws in the process by which drugs are lodged which could allow someone who is corrupt or inclined to corruption to capitalise on the deficiencies of that process. The integrity testing regime allows you to apply, in a covert nature, a test as to the strength of that process and the integrity of that process. They are the kinds of scenarios. You can add different scenarios, of course, but it is very much about looking at exploiting any deficiencies that might exist in our processes. For example, there might be a particular area of the AFP where Commander Walters might receive numerous complaints of various natures over a period of 12 months. However, when he looks at them in their entirety, or we sit down and look at them, they may paint a picture of concern about a particular area or a particular area of supervision. You then apply a proactive integrity testing approach to test whether those complaints are coincidental to the nature of the work or whether in fact there are some underlying issues and activities that we should give some further attention to.

Cmdr Walters—One of the key aspects of the model that we are developing at the moment that needs to be highlighted is that we are looking at targeted integrity testing and not random integrity testing. There is only one jurisdiction that I am aware of in the world that does random testing and that is New York. All other jurisdictions adopt a targeted testing approach.

Ms LEY—That means you must have some evidence, if I can put it like that, or some submissions.

Cmdr Walters—It is pretty much an intelligence based test. That is a key plank of the model that we are looking at at the moment.

Assistant Commissioner Jevtovic—Of course, approval to progress such an integrity test would be at the highest level of the organisation and may well even involve the commissioner of ACLEI himself in a joint approval process with the AFP Commissioner. That is one concept that is being considered.

Cmdr Walters—In terms of the process that we are currently engaged in, we have an internal working group involving a number of areas and portfolios within the AFP—legislation program, legal, people services and wellbeing—that are bringing together the various skill sets necessary to develop the model that suits the AFP, having regard to all the various factors. We had a meeting of that group on Wednesday; the Executive Director of ACLEI, Mr Peter Bache, and the director of intelligence, Mr Gavin Larsen, attended that meeting. They will be continuing members of that working group. We have also had preliminary consultations with the AFPA, as was highlighted in their submission, and we will bring them into that working group as we have more, I guess, meat on the bone about what the model will look like. We are very cognisant of the views that the AFPA have raised with us through correspondence and in their submission to this committee.

Senator CAMERON—You have indicated that there is a debate about the definition of corruption and when ACLEI should get involved or not involved. We visited the Queensland Crime and Misconduct Commission. I think they have resolved that problem by having a very low threshold of investigation. They simply say that, if there is a rumour or if we hear

something, we will investigate. I suppose there is some attraction to that approach because it resolves the issue that you have raised. But I am wondering what that approach would do in practical terms to the civil rights of your officers. Have you thought about any issues that could arise if we adopted a low-threshold approach?

Assistant Commissioner Jevtovic—There are a number of issues that would need to be considered about a very low threshold. One of the strengths that we have, obviously, is that we have a very robust and far-reaching integrity framework, so if you relied on ACLEI alone, or if we did not have ACLEI and we just relied on the AFP alone, then a low-threshold approach might have some merit. But when you have an extensive framework which provides numerous options to people wanting to report corruption or poor behaviour and numerous capabilities to respond to those allegations, that is actually a strength. In the context of needing a low threshold I would probably argue that, given the robustness of our framework, we would not, notwithstanding that the CMC in Queensland had different challenges to those which the AFP had, given the background to its formation. That said, obviously if the issue of definition were to be progressed it would be worthwhile looking at the CMC's definition, and other definitions that are available, and in consultation finding one that best suits the environment in which the AFP operates in the context of its relationship with ACLEI.

Cmdr Walters—In the context of the definition of corruption, we probably have good consultation. There are some matters that we receive about which we say there is no discussion needed, that the matter falls within the section 6 definition of 'engages in corrupt conduct', and that is notified. Where we have areas or issues referred to us about which we are not sure, our normal practice would be to err on the side of caution and refer it or enter into some consultations with ACLEI as to whether they believe it is a matter that should be notified. There is probably not so much debate as there is discussion around getting both ACLEI and the AFP onto the same page in relation to matters that should be notified.

The other issue I raise is, if there were a lower threshold for notifying corrupt conduct, that would obviously increase the number of matters that would be notified. As you are probably aware, the Integrity Commissioner can do one of three things in relation to matters that are notified: he can choose to investigate, there can be a joint investigation with the relevant agency or he can refer the matter back to the agency for investigation with his oversight. A lower threshold would result in an increased number of notifications which, with ACLEI's resources, would probably come back to the AFP. The Integrity Commissioner would more likely say that he would be asking the AFP to investigate, with the final report going to him. In essence, the notification would really just be providing that oversight and the investigation would normally be conducted by professional standards.

Senator CAMERON—You really have not got to that issue of the checks and balances for an officer's civil rights. Do you have a view on that?

Assistant Commissioner Jevtovic—My observation of the processes, both our internal process and the process of ACLEI, is that they do in fact strongly uphold natural justice and the rights of the individual. I know, given my key role and that of Commander Walters in adjudicating through our integrity process, that natural justice is at the forefront of our process. I believe that our officers are given every opportunity to represent themselves and their interests and to defend their reputations. Equally, it should be remembered that we investigate to both

prove and disprove allegations made against officers. I think it is often forgotten that we take our role to disprove false allegations very seriously as well. I think that is probably a key component.

Senator CAMERON—The other debate we have had to some extent is about what is the best model for a law enforcement integrity commission. Is it generalist or specialist? Is it a general approach like the Queensland model, or should it be specialist like ACLEI? Does the AFP have a view on that?

Assistant Commissioner Jevtovic—Specialist in the context of—

Senator CAMERON—In terms of concentrating on one area of operation.

Assistant Commissioner Jevtovic—I think the AFP gets immense benefits from having ACLEI since its promulgation. It adds to our integrity and it adds to our credibility. I think it plays a very important role in that. The independence of ACLEI is critical. Having ACLEI, an independent office, has taken the very good framework the AFP has internally to another level. Whether it would be as relevant and would add that value to other agencies is really a matter for those agencies, but from an AFP perspective I think it has been an important introduction to the integrity framework for Australian law enforcement.

Senator CAMERON—If ACLEI had responsibility for Customs as well as the AFP and the Australian Crime Commission, provided that there were sufficient resources, would there be any issues that would militate against an effective operation of ACLEI by widening its scope?

Assistant Commissioner Jevtovic—My personal observation is that if the commission or ACLEI had the resources—and that was the view of government—then that would be a matter for them to determine.

Senator PARRY—Firstly, could I encourage you to draft a definition of ‘corruption’ and get it into us. You might find we get rapid agreement. I would like to go back to integrity testing, which my colleague raised. I was fortunate enough to be with the commission to combat crime in New York. You are right, Commander, about their random integrity testing. I examined the internal affairs bureau of the New York Police Department. A question that arose with them is one that I will ask you: what about entrapment? Have you considered the provisions of entrapment with integrity testing?

Cmdr Walters—Yes. That is one of the issues that the working group would be looking at in the context of the legislative framework we currently have in place or that might be needed to enable us to do integrity testing. One of the roles of the working group at the moment is to get very clear definitional parameters around exactly what sort of integrity testing the AFP would want to implement. That could be an incremental approach over a period of time. We might start with some very focused integrity tests and build on that over a period of time. Certainly the issue of entrapment is something that has been worked into the development of the regime that has also been looked at by the working group.

Assistant Commissioner Jevtovic—Existing and prevailing legislation would continue in the area of entrapment, particularly the robust entrapment legislation in our controlled operations

legislation, so we would see no weakening or diminishing of that existing legislation and we would be working within it; that is for sure.

Senator PARRY—That is the first matter. The second matter, which is probably the harder one, is cost. Integrity testing is very expensive if you do proper scenario set-ups.

Assistant Commissioner Jevtovic—It is a consideration. Obviously for all organisations, the introduction of new initiatives is one that you must look at on a priority basis. The AFP sees integrity as a critical priority. Our credibility comes from it. As a law enforcement agency, I think your credibility is virtually everything; hence, why we have taken time to look at this initiative. Within the Australian law enforcement environment and within the jurisdictions there are opportunities for assistance between integrity areas. In fact, Commander Walters is part of a working group where concepts and best practice around integrity operations are exchanged. Should we continue to pursue and finalise a position on the integrity testing framework for the AFP, there are opportunities for us to capitalise on existing integrity frameworks from other jurisdictions. In fact, when you think of the covert nature of that work, it is normally best practice to have other capabilities carry out your investigations, so there is a quid pro quo, if you like, in that relationship. But cost is an issue. It is something that Commander Walters and I are very conscious of, but not to the detriment of what an integrity testing regime could do to further add credibility to the AFP.

Senator PARRY—I want to move on to ACLEI's jurisdiction. The Heads of Commonwealth Operational Law Enforcement Agencies list has been suggested as a group of agencies that should come under ACLEI's jurisdiction. Do you agree with that because, naturally, the Australian Federal Police would work on joint operations with probably all of those agencies? Do you think there is any agency not on that list that should be included—for example, Centrelink, with whom you may do some operations?

Assistant Commissioner Jevtovic—I am just trying to think of the agencies on the list—

Senator PARRY—I will list them for you. It is hard to constantly remember them all. They are: Attorney-General's Department, Australian Competition and Consumer Commission, Customs and Border Protection, APRA, the Australian Securities and Investments Commission, ATO, AUSTRAC, CrimTrac, Commonwealth Director of Public Prosecutions and Department of Immigration and Citizenship. They are the Heads of Commonwealth Operational Law Enforcement Agencies. Is there any other agency you think should be added to that list and do you think that is an appropriate list, if ACLEI did extend its jurisdiction?

Assistant Commissioner Jevtovic—It would be a matter for agencies to consider. From an AFP perspective, you have heard relatively positive responses as to the role ACLEI can play. I would say it is more appropriate for relative agencies—

Senator PARRY—Can I rephrase the question? Do you constantly have joint operations with those agencies I read out?

Assistant Commissioner Jevtovic—There are a number of agencies there that we work extremely closely with.

Senator PARRY—ACLEI can pick up officers of those agencies where they work in joint operations—is that correct? For example, if you are working alongside someone from the ATO and there is a corruption allegation, does ACLEI have the right to investigate or is it just your office that does the investigation?

Assistant Commissioner Jevtovic—I would have to check on the legislation under the LEIC Act. If they were special members of the AFP for the purpose of that particular joint investigation or that joint task force then, yes, they would fall within the purview of the LEIC Act. If they were working on a joint operation but did not have any AFP appointee status then, I am not 100 per cent sure, but I do not think they would fall within the remit of ACLEI. But we can check on that.

Senator PARRY—As a matter of fairness, would you agree that it would be unfair to have the AFP officer only investigated and have an officer working alongside from an agency not covered by ACLEI, for all intents and purposes, not investigated?

Assistant Commissioner Jevtovic—There clearly would be some difficulties in that kind of environment, yes.

Senator PARRY—Thank you.

Mr CHESTER—I think in your evidence you said that credibility is virtually everything. Have you noticed anything in terms of not only moral and confidence internally with the ACLEI officers but also ACLEI's public credibility? Have you seen any benefits for the AFP in that regard?

Assistant Commissioner Jevtovic—Internally, it was interesting. Personally, I feel that there has been a positive sense around the integrity that exists around the AFP. We give so many options to our people in the context of concerns they may have around issues of corruption, and I think that is very healthy environment.

As I have already said, and you have heard it previously in evidence, we have a broad range of internal options. If someone felt for whatever reason that the corruption or the concerns they had involved part of that internal process, they have the independence of an outside body to go to. I think that is a very strong and healthy environment for an employee to have, and it is one from my perspective that would only be positive. For example, we have not had complaints from people around ACLEI that we are aware of internally. In fact if anything, as I say, the framework in which the AFP operates and the feedback I get is very positive.

Mr CHESTER—I do not want to refer to particular agencies but, theoretically at least, do you see benefits for the staff within those agencies as well as for the public confidence in those agencies?

Assistant Commissioner Jevtovic—From an AFP perspective I think that has been a really important part of ACLEI's role, to give that independent opportunity to any of our staff to raise issues and concerns.

Cmdr Walters—Just adding to that, the Integrity Commission and other members of ACLEI come along to various training programs within the AFP such as some of our recruit training, our interagency integrity investigator program and training for our aviation officers et cetera. There is a very collegiate approach to the integrity framework and the broader Commonwealth law enforcement integrity framework. In that framework we include the Commonwealth Law Enforcement Ombudsman. Whilst AFP Professional Standards has a very key role in that in investigating serious misconduct within the AFP, corruption issues are dealt with with a degree of transparency and independence by ACLEI. There is also oversight from the Commonwealth Ombudsman in relation to complaint processes and the management of complaints by AFP Professional Standards. That is a very, very robust framework and the great thing about it is that it provides an enormous amount of transparency and independence to complaints against AFP members.

Assistant Commissioner Jevtovic—It is probably important to rule a line under the really critical area of education and prevention. Whilst our capabilities are focused around responding to allegations and investigation, we put a lot of energy—and we welcome ACLEI’s support in this area—into education and prevention. We think that is a critical element and part of the positive aspect that ACLEI has contributed to from an AFP perspective.

Cmdr Walters—I think also the Integrity Commissioner’s recent report *Resistance to corruption*, which was the pilot review of our anticorruption measures within both the ACC and the AFP, was most welcome by the AFP in that it gave a very comprehensive evaluation and assessment of our anticorruption measures, which the review found to be quite mature, and it also noted that there was a need for ongoing consultation and cooperation between ACLEI, the AFP and ACC in terms of sustaining those systems and continuing to keep pace with our operating environments. I think the other key thing there was that it was an independent review; it was not something we did internally. So that level of independence from an agency gives a lot of credibility to the outcomes.

Mr CHESTER—You referred to the education and prevention role and I would be very interested to hear you expand on that for a moment, if you would not mind, in terms of educating officers at a very early stage of what can lead to more serious corrupt behaviour, or what is the role there?

Assistant Commissioner Jevtovic—It is an amalgamation of all those things. It is about the kinds of challenges you will face as a law enforcement officer and the issues to be aware of. It is education in the context of providing people with an understanding of where they have concerns and how they may deal with those concerns. It sort of covers that broad ambit. We particularly focus in areas of supervision, which we think is that first line of corruption prevention. It is the role of the supervisor and helping them understand the kinds of things they need to be alert to and the kinds of behaviours they should display in preventing these behaviours. It is a really broad span.

Education is an area that we really have expanded our efforts in, I would say in the last two years. Our professional standards area now gives presentations on integrity to all our recruit classes and all our supervisory classes and learning opportunities—just to keep reaffirming the issue and the importance of integrity and reaffirming that if people have concerns they should come forward, and we encourage them. I think that is the critical element of education.

Cmdr Walters—In the 2008-09 financial year, Professional Standards delivered I think 177 training or awareness programs throughout the AFP. It is that ‘cradle to grave’ approach, from recruit classes through the various development and other programs, through tier 1 leadership, coordinator, team leader development programs—any opportunity we get to talk to, particularly, as Assistant Commissioner Jevtovic said, people who have leadership or supervisory responsibilities. We make sure that every individual has an obligation and responsibility in relation to integrity and professional standards. Leaders and supervisors particularly have an obligation to make sure that they are across issues that are going on in their area.

If you look at the *Dangerous liaisons* report, the report of the CMC in relation to misconduct in the Queensland Police Service recently, one of the key issues out of that was a failure of leadership which allowed those issues to not only exist but also increase. That is something we are very, very focused on: making sure that our leaders are very, very aware of those issues.

Assistant Commissioner Jevtovic—That is actually a very good example. We take learnings from other commission reviews, and we have actually had someone from the CMC come and present to the senior leadership group of the AFP to give their perspective on the report and the key learnings for the Queensland police. So it is about not reinventing the wheel but learning from things that are occurring in other jurisdictions. We share through the organisation through that education process.

Senator FIELDING—I was hoping that you would have given us more of an insight of your feelings about other agencies being under the oversight of ACLEI, given that you are under the oversight of ACLEI and you work alongside a lot of these other agencies. I would have thought you would have been a bit more forthcoming. You can see no reason why they would not be added, other than resources. Do you see what I am getting at? In other words, I was hoping that you know ‘warts and all’ what it is like to be under ACLEI. I would have thought, knowing that you work closely with these other agencies, you would have had more of a view on that. That is all. I do not want to force you into giving a view but it just seems odd to me that you, out of all the people around, would not have a view on it.

Assistant Commissioner Jevtovic—I think that what we have expressed is our strong and positive relationship with ACLEI. I would leave that for other agencies to take on board and apply to their own environment—

Senator FIELDING—But it has been beneficial, of course?

Mr Jevtovic—For the AFP?

Senator FIELDING—Yes.

Assistant Commissioner Jevtovic—Absolutely.

Senator FIELDING—There were some quite serious claims made in the first presentation, that you were not here for. I would strongly urge you to look at the transcript from this morning. Some serious claims were made about—I will not go to the corruption part—pornography and other issues. Quite clearly, I think, they need to be drawn to your attention, if they have not

already been. I would seriously say that you really need to look at that urgently, as a matter of priority, from the hearing this morning.

Assistant Commissioner Jevtovic—When we return, Senator, we will reflect on that and we will look at the *Hansard* and look at what appropriate response should take place.

Senator CAMERON—I have had a brief discussion with the chair. We have a meeting that we are going to participate in. Whether we want to take this issue through your particular branch of the AFP I think is a matter for the committee, but certainly it is an issue that I want to have looked at in private meeting that we are having as to what is the most appropriate determination for this committee to take place. Whether you want to take that on board or not is a matter for you, but I think the committee needs to make a formal decision about this.

Assistant Commissioner Jevtovic—We can await the outcomes of the committee's deliberations.

Senator PARRY—Just on that: so we are very clear, there will be some formal communication with this committee with whichever jurisdictions that we feel appropriate. That is probably the best way to leave it at the moment. Out of the list of agencies that I read out earlier, would you like to highlight which agencies you work the most with, in an operational sense?

Assistant Commissioner Jevtovic—There are different relationships. Some are operationally very close—

Senator PARRY—I was interested more in the operational relationships.

Assistant Commissioner Jevtovic—We work very closely with agencies such as Customs, obviously; DIAC; the ATO; ASIC. These are agencies that, in the criminal environment, we have very close operational relationships with. It would not be unusual to have joint task forces or joint operating teams working with those agencies. Those agencies would come to the forefront of my thinking, unless I have left anybody out.

Cmdr Walters—We have a close relationship, as well, with AGD. So I think—

Senator PARRY—That would be more administratively than operationally, I would imagine.

Cmdr Walters—Yes.

CHAIR—I just have a very general question. In the AFP are there any gaps in the integrity system at the Commonwealth level?

Assistant Commissioner Jevtovic—As it applies to the AFP?

CHAIR—No, I am asking a more general question.

Assistant Commissioner Jevtovic—There are a number of mechanisms for corruption to be dealt with within the Commonwealth. Under the fraud control policy there are avenues by which

referrals from agencies can come to the AFP to investigate corruption in the Commonwealth. Agencies do, in fact, utilise that mechanism quite regularly. I do not have the figures at my fingertips but there have been numerous referrals over years concerning that.

Can we always do better? The answer always has to be yes. We always have to strive to make sure that we are at the cutting edge of best practice in this area, that our processes are seamless and that we are working collaboratively. Obviously, incumbent on the Commonwealth is that every officer serving in the Commonwealth feels that they have avenues through which they can express their concerns and take up concerns. So clearly we all aspire to create that kind of environment.

CHAIR—Right. I note that former Commissioner Keelty, in the Senate committee inquiry in terms of the LEIC Bill, acknowledged that there were gaps in the Commonwealth integrity system. I think he gave the example of where there is a corruption matter in a Commonwealth agency but it is not necessarily a criminal matter that would attract the AFP's jurisdiction. Do you have any view on that?

Assistant Commissioner Jevtovic— I would have to reflect on former Commissioner Keelty's statement on that and put some context around what he was possibly trying to explain. I know of the commentary but I do not know of it in detail. I can have a look at it and I can provide a response to you

CHAIR—That would be great. Thank you.

Senator CAMERON—I had a quick look at your website. I was trying to find out how many AFP officers were engaged within the professional standards area.

Assistant Commissioner Jevtovic—I can tell you that at the present time—I should know this, off the top of my head—we have 68 personnel in professional standards.

CHAIR—As there are no further questions I thank you very much for taking the time to give evidence today.

Proceedings suspended from 10.48 am to 11.06 am

VAN GESSEL, Ms Theresa, Manager, Policy and Legal Team, CrimTrac Agency

CHAIR—I welcome our next witness, Ms Van Gessel from CrimTrac. The committee has accepted your submission as submission No. 5. Are there any changes you would like to make to it before we proceed?

Ms Van Gessel—No.

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

Ms Van Gessel—I would like to start by thanking you for the opportunity to make a submission. As you will have seen from the written submission, CrimTrac's interest in this review focuses on those aspects that examine the merits or limits of extending the Australian Commission for Law Enforcement Integrity's jurisdiction to other Commonwealth departments or agencies that have a law enforcement function. It is CrimTrac's position that ACLEI serves an important function in the law enforcement environment and that if the government saw fit to expand the jurisdiction of ACLEI to include CrimTrac, we would welcome the additional assurance and certainty that that step would bring to our stakeholders.

At the same time, we remain confident that our existing governance, security and anticorruption measures continue to serve us well as a trusted broker of law enforcement information. It might assist the committee if I briefly outline the measures we currently have in place. As an executive agency pursuant to section 65 of the Public Service Act, we are subject to the accountability, responsibility and reporting mechanisms available through the office of the Australian Public Service Commissioner. CrimTrac has sophisticated audit tools that allow for effective tracking of access to our systems. In this context, I should note that last week CrimTrac was short-listed as a finalist in the annual federal Privacy Commissioner's awards, specifically in relation to our technical audit capabilities, which serve to ensure that the personal details held in our systems are protected.

CrimTrac has robust governance arrangements, which include an active risk and audit committee which receives regular reports and oversights external audits which are conducted into aspects of our business. A focus of these audits is aimed at ensuring integrity and security of our systems and processes to target-harden us against corruption. The other governance arrangements, which assist in ensuring the integrity of our systems and processes, include the fact that we have a board of management which comprises all of Australia's police commissioners and the Deputy Secretary of the Attorney-General's Department. That board receives advice from an independent financial adviser and an independent information and communications technology adviser; they are both non-voting members of the board. The board meets and reviews our activities quarterly and is responsible for approving planned activities and projects. The governance framework also includes a strategic issues group, which comprises assistant commissioner representatives from each of Australia's police jurisdictions, who monitor our projects and are represented on each of our project boards. All of CrimTrac's projects and procurement activities are closely monitored and they are governed via the PRINCE2 and managing successful programs methodologies.

I perhaps should reconfirm for the committee that the CrimTrac agency has no operational law-enforcement functions. We are very aware of that. Our staff do not investigate crimes, provide direction to police on investigations or analyse the information that we hold. We are differentiated from the operations of the Crime Commission and the AFP in that we are subject to the Privacy Act and we conduct privacy impact assessments on all new projects.

Our chief executive officer is responsible to the minister, the government, the parliament and the public, in the same way as the secretary of a department. In that context, while the agency are open to an expansion of the jurisdiction of the ACLEI to include CrimTrac and would welcome the greater accountability and transparency that would come with such an arrangement, we do not intend to imply in any way that our current governance, accountability and oversight arrangements are not sufficient to ensure the integrity of our staff and the data that we hold.

CHAIR—Thank you very much. Could you comment a little further on the kinds of corruption risks that might be present in CrimTrac’s activities?

Ms Van Gessel—The only corruption risk that we have identified is that, because we hold data of a highly personal nature, particularly law-enforcement data, it may be possible for someone to make an approach to one of our staff to gain access to that data and provide it to organised crime, for example, for nefarious purposes.

CHAIR—CrimTrac has submitted that it would have no problem with ACLEI’s jurisdiction being expanded to cover CrimTrac. I take it that that would mean covering all officers within CrimTrac rather than those who carry out a law-enforcement function, since none of them do carry out a law-enforcement function.

Ms Van Gessel—That is correct.

Senator PARRY—Ms Van Gessel, could you explain the internal processes you have to detect any corruption or serious misconduct?

Ms Van Gessel—Given that the main fear around corruption is around access to the data, we have audit functions that operate over that data. We have a new system called CALIF, the CrimTrac Audit Log Integration Facility. That function runs over our systems and is able to provide up-to-date reports on who has access to the systems and for what purpose.

Senator PARRY—Do you do random checks?

Ms Van Gessel—The audit function operates continually and the security officer does checks of those logs on a regular basis. If anything of concern comes up, they can then target specific activity.

Senator PARRY—Does that include the CEO—is the CEO monitored? I am not suggesting there is any corrupt behaviour.

Ms Van Gessel—I believe all staff are monitored, but to be fair I do not believe the CEO actually has access to the systems. I do not have access to those systems. You need a series of password logins to gain access. The CEO’s access to the systems is obtained through authorising

members of staff who have that authorised login to gain access. So it is a very restricted pool of people within the organisation who can technically access the systems, and I do not believe the CEO has that capability.

Senator PARRY—Do you currently conduct, or have any intentions of conducting, any integrity testing?

Ms Van Gessel—We do not currently conduct any integrity testing. It is not something that has been considered. It is certainly something that we would be open to considering.

Senator PARRY—Can the organisation be penetrated remotely for data access?

Ms Van Gessel—Not that I am aware of. I should explain that, obviously, being in policy and legal, I am not great on all the technical aspects.

Senator PARRY—That is all right.

Ms Van Gessel—My understanding is that our data is carried to the police jurisdictions, who access it through the Australian Federal Police wide area network, so our information is as secure as the information within the police's own system.

Senator PARRY—Thank you. I am just asking these questions to get a picture as to the need for CrimTrac to be a part of ACLEI. Thank you.

Ms LEY—Can you give us some sense of how information might escape from CrimTrac back to the jurisdictions from which it was derived and then be subject to getting to people it should not?

Ms Van Gessel—I suppose I should ask you to clarify what you mean by 'escape'.

Ms LEY—You gather information from other sources and jurisdictions. Is that in a raw form which makes it not as useful to them as it becomes to you once you put it all together? If so, to what extent does it go back to the jurisdictions?

Ms Van Gessel—It might be useful for me to briefly explain how we function. CrimTrac acts as a warehouse, if you like. Each of the police jurisdictions have their own independent systems into which they enter information. If they attend a burglary, for example, they enter that information into their system. It is then transported into CrimTrac's data systems via the closed network. We then hold it on our system. Say the incident was entered in Queensland and fingerprints were found at the scene. Those fingerprints would be entered into the system. If someone in New South Wales was doing a check, they would go into their New South Wales police system, enter fingerprints into their system and run a check through the holdings on CrimTrac. We do not add anything to the information; we simply house it so the police who enter it and other police can access it. So, in terms of it being raw data that could be misused, the way the data is protected is through the mechanisms or authorisations in each police jurisdiction covering who has access to that data. The data itself is not altered in any way. So the potential for misuse very much relies on the police who are accessing it as opposed to anything that we do to it within CrimTrac. I do not know if that answers your question.

Ms LEY—It does. That comes under their own arrangements.

Ms Van Gessel—Yes.

Ms LEY—And you have no responsibility as far as that is concerned.

Ms Van Gessel—No, we have no responsibility.

Ms LEY—That is helpful; thank you.

CHAIR—I have a general question that we are putting to all of the witnesses that are appearing before us today. In CrimTrac's view, are there any gaps in the integrity system at the Commonwealth level?

Ms Van Gessel—CrimTrac does not have a view that there are any gaps. We have not identified any in our limited capacity. So the answer is no.

CHAIR—Thank you very much for taking the time to give evidence today.

Proceedings suspended from 11.18 am to 11.37 am

CARMODY, Mr Michael, Chief Executive Officer, Australian Customs and Border Protection Service

KELLEY, Ms Roxanne, National Director, Enforcement and Investigations, Australian Customs and Border Protection Service

STOREN, Mrs Donna, National Manager, Internal Affairs, Australian Customs and Border Protection Service

CHAIR—I welcome witnesses from the Australian Customs and Border Protection Service. Before we proceed to questions, I would like to advise you that serious allegations have been made this morning in relation to allegations of corrupt activity within the Customs service going back a number of years. I want to advise you that we will be sending you a copy of the transcript from this morning and we will also be sending a copy of that to the Commissioner of the Australian Federal Police. Section 215(2) of the Law Enforcement Integrity Commissioner Act provides that it is not in the committee's jurisdiction to investigate specific matters so for the purposes of today's inquiry hearing we intend to concentrate on the terms of reference of this inquiry. That is so you know.

Mr Carmody—Thank you.

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

Mr Carmody—Thank you, Chair. If there are serious allegations obviously we will examine them very carefully. Perhaps if I can make some observations at the start in referring to the committee's terms of reference. There is a number which I do not feel particularly qualified to make comment on. However, given the proceedings as I have seen them, clearly the issue of concern to the committee goes to the possible extension of the operation of the commission to other agencies including—seeing as I am here—specifically the Australian Customs and Border Protection Service. I thought I would share with you as quickly as I could some perspectives on that from my point of view.

First of all, in looking at the act, the definition of 'law enforcement agency'—as has been pointed out to the committee—is very broad and would cover a whole range of organisations, including my own. The dilemma facing the committee or others is: how broad do you make the sweep of the operations of this? Does making it broader dilute the effectiveness or the capability? There are obviously resourcing issues that need to be brought into that.

Very briefly, obviously in the role I perform and the role performed by the organisation, I have to be very alert to and concerned by any questions of corruption or inappropriate behaviour by my officers. As a result of that, in the last year or so under Donna's leadership we have substantially expounded the operations of the internal affairs unit, giving them new capabilities and a new charter, because of my concerns to ensure that we are as corruption free as possible. In the end event there are always going to be some people—human beings are human beings—

who are susceptible to corruption. Notwithstanding the best internal affairs unit and the best operations you have, there is always a risk in relation to individual officers.

I talked about the dilemma the committee faces. I am not going to pretend to try and answer that for you. The point I would make is that in coming into this role there is always a broad sweep of concerns that go from corruption down to other, lesser issues. I will mention my greatest concern. Given our role at the border—particularly if you think of the significant consequences of attempts by criminal syndicates to bring illicit drugs, or other items of concern to the community, across the border—I would be surprised if there were not syndicates who felt that they would be advantaged by compromising one of my officers or otherwise, or even trying to gain employment. I am not suggesting we have any evidence of any systematic attempts in that way, but it is obviously a concern to me. My officers make decisions about what goods should be inspected and so on. That is a major concern to me.

Notwithstanding the actions we have taken to ensure we have an appropriate internal affairs unit and the action that is taken in conjunction with the Australian Federal Police—indeed, we have seconded an Australia Federal Police officer to be a senior person within the unit—I always find advantage in something independent of the organisation being there to reinforce and assist. That brings you back to the dilemma: how far do you take it? Mr Moss talked to you about what differentiation he makes between customs, border protection, DIAC and my old organisation in terms of this. There are genuine issues in that, if you spread it too wide, you lose—to me—what is the key around serious and organised crime potential compromise and infiltration. That is my perspective.

Given the seriousness of the duties that we perform and given, at the top end of the scale, the risk that there could be criminal elements who would like to compromise officers, we would benefit from having a level of external involvement. The question then becomes whether you do it for the whole organisation. How do you split the organisation? As I said, do you risk defusing the focus of the commission, or is there some scope to allow for investigation and activities of the commission in relation to particular types of potential corruption or whatever? I will leave that dilemma with the committee, but I just wanted to shed my perspective on those issues.

CHAIR—Thank you for that statement. There has been some evidence given to the committee that the customs service has a practice of rotating customs staff into law enforcement functions so that people could be recruited into the Customs Service to do an administrative function and some time down the line find themselves performing a law enforcement function. That would tend to indicate that, if ACLEI's jurisdiction were to be extended to the customs service, it should include all staff and not simply those performing a law enforcement function. What do you say to that?

Mr Carmody—I think that is the dilemma—and 'dilemma' is my word—or issue that I referred to in my opening comments. It is not only a matter of the fact that someone might be recruited into one area and then moved into another area, and that does occur. If you take the breadth of responsibilities of customs and border protection, we have people investigating antidumping measures and we have people at the primary line at airports. There is a whole breadth of responsibilities. In some ways it is easy to say, 'Well, there might be particular areas of our operations that you might exclude.' You might not have the same concerns about antidumping. But it is the case that officers who would often perform 99.9 per cent of routine

also at some times are involved in interception of goods or whatever. From my perspective, it is fairly hard to draw an organisational—

CHAIR—Line.

Mr Carmody—line. We could attempt to do that. That is why I mused over whether it was more about the allegation and nature of corruption that you might focus on in an organisation like mine—which has this other range of responsibilities—and then you would deal with the issue of how you treated the Australian Taxation Office, which also has some of those responsibilities.

CHAIR—Thank you. In view of the considerable corruption risk, because of the types of activities that the Customs and Border Protection Services are engaged in, what corruption prevention initiatives does the service take to mitigate the risk?

Mr Carmody—That is where I referred to in my opening comments that we have substantially enhanced the operations of our internal affairs unit. We have expanded the resourcing of that. We have seconded a senior police officer as a—what is his role?

Mrs Storen—He is performing the duties of a director.

Mr Carmody—He is performing the duties of a director in there, which helps us both with his experience and with the liaison with the AFP in doing that.

CHAIR—How many staff are there within the internal affairs unit?

Mr Carmody—The number was increased in our latest budget from six to 15. We have given them the responsibility overall for fraud control development and coordination. We have given them an intelligence capability to assist them in their operations. In addition, they support ethics and integrity training for officers throughout the organisation. We have expanded the range of opportunities for people to bring forward allegations and complaints.

CHAIR—How many staff are there in the service?

Mr Carmody—There are around about 5½ thousand.

Mr CHESTER—Just for clarification: they are spread over how many different locations?

Mr Carmody—We have hundreds—well, I do not know whether there are hundreds, but there are a lot—of district officers around the country at ports and so on and we have officers in the major capital cities. But it is a widely distributed organisation. Enhancing the resourcing and capability of that area, enhancing the avenues for people to make complaints and enhancing our educative function have been the main strategies that we have been employing.

CHAIR—Okay.

Senator FIELDING—I was interested. We had the Australian Federal Police in before and they said that it has been a good thing to have the oversight from ACLEI, that it has reinforced

the issues of ethics and integrity. If the resources were there in ACLEI, could you see any disadvantages of having that external body?

Mr Carmody—Let us put aside the resourcing and other issues.

Senator FIELDING—Yes. Let us not cloud the discussion with resources. Put resources to one side.

Mr Carmody—If I put that aside, I think I mentioned in my opening comments that I am a firm believer that notwithstanding the best internal efforts you make when you have the sorts of responsibilities we have there is advantage in having someone outside the organisation suitably skilled, resourced and qualified to assist us in that.

Senator FIELDING—Obviously from time to time claims are made about, say, corruption. If it is left to internal then there is this bit about, ‘Okay, they would give that type of response.’ Having someone external just allows that extra eye on it. Is that what you are getting at?

Mr Carmody—Almost no matter what you do sometimes conspiracies and allegations get made. First of all, I do not diminish the importance of a strongly functioning internal assurance. Notwithstanding comments that are made, having a strong internal assurance is a foundation stone. Sometimes you just have to put up with allegations and deal with them and make sure they are dealt with. I guess the point I am making again is that, given the nature of some of our operations and the potential for criminal syndicates to compromise them or our officers, having a body that is more widely experienced in that through its operation with other law enforcement agencies, their experiences there and what they can bring to the table—and, you are right, having an external outlet at times—are advantages. It is up to governments and committees to weigh up whether resourcing is justified.

Senator FIELDING—You said internal affairs went from six to 15. I am just trying to work it out. What was it?

Mr Carmody—It was increased staff numbers from six to 15.

Senator FIELDING—That is a huge increase. On one hand, there are still small numbers compared to the number of staff you have. What led to that change? That is a big change. Does that make sense? It is nearly three times the number.

Mr Carmody—Yes, it is a big change. When I moved in, we changed our structural arrangements to move—and this goes to the point about distribution—to much more national operations. Previously, it was very much decentralised. We are still distributed around the country, but we run national programs these days. As part of that reorganisation of the organisation we started to look within our corporate areas at the internal assurance function. I cannot remember the exact chain, but in my mind when this issue came up I just felt for the size of the organisation and the risks that were there this was an area we needed to invest in.

Senator FIELDING—So there was not an internal review that said, ‘Look, the potential risk for corruption has gone up and therefore we need to double to nearly triple the size of internal affairs’?

Mr Carmody—I am just being reminded that there were some internal movements from investigations. Would you like to just inform them?

Mrs Storen—What initially happened with the fraud control responsibilities was this. They moved from our investigation function through to internal affairs. Initially we only had investigations, and that was a team of six. With the fraud control responsibilities that came to the area, that increased our staff numbers. Then we developed an intelligence function and then had a number of extra investigators join the team.

Senator FIELDING—Therefore, what we are saying is that there has not been an increase at all. It is just that we have changed the deck chairs of people looking after things. Is that what we are talking about? I am just trying to be real. I am left with the feeling that we have increased it—doubled it, nearly tripled it—from six to 15, but you have now told me it was just rearranging the deck chairs, that they were doing the work anyway.

Mrs Storen—When the fraud control function came to the area it was not staffed, so we staffed it with two individuals. The other 13 staff were then centred around investigations and intelligence and we increased that function.

Mr Carmody—Increased staffing.

Mrs Storen—Increased staffing function.

Senator FIELDING—Have there been any reports into that at all?

Mr Carmody—In what sense?

Senator FIELDING—In regard to reviewing the potential risk; whether it has changed or increased. Have you had any reports done on that?

Mr Carmody—The establishment of this is fairly new and so we have not done a review as a result of that. The best I can say to you, Senator, is that this was part of a review of the organisation. I am sure I will be corrected if I am wrong but there was some transfer of functions and staff but additional staffing was put into the function. While it was part of a restructuring of the organisation, it also reflected my concerns to increase the capability.

Senator FIELDING—When was the last time there was a potential risk audit done in your department in regard to corruption?

Mrs Storen—We conducted a risk assessment in 2007.

Senator FIELDING—On the potential risk for corruption?

Mrs Storen—Senator, with the Customs and Border Protection Services we deal under the fraud control policy. I know this will sound odd to you but we do not deal under corruption definitions; we deal under the fraud control definition. So we conducted a risk assessment under fraud. We are still using that through our risk assessment process and a new risk assessment will be in place in the near future to conduct a review.

Senator FIELDING—There is a difference between fraud and corruption. There is a very big difference and this is what we are going to get to, I think.

Mr Carmody—But you understand we are operating under the fraud arrangements that embrace corruption.

Mrs Storen—If you have a look at the definition under fraud control, corruption is a subset of fraud and not the other way round.

CHAIR—It should be the other way round.

Senator FIELDING—Correct!

Mr Carmody—We are operating under the fraud control arrangements of the Commonwealth.

Senator FIELDING—I think that is very strange.

Mr Carmody—That does not prevent us from being very concerned about corruption, Senator.

Senator FIELDING—I am saying the audits should be on potential risks of corruption, because then you know what the real risks are and can make sure you have the right resources attached to that rather than always underestimating the potential problem.

Mrs Storen—We are changing our strategies in the organisation but predominantly—because we work under the fraud control guidelines—we do need to work within the definition of fraud. We are looking at anticorruption strategies and have implemented a new Customs and border protection framework, which deals with preparedness, prevention, detection and resolution. So we are actually taking it a little bit further than some of the other agencies.

CHAIR—Who sets those fraud guidelines?

Mrs Storen—The Attorney-General's Department.

CHAIR—So you are saying that you cannot alter that. It would have to be the Attorney-General that would alter that?

Mrs Storen—Yes, that is correct, Madam Chair.

Senator FIELDING—I am thankful for your statements before—that you will take those claims seriously.

Mr Carmody—Absolutely.

Mr CHESTER—This question is in relation to something you have touched on, Mrs Storen, regarding the education or prevention role. Can you give me some understanding of whether it is

an induction process when you have new officers starting or whether there is an ongoing culture of prevention in identifying possible risk areas. Could you run through that for me?

Mrs Storen—We have a major focus on education and training. We provide a presentation to every induction program that comes through the organisation. This year we have provided presentations for over 3½ thousand participants from Customs and border protection and contractors. In that role, we also provide updates on how to report incidents—whistle-blowing—within the organisation. We talk about ethics and integrity and the importance of that within the organisation. We target every region. Customs and border protection is a very fluid organisation, so if there is some downtime at the Sydney airport between 10 and 11 o'clock at night then that is when we might be providing the education and training. We actually work with the organisation, so we are not interrupting operations. Does that answer your question?

Mr CHESTER—Yes, fairly well. Building a little on your opening comments, Mr Carmody, you referred to trying to be as corruption free as possible and that there is always a risk in relation to individual officers. Is it unreasonable then for the public to expect zero corruption in high-risk areas of your service? I do not want to tie you in knots on it, but what can we expect as a tolerable level?

Mr Carmody—That is a very difficult question to answer. People will have views of corruption and what is corruption. I do not think you can ever be in a position where any organisation will never have an instance of someone being corrupted or operating inappropriately. I think it is unrealistic to expect that—though I would love to say that you can put in systems and processes and everything else—because we are human beings with all our foibles and potential. What that does say to me is that the community should expect that an organisation have in place both preventive education and a strong assurance of an investigative capability that tackles issues and is not afraid to tackle those issues.

Mr CHESTER—Are you confident that under your current structure you have in place the capacity that you have just described?

Mr Carmody—I believe we have a very good capability. I have no doubt that it has only been in its present configuration for a short time and we will have to continue to review it. I am certainly satisfied that we have moved forward. The question that has been raised by the committee is whether there an advantage in something. In saying that, I am not precluding the comments I have made about the potential for external risks.

Ms LEY—With regard to your internal affairs department, if somebody from outside the organisation—for example, a customs broker—had an issue they wanted to raise, would they have an ability to raise it directly with the internal affairs department? How would a reference arrive within that section?

Mrs Storen—There are a number of ways. We have a compliments and complaints hotline and a frontline hotline. Any external body or individual can forward a complaint or compliment through those telephone lines. We also have an opportunity for people to make complaints directly to internal affairs.

Ms LEY—So somebody from outside the organisation can be connected directly and have a conversation with someone within the internal affairs section without going through any other areas of Customs.

Mrs Storen—That is correct.

Ms LEY—Following the cocaine bust at Sydney airport earlier this year—the smuggling ring that was identified—what processes and actions did Customs put in place?

Mr Carmody—Can I introduce my National Director of Enforcement and Investigations, who might be able to give some assistance here.

Ms LEY—I appreciate that there are ongoing investigations. I am just looking for a sense of the response, the process and any resulting changes. Keep it as broad as you need to.

Ms Kelley—Yes, it is an ongoing operation, so comment will have to be, I suppose, quite broad. It was a joint operation with the Australian Federal Police. The Australian Federal Police are working on any action against the individuals in pursuing those individuals. In terms of our normal process around those types of joint operations: if information comes to light around any issues with Customs officers, they are immediately referred to our Internal Affairs Unit.

Ms LEY—Presumably, Customs looked at the chain of events which could have resulted in what was alleged to have happened. Has that chain of events been investigated to see whether changes could be made to processes within the organisation—recruitment, appointments, supervision or whatever they may be—as a result of that?

Mrs Storen—We are working on an organised crime strategy with our law enforcement strategy area. One of the key areas is to look at infiltration and corruption. We also work very closely with our people branch, which deals with recruitment and security. Michael has endorsed our annual plan for 2009-10, and one of the enabling risks is ‘ethics and integrity’, which includes infiltration and corruption. So we are looking at those key strategies to try to improve our processes in relation to people within the organisation.

Mr Carmody—I am having difficulty, in light of the ongoing investigation, as to what is behind your question.

Ms LEY—The ability of the organisation to respond to what is a problem and what it might be putting in place to make sure that a similar problem does not recur in the future—or identifying where it may be occurring elsewhere within the organisation, which you may not be aware of.

Mr Carmody—I am still trying to work out whether there are allegations about officers involved in this particular instance or whether you are talking about the fact that there was an attempt to bring in—

Ms LEY—Yes: the allegations that there were officials from the organisation involved. If you prefer not to comment, that is fine. I understand.

Mr Carmody—I think I would prefer not to.

Ms LEY—Within the Internal Affairs Unit, how much effort is dedicated to proactive ethics training and providing a culture where corruption and serious misconduct cannot take place and how much is dedicated to responding to complaints and concerns that are made? In other words, what is the approximate division of time, resources and effort between the proactive and the reactive?

Mrs Storen—I would not be able to give you an estimate of time but, in relation to resources, we have five staff who are dedicated to intelligence and our fraud control responsibilities. The remaining staff are dealing with investigations. This year we have also dedicated resources to putting out a fraud awareness survey. Instead of calling it ‘corruption’ we call it ‘fraud control’. The fraud awareness survey we put out this year went to every member of staff in the organisation so we could look at what the awareness in the organisation was as well as at improvements that we could make in our branch.

As I stated, we have provided 3½ thousand participants with education and training in relation to ethics and integrity. We also have a compulsory online code of conduct and ethics training, which is linked to performance management. Every staff member within Customs has to undertake the mandatory training each year for progression with the organisation. So we do have some dedicated resources throughout the organisation for education and training and targeting all employees within the organisation.

CHAIR—I have a follow-up question to Ms Ley’s first question about the Internal Affairs Unit and conducting investigations. We have had a submission to the effect that the Internal Affairs Unit can only commence investigations of suspected serious misconduct and corruption on the reference of the CEO or deputy CEOs and cannot conduct an investigation on its own motion. What do you say to that?

Mr Carmody—I understand that that is the case. I am sure I was aware of it; I am sure I must have seen some document.

CHAIR—Are you saying that that is the case?

Mr Carmody—I think it is. Can I say to the committee, it having been brought to my attention, that I think I need to review that.

Senator PARRY—In relation to the Internal Affairs Unit, what are the qualifications of the people? Apart from one AFP officer, what are the other investigative capabilities of the unit?

Mrs Storen—All the members of the unit have a minimum standard of certificate IV qualification. I have two members at the moment who are finalising that.

Senator PARRY—Are there any other life experiences in investigation and policing?

Mrs Storen—In relation to life experience I have people from age 22 to 54. There are people in the unit who are ex police officers, ex military police officers and all members have some criminal investigation background.

Senator PARRY—What about rotation and selection criteria? Do you rotate them through the unit and what is the selection criteria?

Mrs Storen—For a minimum standard they must hold a TS clearance and Certificate IV in Investigations, which is for our junior investigators. The managers must hold an Advanced Diploma or Diploma in Investigations. I have only been there for two years and at the moment we have been recruiting people to the area. From next year I would like to see us rotating people through our branch.

Senator PARRY—Can people apply to join that unit or are they personally selected?

Mrs Storen—There are a couple of people that have been selected and other people have applied to come to the branch.

Senator PARRY—Moving onto the organisation as a whole, do you have any declaration of interests or financial statements that need to be provided for EL or above or at the SES level?

Mrs Storen—Yes, all SES officers must provide financial declarations. All members in the organisation have security clearances. If you hold a TS clearance or above you must provide a financial declaration.

Senator PARRY—Where are they? Are they just put in a bottom drawer somewhere or are they analysed regularly?

Mrs Storen—That would be something that would be analysed, I presume, by our security area.

Senator PARRY—Does that apply to the CEO? Do you also have to comply with that, Mr Carmody?

Mr Carmody—I have a top secret clearance. I have just been through a clearance, Senator, and if it is now not known about me, I then do not know what the situation is. It is a gruelling experience.

Senator PARRY—Moving onto ACLEI's role and an examination of where ACLEI may fit with Customs and Border Protection, you are familiar with the Heads of Commonwealth Operational Law Enforcement Agencies, HOCOLEA?

Mr Carmody—Yes, I am.

Senator PARRY—Are you familiar with all those agencies? I am happy to quickly read them out because I want to ask a question about them.

Mr Carmody—I could not run them off but I am familiar with them.

Senator PARRY—AFP, ACC and yourselves, the Attorney-General's, ACCC, APRA, ASIC, ATO, AUSTRAC, CrimTrac and the Commonwealth DPP are the listed agencies. Out of all those agencies could I ask: which agency would you have the most joint operations with?

Mr Carmody—We have the closest relationships with the AFP and the Australian Crime Commission. We do have other relationships depending on the matters.

Senator PARRY—That is the answer I was after. Would you consider that Customs and Border Protection would be probably the most likened agency to the AFP and the ACC in the law enforcement aspect?

Mr Carmody—In some aspects of our operations.

Senator PARRY—Out of those other agencies, excluding AFP and ACC, would you more likely to be regarded as a law enforcement type of an agency?

Mr Carmody—I do not know whether I could comment on all the other agencies.

Senator PARRY—Can you give me any idea of the number of joint investigations that you may do with AFP or the volume of personnel involved? That may be something that you need to take on notice.

Mr Carmody—I will have to take that on notice, Senator.

Senator PARRY—And just as best you can provide that information as I understand it might be a difficult thing to come up with. Finally, Mr Carmody, you did make the statement of ‘spread it too wide’. You were concerned with ACLEI spreading it too wide and leaving it as to whether you just focus on some aspects of customs and border protection or the whole lot. Could I suggest that maybe every employee of Customs and Border Protection would have the ability to be involved in corrupt activity, whether you are a data processor or whether you are someone who issues identification cards. It does not need to be the front-end law enforcement officer. Do you have a comment about that?

Mr Carmody—Given the broad definition of corruption in law enforcement, I think that is true of a whole range of organisations. I was just coming from a particular perspective. Even though that definition was broad, the focus of it—I might be wrong here—is about high-end criminal syndicates and possible infiltration. True, on a broad definition a whole range of public servants could be embraced. I hope I am not giving gratuitous advice but if you take the serious end, and you want to be sure that you are dealing with that in the most effective way and establish a body to do that, then to the extent that you start to expand it into a whole range of organisations and important issues—which can be dealt with appropriately through internal assurance units and other areas—to me you are just running a risk of subsuming them in the ongoing issues that can be dealt with, and risk losing a very strong focus on the high-end issues.

Senator PARRY—Would you agree, though, that to really look at systemic corruption or serious organised crime activity within organisations you do need to have a handle on the entire internal affairs investigation and structure of each agency?

Mr Carmody—I think that was the point I was making. At that level you cannot divorce it. In my sense, the way to address that dilemma is to allow that access, but where it is focused on particular aspects of criminal—

Senator PARRY—Are you aware of the model that the AFP and ACC—but particularly the AFP—use? ACLEI does not physically get involved in any internal affairs matter or misconduct. ACLEI only gets involved when it reaches a certain level. But ACLEI has the right to examine the internal processes of the agencies concerned, which probably would alleviate the fear—if I can use that word—that you have outlined here today. Do you have a statement about that?

Mr Carmody—I am not completely familiar with it, but in my sense concentrating on the high-end issues that I am concerned with would be an important issue. I acknowledge that in doing that sometimes they would need to dig into the organisation more broadly.

Senator CAMERON—Bear with me because we come to these hearings with a particular bent. It is about integrity. I have had a look at your website. I was looking to try and find the internal affairs unit and how quickly I would be able to contact the internal affairs unit. I must say that I would not even know you had one by going onto the site. You have a section for complaints and compliments, and it sounds more like something David Jones or Woolworths would do rather than something that is a serious integrity issue. I am just raising those issues.

I went onto another document you have got, which is your strategic statement. I went onto the AFP website and I found it pretty difficult—so I am not singling you out—to find how you would make a complaint to the AFP. But if you put ‘integrity’ into the AFP, up comes more and more documents and analyses of integrity; so it is well documented. I am sure you would find something if you went looking. When you type ‘integrity’ into your website you cannot find anything. It is just not there. I am not criticising—I am just drawing your attention to the difference in the culture of the AFP on their website and your culture on your website. I then said, ‘It may be somewhere else’ and I went to the strategic statement. You have got a strategic statement from 2007-10 and I thought, ‘Well, integrity would be a big issue there’. You set out your aspirations and they are trust, respect and to be valued. And I suppose integrity is a key part of all of those issues but again I typed ‘internal affairs’ into your strategic statement and could not find anything.

I am just raising this in terms of culture. You may have a focused culture which is not clear to the public or to me, someone who is looking at this very quickly and, I must say, in a very shallow way. That would lead me to make a very shallow conclusion. We need to have more emphasis on this issue and, if someone wants to make a complaint to the internal affairs unit, it is not like *Spooks* on the ABC—you need to be able to find it. That would be the first point I would make. If you cannot find it then it is not that relevant to someone. I am sorry to be making these statements, but I am just trying to contextualise the questions that I am going to raise in relation to that.

I am sorry if I missed something because I had to go out for 10 minutes. There is no written submission. Do you support an expansion of ACLEI’s role into Customs? Has that been asked? Did I miss that?

Mr Carmody—I made an opening statement in which I raised the issue about how far you spread it but stated that, particularly given the serious end, where there are perhaps attempts by criminals to facilitate illicit drugs and other things getting into the country, I saw benefit in having the external support.

Senator CAMERON—I missed that point but I think you raised the question of dumping. Should it apply to dumping?

Mr Carmody—Yes.

Senator CAMERON—I have had some experience with dumping in my previous position as secretary of the Manufacturing Workers Union and I know how much money is involved in an overseas company being able to dump. The body that deals with dumping is Customs, and your officers, in my view—and I am not making any allegations against any of your officers—could be targeted by overseas companies. This is a hypothetical. An investigative officer would be giving advice to you and you would be giving advice to government, and, if there was corruption in that area, it could be huge amounts of money. So I was wondering why you would particularly raise dumping as an issue that might have to be pushed aside. My experience is that dumping is one of the key areas.

Mr Carmody—Thank you for your experience. Maybe antidumping was not a good example. The broad point I was making was that I was certainly concerned about potential for criminal compromise in significant areas. I used drugs perhaps incorrectly, but I hope I have made it clear that my distinction was about attempts at significant criminal compromise to my officers or others. It was around my attempt to say where a line might be drawn. I tried to say that. I would not like to make it around organisational elements. I probably gave a bad example, but it was at the top end that I was concerned there would be benefit in addition. If allegations were to occur, we have a strong internal affairs unit that would look at them and, as necessary, the AFP and others would be called in.

Senator CAMERON—Have you benchmarked the resources, personnel and funding, in your internal affairs unit against any other comparative international or Australian body to make a judgment about whether we are putting enough into it, or is it just a value judgment—we think we have got it right?

Mr Carmody—I do not believe we have done any systematic benchmarking. I acknowledge there was a question about consolidation of numbers and things, but my judgment was based partly on experience and partly on concerns about needing to beef up the area. I think we have done that in capability. As I have already indicated, it is only relatively new, but we will conduct a review in the future.

Senator CAMERON—If the committee made a decision to recommend to government that we widen ACLEI's role and that it encompasses Customs, and we said it would encompass every employee of Customs regardless of the classification—that Customs would come in lock, stock and barrel—would that be an issue for the Customs executives?

Mr Carmody—No.

Senator CAMERON—You could work with that?

Mr Carmody—I have already indicated to you that I believe in a strong internal assurance unit and educative function, but I also believe—and this is where I say 'particularly at the high end'—that in potential criminal compromise and infiltration there is advantage in having an

experienced external body to assist in that. How widely you go are matters for broad decision that I am not going to get uptight about one way or the other.

Senator CAMERON—My inexperience in dealing with Customs has been good, and I was not a senator at the time.

Senator FIELDING—They keep letting you back in!

Senator CAMERON—Even though a lot of employers would try and give me a one-way ticket! Compared to some other countries I have been in, Customs have been very professional and very good. I do not have a problem there.

Mr Carmody—Thank you.

Mr CHESTER—It concerns me that I am starting to think like Senator Cameron. Senator Cameron made references to things I have in my notes. I want to explore further the issue of benchmarking and the research or survey work you do in relation to your major stakeholders, and whether they have confidence in your current arrangements in terms of this integrity issue. For an organisation like Customs, public confidence or stakeholder confidence in the way you conduct your business is important. I wonder whether you do any benchmarking or stakeholder surveys?

Mr Carmody—Certainly ‘confidence’—and I use that word regularly in this context—in the integrity of our operations is critical to our ability to do the job. We have significant powers and significant responsibilities. If there was any general sense in the community that they could not have confidence in the integrity of our operations, it would be devastating for the organisation. We have started conducting surveys with the broking community because they are a large part of our operation. I do not think we had a particular issue about corruption, but it was never raised. There are always issues, but there was an overwhelming positive response to our operations.

Mr CHESTER—I am interested in the culture within your organisation and whether you encourage reports of any such activity. Do you believe in the benefit of having an external oversight in terms of staff morale and whether those external stakeholders will see that as a good box to have ticked, that Customs have an external oversight body? Or am I stretching a very long bow for you now?

Mr Carmody—You are starting to get into very broad things and I would be worried about defusing the approach of the body. I do not think we have conducted surveys of whether people feel confident to put forward complaints. But, as Donna has indicated, we have conducted a wide range of education and training—and I acknowledge that it sounds like we need to do some work on our website—but there are a range of avenues for people to come forward.

This is always a bit of a two-edged sword, but I will make the point. Since we have implemented this new arrangement and started to get out more, we have seen an increase in the number of complaints. As much as anything, I put it down to the fact that we are now much more out there amongst staff. I attribute that increasing number of complaints to more confidence in the ability of people to come forward.

CHAIR—I know that staff integrity perception surveys are carried out in other agencies in the Public Service. Is that something that you would consider doing as an agency?

Mr Carmody—In the context of integrity I think we should look at that. In terms of what we have been discussing here and the ability to come forward, that would be worth pursuing.

CHAIR—In terms of the processes for dealing with investigations, if matters were to arise that were potentially criminal in nature, would you automatically refer them to the AFP for investigation or would they be investigated in-house solely?

Mrs Storen—Madam Chair, that would be determined on a case by case basis. As stated before, we assess every matter that comes through to Internal Affairs. We make an assessment as to whether it is criminal or whether it might be an administrative matter. If it is administrative, it goes through to our People Branch. If it is criminal, we will assess that. The fraud control guidelines state that as an agency we can investigate minor or routine instances of fraud, which is what we do. We may determine that a matter is serious and complex and we will liaise with the AFP to determine whether they will take that matter on as an investigation. Under their case priority system, they will let us know whether they will accept that for investigation or whether it will be returned to us for investigation.

CHAIR—In relation to the fraud prevention guidelines, which we talked about earlier, I accept that you have these guidelines from the Attorney-General's Department, which presumably they want you to promulgate in relation to fraud. I would assume that there is nothing to stop the Customs service implementing a broader anticorruption strategy which includes the fraud prevention guidelines from the Attorney-General's Department. There is nothing in the fraud prevention guidelines that says, 'This is all you can deal with. You can't deal with anticorruption matters more broadly.' There is nothing to prevent a broader anticorruption strategy, is there?

Mrs Storen—It is something that we are looking at at the moment. We are reviewing having an anticorruption strategy within Customs and Border Protection. I am not aware that there is anything in the fraud control guidelines that states that Customs and Border Protection cannot have that.

CHAIR—Presumably, the fraud prevention guidelines deal with fraud prevention.

Mrs Storen—Yes.

CHAIR—I would be surprised if they said, 'But you are not allowed to deal with anything else.'

Mrs Storen—No.

CHAIR—So you are not restricted by the fraud prevention guidelines from having a broader anticorruption strategy.

Mrs Storen—They are quite specific.

CHAIR—In relation to fraud.

Mrs Storen—Yes, and as I said, corruption is a subset of fraud under that definition.

Mr Carmody—So you are quite entitled to look at anticorruption.

CHAIR—It is not a subset of corruption. Fraud is a subset of corruption; corruption is not a subset of fraud.

Mr Carmody—That is a debate you can have, but none of that prevents us from doing what you are talking about.

CHAIR—Because you can set your own priorities for your own agency. Do you liaise with the Public Service Commission on these issues?

Mr Carmody—It is not in my consciousness. I am sure there are discussions over time and material would come from the Public Service Commission, but I am not conscious of direct talks.

CHAIR—The Public Service Commission has a code of conduct for public servants and it is setting up a new ethics advisory service.

Mr Carmody—Yes, and we advertise that ethics advisory service.

Senator PARRY—Can I just add for the record—and I think we will be making a submission about this—the definition of fraud in the guidelines is that it includes abuse, bankruptcy, bribery and corruption. It even includes theft, which is really not fraud, so whoever has designed this document has probably used an incorrect heading.

CHAIR—Just using the wrong terminology.

Senator PARRY—Yes. It is a great definition but it is the wrong terminology. Maybe we can make some suggestions about that.

Ms LEY—I am just trying to get a sense of the dividing line between investigations that Customs can do independently and those that involve the AFP. Is it possible to do investigations without involving the AFP?

Mrs Storen—Yes, it is.

Ms LEY—And what would determine whether you did or did not include the AFP?

Mrs Storen—As I stated before, it is done on a case-by-case basis. Political matters need to be referred straight to the AFP.

Mr Carmody—I think there is framework for decision making—is that correct?

Mrs Storen—Yes.

Mr Carmody—If this is the right thing, to help you in your question we will provide this to the committee. We have a prioritisation model, which would go to some of those.

Ms LEY—If you do refer something to the AFP, does the AFP then decide about its priority or the degree to which it is investigated, even if Customs should disagree and prefer that it was, for example, given higher or lower priority? Who takes the lead in this instance?

Mrs Storen—I think that might be a question for the AFP, but there will be some instances that are referred to the AFP and they will then refer it back to the Australian Customs and Border Protection Service. Having an AFP officer in our office has assisted us in liaising more closely with the AFP on matters that we can refer.

Ms LEY—I know we have looked at the ACLEI situation and its possibilities but, broadly, would you see a model where your internal affairs section had to report everything it looked at to ACLEI, with ACLEI having the ability to monitor as required—clearly it cannot drill down and investigate the small incidents that get reported to you—the entire quantum of what does come to the section, to ACLEI, with ACLEI having a broad overview of that? I know these are only concepts, but does that model have problems?

Mr Carmody—I am being rude here, but I think I have made my position clear on the value in particular areas of the external body, notwithstanding the best internal affairs unit that you can have. My only comment on that is that if the body has concerns then open access is important. My only observation would be that if you start to bury people in detail and data you start to risk the ability to defuse. But that is just an observation.

Ms LEY—That is a good point.

CHAIR—I note, Mr Carmody, that you have just offered to provide us with the decision-making framework.

Mr Carmody—I have not been through it to assess what it actually provides but I am happy for that to be tabled.

Senator CAMERON—One of the issues that has been discussed at most of our hearings has been balancing the civil rights of officers of, say, the AFP and the Australian Crime Commission with the need for ACLEI to investigate. Does your unit have any experience in balancing the rights of officers who are being investigated? How do you handle that? Do you have any lessons for us on that?

Mrs Storen—Internal affairs follows natural justice. When we conduct investigations we follow legislative requirements. Individuals and personnel have the right to silence as they would in any other investigation.

Senator CAMERON—Except the Australian Building and Construction Commission.

Mrs Storen—Yes.

Mr Carmody—No comment!

Mrs Storen—Other agencies also have disciplinary acts that give them the right to ask people to answer their questions. We do not have that, so we follow natural justice in our investigations.

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

Proceedings suspended from 12.39 pm to 1.30 pm

OUTRAM, Mr Michael, Executive Director, Serious Organised Crime, Australian Crime Commission

BAILEY, Ms Jane, Executive Director, People and Business Support, Australian Crime Commission

CHAIR—Welcome. The committee has accepted your submission as submission No. 17. Are there any changes you would like to make to it before we proceed?

Ms Bailey—No, thank you, Chair.

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

Ms Bailey—We did not intend to make a further statement. Our submission summarises our input but we are happy to answer questions.

CHAIR—Great, thank you. It has been argued in this inquiry by a number of submissions that ACLEI's jurisdiction should, as a first step, be extended to all members of the heads of Commonwealth operational law enforcement agencies. So as well as the AFP and the ACC, this would include the Attorney-General's Department, the Australian Competition and Consumer Commission, the Australian Customs and Border Protection Service, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, AUSTRAC, CrimTrac, the Department of Immigration and Citizenship and the Commonwealth DPP. In your view, which agencies, of that list of agencies, are at the greatest risk of infiltration by serious and organised crime groups?

Ms Bailey—From our perspective, we appreciate the fact that there is an integrity regime for law enforcement agencies. We think that is a particularly important aspect of our world—that is, it does somewhat distance us from other Commonwealth agencies. As for the extent to which other agencies are subject to infiltration by organised crime, it is hard to generalise in that space. I guess anywhere is open to corruption, by organised crime or just other criminals, so I am not sure that I have a definitive view about any of those agencies being more likely to be open to corruption than others. I do not know whether Michael has a view.

Mr Outram—That is right. I think it is very hard to quantify vulnerability to corruption. I suppose when you look at the implications, though, of trusted insiders or people in the organisation, it would be those who have the most sensitive information who would be most vulnerable. At the end of the day, it is the information that is of critical value for organised crime. So it is about how best to defeat the systems, the processes, the regimes in place, even in law enforcement generally, and how to avoid being caught, how to avoid detection and being tipped off about law enforcement activities and so forth. So it is the agencies that contain the most sensitive information. I can give you a very general answer like that.

The other thing I would say is from our point of view as the Australian Crime Commission. We of course have a particularly distinctive regime for collaborating with other organisations in

that, when we do work with them, their members of staff generally become members of staff of the Australian Crime Commission for the purposes of our legislation, and therefore they become subject to all the secrecy provisions and other penalties that are contained within our legislation. So we are quite comfortable with that approach. It gives us an additional layer of security, I suppose, around our collaboration with non-traditional law enforcement agencies.

CHAIR—Which agencies would you work with the most?

Mr Outram—In the list that you provided, probably the ones we work with most, beyond the Australian Federal Police, would be the Customs and Border Protection Service and the Australian Taxation Office. Beyond that there are a whole range of agencies that we interact with, like the Department of immigration, Centrelink, Prime Minister and Cabinet, Attorney-General's Department. We probably engage with the whole plethora, really, of Commonwealth departments at some level beyond that.

CHAIR—Does the ACC have a view on whether all of those agencies or particular agencies ought to be brought within the jurisdiction of ACLEI?

Ms Bailey—I do not think we have a view on that. That is a matter for others. But I think, as Michael said, the issue for us is where is their vulnerability in terms of access to the information that can expose people to the greatest risk of corruption, and it does tend to reside, to some extent, closer to operational law enforcement. That is one measure, but I am not saying that is the only measure. You could make that observation.

Mr Outram—To go back to that risk issue, just to give you an example: if a human source or an informer were to be identified and exposed through corruption then the risks would be significant, possibly even risk to life. In organisations that tend to hold that sort of information the risk is far greater. So information has different levels of risk attached to it, I would say.

CHAIR—You note in your submission the issue of timeliness of case completion, and I note that cases have been with ACLEI for 12 months on average. You state:

The ACC would be concerned if changes to ACLEI's jurisdiction impacted on its capacity to deal with investigations relating to ACC staff in a timely manner.

Can you expand a little on that. And do you consider ACLEI's current resources inadequate, given the 12-month period for completion of cases?

Ms Bailey—From a purely selfish perspective, any agency that is dealing with possible corruption allegations would really rather have them dealt with as quickly as possible. Of course, we always understand that that is an issue, but we also recognise the realities of life and so the level of resources that ACLEI have is the level they have. So we try to work with them as cooperatively as we can, make sure we get information to them as quickly as we can, respond to their requests for further information and, where appropriate, work on joint investigations with them. Of course we would prefer a timely turnaround on those issues, but the reality is that some of them are complex investigations. I am not saying there are those issues because they are driven by a budget. It may be, but it may be about the complexity of the investigation or the

people involved. It is hard to draw a reason why—except that we would all like things to happen very quickly.

CHAIR—You stated in your submission:

Experience has shown that issuing notices and summonses is an inflexible way for ACLEI to obtain information.

Do you have any ideas about what procedures would be preferable in your view?

Ms Bailey—We did not want to presume to offer an option. We just observed that the process can sometimes be that they will issue a summons or notice or supply a raft of information and in discovery of that they will have a reason for more issuing of summons, so it seemed to us we should try and work out if there was a way that we could better expedite that process and we were not presuming to say how it would happen. I think they might have some ideas. The issue would be that it is very sequential, so how can we give them a better entree to the information because we are very keen to provide what we can to them as soon as we can. That would be a matter for their act. I did not have a model in mind. I just observed that that might be an expedited way to think about it.

Senator PARRY—Mr Outram, I want to take you back to your comment about when you have people working with you from other agencies and they are employed, attached to ACC. I have forgotten the terminology you used.

Mr Outram—They are nominated as members of staff, so they become members of staff not employees for the purposes of the ACC act. There is not an employment framework.

Senator PARRY—Which then brings them under the jurisdiction of ACLEI.

Mr Outram—Absolutely.

Senator PARRY—Are there operations that you would have—and I will use customs and border protection as an example—where they do not come under the jurisdiction of ACC?

Mr Outram—If we decided to disseminate intelligence to the Customs and Border Protection Service then that would be an example of where they would not necessarily become members of staff for the ACC, so it would be a lawful dissemination of intelligence to them under our act and they could then action that as appropriate. There are some requirements in controlled operations legislation for us to notify customers where we think that illicit commodities might be coming over the border. That is another example of where customs would become aware of law enforcement activities not subject to the Australian Crime Commission Act.

Senator PARRY—So in theory you could have a situation where an allegation of corruption is made against an ACC and a customs officer but ACLEI could only investigate the ACC officer.

Mr Outram—Yes, that is theoretically possible.

Senator PARRY—Do you know whether the ACC has been exposed to that extent and that has happened? I am happy for you take that on notice.

Mr Outram—We will have to confirm that.

Senator PARRY—But nothing springs to mind?

Mr Outram—No, Nothing springs to mind

Senator PARRY—The chair indicated the HOCLEA group. Have you examined any internal modeling for the purposes of ramping up ACLEI if that were required from a resourcing perspective? Have you even modelled how you would go about adding an agency or a group of agencies?

Ms Bailey—That would be a matter for ACLEI. The way they use their resources and deploy them across the range of investigations is their internal prioritisation model and rightly so. We are not involved in that. We refer matters as quickly as possible and respond as quickly as possible and really work very closely, but that is a matter for how they prioritise.

Senator PARRY—So there is nothing you can do internally on your side that would aid ACLEI? Are you fully resourced as an ACC as best you can be?

Ms Bailey—The thing I think we have a responsibility to do, which we are focused on, is building our anticorruption regime internally to prevent issues happening. That is our responsibility. We definitely have a responsibility to build that as far as possible into the most robust process we can so that it prevents it happening. Once it happens or there is an allegation that has happened, there is not a lot we can do except to gather as much information quickly and easily. But our responsibility is to build that internal culture to be robust and identify the risk factors around corruption early.

Senator PARRY—Changing tack, it has been suggested that the act is lacking a definition of corruption. Do you agree with that statement?

Ms Bailey—We have a view that the way the act is currently constructed allows us to make well judged decisions about what to refer there without being overly prescriptive. We are working with ACLEI and there is some work going on around definitional matters and how you would do that. I think that everyone agrees that it is important not to be too prescriptive because the exposure we have had so far suggests that there is no pattern, general theme or trend. Things tend to emerge quite differently each time. It is a balance between what the right definition is and what is overly prescriptive, so that some stuff will not be missed out. It is a very delicate issue, but one that we all focus on. Personally, I am inclined towards a broader interpretation from the agency's referring perspective so that you can satisfy yourself.

Senator PARRY—When you said 'we consider', was that just internally in the ACC or other agencies?

Ms Bailey—We have not discussed it outside. We have had bilaterals with ACLEI on it, and I know they have probably had some discussions with our other partners and the AFP. We have only had bilaterals with them.

Senator PARRY—It may or may not surprise you that the Australian Federal Police said they would be looking for a definition of corruption. It is just interesting that there are two different perspectives on that. Do you come under the Commonwealth Fraud Control Guidelines as well?

Ms Bailey—We do, yes.

Senator PARRY—Do you have any comment about that? May 2002 was the last time the document was revised, and it has been mentioned that other agencies that are not covered by ACLEI are covered under those guidelines. I would also be interested in your impression of the title of it, ‘Commonwealth Fraud Control’, which has as a subheading and a definition, ‘corruption’, which we think is back-to-front.

Mr Outram—Corruption can occur in a lot of different contexts, one of which is fraud. In terms of organised crime, it is probably not the main context in which we think about corruption risks. We think more about the integrity of our information, and therefore we are concerned about the people who we recruit into our organisation and what they do with that information—that is the context. Whilst fraud is clearly a risk for us, and we have to manage that as well, corruption can be much broader than that. It can occur through inappropriateness, or just through relationships—sometimes familial or previous business relationships and conflicts of interest. Corruption risks and how you identify them are quite a complex dynamic, as is how you then start to work to minimise them.

Senator PARRY—It is called the Commonwealth Fraud Control Guidelines, and there is a definition of ‘fraud’ which I believe has probably been constructed very poorly. You have jumped to the same conclusion I did, that it relates to fraud when it actually covers everything. It is just a very unusual title. The Commonwealth Fraud Control Guidelines do not conflict in any way with the regime of ACLEI?

Ms Bailey—Except, I suppose, they impose on us as a public service agency this imperative to report serious corruption to the integrity commission.

Senator PARRY—Which you would do anyway.

Ms Bailey—That is the thing. From a public service perspective, the fraud control guidelines are about that broader issue of use of public money and responsible actions. It could be corruption or it could just be fraud or poor administration. We work pretty comprehensively with the fraud control guidelines and ACLEI across our risk matrix. It is important to have all of those things covered, and we are public servants working in this space. We are probably the only agency that just sits across the two, and I think it is important that we uphold the highest public service standards. Then we have this extra responsibility to ACLEI about our integrity and the corruption risk. I think the fraud control is important. I do not have a view about the titling and that, but that issue about public servants being resistant and highly accountable for everything they do make the fraud matters as important to us.

Mr Outram—I might add that if the response itself is to deal with embedded corruption that has got a relationship to organised crime, it can be very difficult to actually get a good outcome from an investigation. You might require some very leading edge investigative techniques and methodologies to achieve an outcome. I think there may be differences in terms of the response you are thinking about; the broader issue around fraud control and corruption that is linked to organised crime.

Senator PARRY—What would you regard as your higher authority—the fraud control guidelines which, as you say, every public service agency is required to follow, or ACLEI?

Ms Bailey—I think I see them as part of the same framework. There is no discretion for us in that we must refer matters of serious corruption to ACLEI. That just sits over and above everything else we have to be as a public service agency. They are not inconsistent, and I have not come across a case yet where those two are wronged. It is just to say that we have that obligation on top of the obligations that every other public service agency has. It is the unique nature of our business, but I think appropriate to the level of risk that we have to manage. That is why it all has to be very integrated from us from a risk perspective. We cannot just focus on corruption; we have to focus on the public service-wide fraud control.

Senator CAMERON—We visited the Queensland Crime and Misconduct Commission and they have a very broad coverage. They indicated to us they thought it was quite successful and it was actually a benefit for the cross-fertilisation between agencies. You have expressed some concern not about cross-fertilisation but about resources and timing and focus, I think. If the resources were there, does that take away the problem? Have you had look at the Queensland model?

Mr Outram—My understanding of the Queensland model is that they now investigate both organised crime and police corruption in two different arms of their organisation. We have not looked at that beyond that. There are other examples, I suppose, where you have had the Independent Commission against Corruption in New South Wales who before the Wood royal commission looked at corruption in its broadest sense and then after the Wood royal commission you got the Police Integrity Commission to take on the police integrity issues and the public service issues were handled separately there. So we have got no fixed view but there are obviously different models around the country that have been adopted. You have got the Crime and Corruption Commission in Western Australia at the moment who are looking to expand, I understand. There may be legislation before parliament in Western Australia looking to expand their remit into the organised crime space. I suppose that goes to that issue of the nexus between organised crime and corruption and potential corruption possibly, but I do not know if there is a best model or that we have got a view about a best model.

Senator CAMERON—One of the other differences between the ACLEI model and the Queensland model is that the Queensland model has got a very low threshold before an investigation takes place. You only have to make an allegation or even a rumour and they will click into action and deal with it. Do you have any comment, if it was a new body, on what is the best model? Is it the serious misconduct model ACLEI uses or the Queensland investigate anything?

Ms Bailey—I think it is important to think about what the individual responsibility of the agency is in terms of building their own culture and corruption resistance regime that allows it to deal with a range of issues that come up, whether they are complaints or allegations, and a threshold test. I think that capacity has to be within an agency. That is important to build the culture, to build the focus, to build the attention. I do not have a view either way. I just think that if you have a low threshold and an outside body, somehow over time does the body stop focusing on that as much and wait things to come up through that? I do not say that does happen, I just say that is one issue you would have to consider about whether if you make the threshold too low the body involved over time is focused less on those things and waits for things to come up through there. We have a very strong issue from our perspective about what we have to deal with that we must be eternally alert to what could be changing, to what could be coming over the horizon and what are the indicators, so not waiting for someone to make an allegation or raise an issue but to this whole of lifetime management of our people and understanding what is happening and what is changing in their worlds. I do not think you can take that away from home agency because that is about the culture you build and the values you have. I do not profess a view either way, I just think that for me that would be one of the fundamental questions you would want to explore in a lot of detail to understand what the implication would be for a low threshold on the other side.

Ms LEY—I note that in your submission you say there are 14 ACC matters outstanding at ACLEI. Though you do not say it explicitly, you hinted that that length of time could be a bit of a problem resolving ongoing workforce issues in your organisation. Are you hearing back at regular intervals about the developments of those cases? Is it a matter, do you feel, of the resources of ACLEI or is it that the complex nature of the investigative processes is not warranting that time?

Ms Bailey—To an extent I imagine it is a combination. We have a monthly meeting each month with ACLEI to go through the outstanding cases to understand what has happened and to make sure we are across it and if there is anything else we can do to help progress it. We have a weekly meeting with our CEO at which we exchange that information with ACLEI about all our professional standards matters. So they know what we are dealing with. The communication is very good. But necessarily they are complex tasks. For example, if they issue us a notice that wants a range of information it can take us sometimes a couple of weeks to get that information together. It is not a simple process. So all of it is protracted because it is a complex matter. Some are simple, straightforward matters, on others we will exchange notices over some months building a body of information. We have tried to provide them with everything we think they would want, but when they read that then they ask for more. I would not like to generalise to say that we have very strong communication. I can absolutely have confidence that I can ring the Integrity Commissioner or his staff and say: ‘This is a concern. We’re giving you a heads-up. What do you want to do about it? Where’s that at?’ So as much as we can, we have a very cooperative relationship around understanding how we can deal with emerging issues for each other.

Ms LEY—Michael, do you think organised crime groups in our jurisdiction have a knowledge of the existence of ACLEI, its limitations, its brief and also whether, for example, an agency such as Customs does not come under the remit of ACLEI and notes those things and take advantage of them?

Mr Outram—It is a difficult question to answer. What I would say is this: increasingly, the upper echelons of organised crime do have access to best counsel, best advice, financial, legal and otherwise. So it is likely that if it became an issue that is relevant to them that they would know that. But I cannot answer specifically that I know or do not know whether particular groups do or do not study ACLEI and the integrity regime. We have been aware of some members of criminal groups making references to ombudsmen and so forth, but legitimately, not apparently with any sort of nefarious intent. But it is a very difficult question for me to answer precisely. I am sorry about that.

Ms LEY—This is probably not an organisation's view, but do you have a view about the need for a broad public service anticorruption body at the federal level?

Mr Outram—I do not know about the need for that, but what I would say is this: we have talked about corruption risks and how different they can be. The risks faced by law enforcement agencies, the risk profile in the corruption space, is perhaps different in some ways to some other organisations. The response to those risks might need to be more sophisticated sometimes because of the difficult nature of the investigations. For example, if you have a corrupt detective—and I can talk from experience here—it is very challenging to get the evidence that you need to prove that detective is corrupt because they are very clever and very sophisticated. They know the rules of engagement very well. And I am talking from experience here that they are some of the most difficult investigations.

Senator PARRY—Not as the corrupt detective, I hope! You had better get that on the record pretty quick.

Mr Outram—No, that is right. Thank you, Senator; I will just qualify that is as an investigator of corruption. I have experience at the Independent Commission Against Corruption in New South Wales and, before that, in the London metropolitan police in an anticorruption command for two or three years. They are very tough investigations. What I am saying is that law enforcement integrity and corruption has a particular dimension to it that might at least be viewed slightly differently from the broader context you talk of. But I do not have a view, and I do not think we have a view, about what would be appropriate and right for the whole of Commonwealth, other than to flag that particular differentiation.

Ms LEY—So do you think there is a higher corruption risk in law enforcement compared with the public service performing its administrative functions? I use this example only because it was used as an example earlier, but that the dollars associated with cases which we are dumping of manufacturing or agricultural products in Australia has proved that—the dollars are extremely high, so the opportunities to subvert that process would bring very substantial rewards, but there is no law enforcement involved, as is the case with a lot of federal administrative processes. Do you think the corruption risk is higher with law enforcement?

Mr Outram—I would say that it is different; I would not like to say it is necessarily higher.

Ms Bailey—It is different.

Ms LEY—And so the approach to combat it would be different?

Mr Outram—There may be some synergies. An investigation is an investigation I guess, but what I can say based on investigating public servants at the Independent Commission Against Corruption is that they tend to be softer targets.

Ms LEY—Softer targets for crime groups?

Mr Outram—Probably for that as well, but as in easier to investigate. I would not want to downplay the impact of the scenario that you are painting. The impact of that is high, it is significant. We are just trying to flag that there are different contexts here and that the approach might need to be thought of differently. Some of the resources and capabilities you would bring to investigate both of those scenarios might be the same, but my experience is that certainly public service corruption does not tend to be as complicated or as difficult to investigate and resolve as that of law enforcement officers who are involved in corrupt activities.

Ms LEY—As a committee, if we are considering recommending expansion of ACLEI's jurisdiction then it cannot necessarily take in the whole world, and so it might be that we have to look at where to draw the limits. It has been suggested in many submissions that law enforcement operatives within an organisation could be a good additional expansion point.

CHAIR—The committee is aware that ACLEI undertook a pilot risk review of the ACC's internal anticorruption risk arrangements. Can you comment on the merits of this process?

Ms Bailey—Importantly for us, it is really important to work in partnership with the Integrity Commissioner on those sorts of arrangements. We try to be very outward looking and benchmark ourselves and what we are doing—is it enough, is it of a high enough standard, is it best practice—but it is really important to us to have someone who is dealing with these integrity issues across these two agencies to say to us, 'Yes, that looks robust enough,' or 'You're still on a journey,' or 'You need to go here.' You can never step away from having that kind of input. We are all about the same thing: which is the best regime in our agency to prevent anything going to ACLEI would be the ideal outcome. While I understand people might feel that is a bit like the fox telling the henhouse how to behave, it really is not. It is really a cooperative process around how to help us build the best practice internal process, and mismanagement and corruption resistance. One thing that has been really important for us is that the Integrity Commissioner has appeared at a lot of our ethics awareness sessions around the country with our staff, so it has given that face of ACLEI to our staff. It shows that absolute linkage in appropriateness. And while we never would just do what ACLEI told us to do, it is an important voice to give us a view of how we are going. They are looking at a broader set of agencies and a broader perspective on this. It is good to get their input about how we are sitting and what we need to do. I am very supportive of that; it has been really useful to us to have that ability for them to do that. Any review is always a little bit of work, but that is good. It is a good investment for us to do.

CHAIR—Are you aware that the Attorney-General's Department has submitted that it is doubtful that activities such as corruption risk assessments or developing corruption risk plans are covered by the commission's functions under the act?

Ms Bailey—I am aware of that fact.

CHAIR—This committee, in its report on the inquiry into law enforcement integrity models—our last inquiry—recommended that a corruption prevention and education function be included under section 15 of the LEIC Act to better reflect the objects of the act and to give greater prominence to what the committee considers to be a very important function of the Integrity Commissioner. Would the ACC support this recommendation?

Ms Bailey—I have just expressed my view that it has been very beneficial to us. I do not really want to express an opinion on whether it should be in the act or otherwise; I just think it has been very beneficial for us. I would leave it at that.

CHAIR—I know that you had a question from Ms Ley earlier which was similar, but I just wanted to ask if, in ACC's view, there are any gaps in the integrity system at the Commonwealth level?

Ms Bailey—There is an issue that we are continuing to work with that is about people who are coming to join the ACC who may have had issues relating to them in a previous area or jurisdiction to which ACLEI's reach does not extend. So for us to access some of the information that we would want to know about those people, there is a gap. I cannot be too expressive, but there is an issue where they can only deal with the people who work with the ACC. At a stage just before you employ people, there might on occasion be a need to know something that the corruption bodies might know about a person. That gap has occurred to us. I raised that with the Public Service Commissioner as well. So there is just a very small, specific circumstance where, before they join you, there might be an occasion where you would want some ability to be able to exchange information through the corruption bodies.

CHAIR—Do you have any particular agencies that you are thinking of, where you are getting staff from?

Ms Bailey—No. They may be a person who is not coming from anywhere in particular, who has just come to you and may be competitive for a role but who may have a connection, an association or something to another corruption body that you cannot get to and that ACLEI cannot get to because they can only deal with information about your current employers. I do not want to make too big a thing of it—it is a very specific thing. There may have to be a doorway when they join us. But that is the only thing that I have been aware of since I have been here.

CHAIR—Do you have a specific recommendation, or request as to what you would like to see happen?

Ms Bailey—The issue for me is that, if you were in the final throes of offers of employment, in some specific cases it might be useful to use ACLEI to provide some information to you. You would not want it for everyone that you were just thinking about employing, but there may be a couple of cases where you would want to be able to deal with that. But, because they are not employed by you, ACLEI cannot assist you—and the other corruption bodies that might know something may not be able to tell you because they have no jurisdiction to tell you. They could possibly tell ACLEI but ACLEI cannot tell you because they are not employed by you.

Senator PARRY—This is basically background checking. So, you cannot run a background check through ACLEI?

Ms Bailey—No, and we do not want to. I do not want to confuse things. We do a lot of background checking on certain issues but, sometimes, through an association or a matter, they may be an issue raised about a person you are about to offer employment to that is not documented. We might know that another corruption body might have some information about that. They cannot release that to us, because of their laws, but they could release it to ACLEI. ACLEI could then not tell us because the person is not employed by us. That is a gap for me.

CHAIR—Is there not some procedure you could implement in the applications process whereby a person who is applying for a job with the ACC would agree that you could make such inquiries as necessary to satisfy yourself about the person's bona fides?

Ms Bailey—There is—and we do—but there are a couple of structural legal issues. Perhaps we could come back to you on that. There is a reason why some of the corruption bodies cannot actually tell us some things sometimes, which they could tell ACLEI but ACLEI could not tell us. So there is an issue for us about the reach of them perhaps even to people you have made an offer to. If ACLEI had some jurisdiction there that might help us in those cases.

Senator PARRY—Is this a legislative defect in the LEIC Act?

Ms Bailey—I do not know that it—

Senator PARRY—Or could it be fixed by a legislative arrangement in the LEIC Act?

Ms Bailey—It is my view that they are rightly constrained by people who work for the ACC. The definition of who is employed by us and who works for us is somewhat semantic, I agree, but there are people who you would be making an offer of employment to, at which late stage you might find out something that you needed to understand more about—but then you cannot quite unwind that.

Mr Outram—It is probably more an issue of prevention rather than investigation.

Ms Bailey—Yes. It is sensitive, but it is an issue.

Mr CHESTER—Ms Bailey, you referred earlier to building a culture of a corruption resistant regime. I am interested, just for our own knowledge, what that actually looks like on the ground, in terms of in the workplace. I think you referred to the ethical awareness sessions. But what does it mean on a daily, monthly, annual basis? How does that look on the ground in a workplace?

Ms Bailey—I guess the first approach for us is to make sure that, when people join the ACC they have a clear understanding of what their expectations and obligations are, what they have to disclose to us and keep us informed about, and what is appropriate and what is not. That goes for everything from information management to who your associations are to that constant vigilance about what is changing in your world that you need to tell us about. That is the first thing: that people feel comfortable in our organisation to share that information, with the professional standards people. Then I think the important thing for us is to be able to say to people: this is the public service, this is ACLEI and these are the two frameworks within which we have to be 110 per cent compliant—and each individual has the responsibility to understand their obligations

and to do that. That is easy to say, but for staff that is quite a challenge. Our ethics awareness sessions, which I think some of the members participated in, are really about taking the staff through their obligations, using some scenario based cases to say, 'What would you do in this case? Is that right or wrong? What do you think?' So it is about building their knowledge, because it is very much in the dependent on how you would do something in given circumstances.

We are also working with people in our high-risk areas, to understand what the corruption risks might be and how resistant to corruption that group are—so, more focus, more auditing, more discussions about risk; and interviewing them, looking at the details of their activities, so that we have a sense that they are a high-risk group but they understand the risks and they are managing them and there is nothing changing in their world. Then for the managers there is a really big focus on day-to-day openness and clarity about the fact that there are no compromises. That has to be a focus: there are no compromises; you must declare.

Mr Outram—We have also done some very practical things. One of those is the creation of the multi-disciplinary teams. So, rather than having just the team of investigators or analysts, we actually integrate the lawyers, the investigators, the analysts and the support officers into one team. And we have put quite a bit of effort into the way that teams are actually created and led by managers and the way that they discuss issues, discuss risks, and make decisions collaboratively in track with other teams. So it is not just about being focused on the results. Of course, the results are really important, but it is also about the way we get to results. So we are talking very much internally about the way we look at our values. We are focused on the values and culture as much as the rules. Jane has provided a lot of input recently about moving from that rules based culture to one that does talk through risk, values and issues and confronts problems in an open dialogue rather than dealing with the surface.

Another practical example is that we introduced a sound operating procedure for dealing with significant occurrences, so that we do not get blindsided by something out of left field—all of a sudden we read about something in the paper—and to educate our people that we need to flag up incidents, issues and things that are coming over the horizon that might actually impact on the reputation of the organisation, people within the organisation and so forth. So it is just to get people to think differently about the day-to-day work.

Senator PARRY—Can I just add a comment in relation to the ethics awareness that we participated in. That was very good, very enlightening. I think the agency should be commended for the way that was conducted. Well done.

CHAIR—I will second that.

Mr Outram—Thank you.

CHAIR—In relation to that, I was just looking at the ACC 'unbreakable rules' that were developed in consultation with staff. I was looking at the one that says, 'Never put the safety of ACC staff at unacceptable levels of risk'. I was thinking that, given you are dealing with serious and organised crime, it might also include 'or members of the public' rather than just ACC staff.

Ms Bailey—On that point, what we were focusing on was that we ask our people to do very dangerous and risky things and, individually or in very small teams, they have to expose themselves to lots of situations that many public servants would never contemplate. Therefore, we were really focusing on them: you do not have to do something; don't take the risk; don't do anything that will put you where you could be harmed or injured. I guess we do some of those activities in more of a public forum sometimes. It is an interesting suggestion. We were really focusing on them, when they are doing these very operational activities—we did not want them to think that there was ever an imperative that said the outcome was worth more than any risk, that they needed to trust their judgment and, if they thought the risk was too high to do that thing now, they should not do it. But, yes, we do not tend to do a lot of those things in public. It is a point that we could—

CHAIR—But operational activities might happen in public.

Ms Bailey—That is true, yes.

CHAIR—That is all I was thinking; it was just a suggestion. Did you have any further comments you would like to make?

Ms Bailey—Just that we are always happy to come and talk to the committee. It is fair to say that we have a very supportive and responsive relationship with ACLEI. We think that is a great benefit to our agency and we certainly intend for that to continue into the future.

CHAIR—There being no further questions, I thank you very much for taking your time to give evidence today.

[2.15 pm]

CRANSTON, Mr Michael, Deputy Commissioner, Australian Taxation Office

MALONE, Mr Paul, Assistant Commissioner, Australian Taxation Office

CHAIR—I welcome officers from the Australian Taxation Office. 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 Cranston—The Australian Taxation is the government's principal revenue collection agency and as well has significant responsibilities in relation to superannuation and the Australian Business Register. Our legal framework relies on the community self-regulating. The system is robust and we have a really strong culture of voluntary compliance. As a result, our strategies are highly weighted to helping people and businesses to comply. While our approach is based on the philosophy that prevention is better than cure, to reinforce confidence in the system our extensive program of help and assistance is complemented by a credible audit and investigation program.

A small proportion of our work involves interaction with law enforcement agencies. At 30 June 2009 we had nearly 23,500 staff within the organisation, of which 96 were directly engaged in investigating potential tax fraud. Our investigators work under relevant civil and criminal laws and are required to comply with a range of practice statements, guidelines and policies to ensure our investigative work reflects best practice and withstands external scrutiny. In addition, a number of tax officers undertake tax audits and support investigations in joint task forces with law enforcement agencies, such as Project Wickenby.

We recover amounts that are payable under the law and which often involve civil penalties. We apply audit investigation processes and controls at the case level. This includes a range of sign-off processes including a committee represented by senior management approving case selection and finalisation of matters. This is complemented by an internal quality framework process, which further provides assurance of our audit and investigation work.

We work with other law enforcement agencies where appropriate. In the 2008-09 year we completed 183 investigations regarding fraud on the tax and superannuation systems, and provided 86 briefs of evidence to the Commonwealth Director of Public Prosecutions. Our work with these agencies, such as exchange of information, is governed by strict provisions within the law to ensure our interactions are appropriate.

In 2008-09, we published information on our website about two independent reviews—the Fitzgerald and Boucher reviews—which were commissioned into our serious non-compliance business area. This area deals primarily with investigating potential tax fraud and serious evasion.

In addition, the Australian National Audit Office have conducted a review of the SNC business line. The objective of the audit was to assess the management practices around the tax

office's strategy to address serious non-compliance. We are continuing to strengthen our existing policies, procedures and practices as a result of recommendations from these reviews. As a public sector organisation we are watched and guided by parliament through Senate estimates and the Joint Ct on Public Accounts and Audit and by scrutiny by the Ombudsman, the Inspector General of Taxation and the Australian National Audit Office. These agencies regularly review aspects of the tax office operations to ensure that we are operating effectively and efficiently, and provide recommendations on how they think we can improve. In addition, our audit committee, which includes representatives from the private sector, ensures implementation of ANAO and internal audit recommendations and internal reviews and action items that support governance and probity.

The level of external scrutiny we receive, while not specifically directed towards integrity issues, is significant. We value and welcome this scrutiny, as it adds to the robust internal governance framework and comprehensive internal integrity assurance processes to monitor the health of integrity within the organisation. Our integrity framework seeks to promote a strong culture of integrity. It sets out the behaviours, values and ethics underpinning the policies, processes and procedures for our work. The framework makes our integrity visible and measurable, and assists us to deliver on our commitment of being an open and accountable organisation. Our integrity assurance branch works to minimise dishonest and unlawful conduct by staff and foster an ethical culture within the tax office. This area is responsible for ensuring appropriate fraud detection, prevention, training and investigation reporting, and data collection procedures and processes are in place. Examples of its activities include fraud and corruption control planning, intelligence gathering and risk assessment, and providing corporate, fraud and ethics awareness training to staff. The integrity assurance branch reports to the audit committee on our fraud and corruption planning activities.

Our fraud awareness programs have been used by other government agencies to educate staff about issues such as conflicts of interest, misconduct, ethics and privacy. We investigate and take action on all allegations of fraud and serious misconduct made against our staff. In 2008-09 we completed 209 investigations and substantiated 24 of them. We refer substantiated matters for misconduct action and/or criminal prosecutions. At 30 June 2009, seven matters were with the Commonwealth Director of Public Prosecutions or before the courts. With our large workforce, the low number of substantiated matters reflects on the strong integrity and ethics in the ATO. We have represented a number of Commonwealth and interdepartmental forums addressing fraud prevention and control strategies. We share information with national and international agencies on the emerging trends and better practice in preventing, detecting and managing fraud and corruption risk. For example, our integrity assurance branch represents the tax office on the Australian government anticorruption interdepartmental committee, whose purpose is to advise the government on corruption issues and coordinate and implement Australia's anticorruption agenda.

In 2007-08 we received the SAI global Australian business excellence award for governance, recognising our integrity framework. We have also been recognised by the Corruption Prevention Network, winning awards in the Commonwealth public sector category three consecutive years. We also completed a benchmarking report on the fraud control arrangements in similar agencies in the United Kingdom and the United States. The report notes that our operations rate highly against overseas counterparts in our approach to promoting an ethical workplace encouraging integrity and minimising corruption. While our involvement with law

enforcement activities forms a small proportion of our work, it is nevertheless an important part, as our work on task forces such as Projection Wickenby shows. We welcome the opportunity to have outlined that suite of integrity assurance processes that currently apply to us.

CHAIR—Thank you. What do you consider to be the main corruption risks that your agency faces?

Mr Malone—Our intelligence would indicate that the main corruption risk faced by the Australian Taxation Office would be from potential infiltration of the office or influence on people within the office by organised criminal activity. We do have a comprehensive fraud and corruption control planning regime that constantly looks at all the risks that impact on our business across all of the business lines. That specifically addresses corruption risk within its purvey. Mr Cranston mentioned some of the overseas benchmarking that I did last year. We did find that our like agencies in both the US and the UK had the same issue of risk of infiltration from criminal activity.

CHAIR—What do those organised criminals do when they get into the agency?

Mr Malone—They may try to seek employment with the agency. They may call on past relationships with people who are actually in an agency. That was pretty much a theme, particularly in the UK, where people might have had longstanding relationships going back to school times and someone would work, particularly in the border protection side, in Her Majesty's Revenue and Customs. The criminals would approach old school colleagues, either through rebuilding a friendship or by other more nefarious means, such as standing over people, to get access to information or to clear the way for an importation.

Mr Cranston—Just to add to what Mr Malone said: we have not identified any sorts of systemic issues in relation to this area. There have been some individual matters but whether we would classify them as something of real concern to us, like an attack from an organised group, we would say that we have not had that.

CHAIR—What about the cases where tax officers have been found to be selling private tax rulings?

Mr Malone—That matter has been dealt with by the courts.

CHAIR—That was an isolated case?

Mr Cranston—That was an isolated incident that happened some time ago. It was identified and dealt with and also dealt with by the courts. We have not identified any other issues—

CHAIR—How did that come to light?

Mr Malone—Through our control mechanisms, from the fraud control planning arrangements.

CHAIR—Senator Parry, you have a follow-up question.

Senator PARRY—Yes. What do they do with the information? How is information that is taken corruptly from the organisation utilised?

Mr Cranston—Generally what information is taken from the tax office?

Senator PARRY—Yes. What is the advantage of the information? How is it used? Is it sold? Is it used to bribe? What is the value of the information from the ATO?

Mr Cranston—We have seen examples where people have taken taxpayer information, not from the tax office but from other means. File numbers are maybe taken from other taxpayers and that may be used—

Senator PARRY—Identity fraud is one of them.

Mr Cranston—Yes, identity fraud is one area. But I cannot recall any evidence of that being linked to staff who have taken that sort of information for that purpose.

Senator PARRY—Sorry. You just went to great lengths to tell us about how people infiltrate the organisation. What do they do with the information when they have infiltrated the organisation? Identity fraud is one. What else is there?

Mr Malone—I was saying that the risk to the organisation is infiltration. I am not saying that it has happened.

Senator PARRY—That is what you are guarding against. What else, apart from identity fraud, can they do with the records?

Mr Malone—There are numerous things that you can do with the information.

Senator PARRY—That is what I am seeking.

Mr Malone—It has commercial value.

Senator PARRY—How?

Mr Cranston—It is really hard to comment on the expertise of criminals and what they use that information for.

Senator PARRY—Competitor advantage and industrial espionage, for example.

Mr Cranston—Competitive advantage is potentially possible. Access to certain tax information can provide you with a certain level of information about the financial taxable income et cetera of a particular competitor. What is disclosed to the ATO may not be comprehensive enough to give that sort of advantage.

Senator PARRY—Exactly. I just want to scope the problem, if there is one or if there is potentially one.

CHAIR—There have been some submissions to this inquiry that ACLEI’s jurisdiction should be extended to all members of the heads of Commonwealth operational law enforcement agencies, and that would include the Australian Taxation Office. Does the ATO have a view on that?

Mr Cranston—We are like the government’s principal revenue agency and we administer the tax and super systems. The law enforcement activity that we do is very small compared to the total functions of the tax office. We are very confident that we have a robust capability in fraud control internally and, as I outlined in my opening address, a very strong integrity insurance framework. In addition to that, we have external scrutineers. The Ombudsman looks at us. We also have the ANAO. They look at particular matters, down at case level et cetera. We also have an independent person working within the ATO. That position was filled, and we have been looking for somebody else for four weeks now to replace the person who left. That position also gives us some independent scrutiny.

CHAIR—Do you have anything to do with the Australian Public Service Commission? Do they exercise any oversight?

Mr Malone—Not so much oversight; we do share information, particularly training information—ethics and fraud awareness training. They are currently using some of our training product in an AusAID program through the Public Service Commission—in Fiji, I believe.

CHAIR—If ACLEI’s jurisdiction were to be extended to all those agencies, including the ATO, because of the small number of law enforcement officials within the agency relative to the total number, would you be submitting that the jurisdiction only be extended to those agents carrying out a law enforcement function, as opposed to all members of the tax office?

Mr Cranston—It is certainly a matter for the government to decide if we were to fit under that particular authority for that governance purpose. From my understanding of the commission and its role, it looks more at the higher risk functions, which are the law enforcement functions. If the ATO had to be part of it, we would like to see it scoped to that high-risk work that we are involved in.

CHAIR—Are there officers dealing with this exclusively or do people move in and out of those functions?

Mr Cranston—Yes, we do have a group who deal with that work specifically. Of course, the movement is generally due to career changes, not just resourcing changes. To be an investigator, you need a certain level of training. We also have to have a certain level of security classification. You can only work in that area if you are part of our particular business line which has different levels of classifications than other areas of the office. Therefore, generally, the workforce is predominately the workforce that is in place. As I have said, our recruitment in the past has often been from other agencies. Some tax officers move from other areas into our area and sometimes they do leave. Generally speaking, the workforce has remained the same and is very stable.

CHAIR—In your view, are there any gaps in the integrity system at the Commonwealth level?

Mr Cranston—There is no one Commonwealth integrity framework. My only comment is that, from the ATO's perspective, we believe we have a strong integrity framework and we have external scrutineers covering many of the aspects of the ATO from financial management, efficient use of resources, systemic issues, the Inspector-General of Taxation and how we deal with matters and the ANAO et cetera. I probably do not have a comment in relation to whether there are gaps at the Commonwealth level. Mr Malone?

Mr Malone—No gaps at a particularly high level. There is always room for improvement in training people in a coordinated way. We try and engender that amongst agencies, but it is not formalised in any way. There might be some scope to do something about that.

CHAIR—Thank you.

Senator CAMERON—I am quite taken by the difference between the submission from the Australian Federal Police and the Australia Taxation Office today. The Federal Police took the view that they would welcome as much additional oversight as they possibly could get and you have put up a very robust defence about your own internal integrity. I am not questioning that. However, I am sure there are many heads of various organisations who thought their internal systems were robust and accountable, and rued the day that they said that in a public place. You can be sure in these issues, can you?

Mr Cranston—Nobody can say that nothing can potentially happen. All I can comment on is how we operate, our particular framework and how robust it is. We have not identified any systemic problems in relation to this matter. The AFP, who have been under the commission for some time, are probably in a better position to comment on its worthiness rather than the ATO.

Senator CAMERON—How many people are involved in the integrity operation?

Mr Malone—In the previous year it has been 36 staff.

Senator CAMERON—What is your total employment?

Mr Cranston—It is 23,500.

Senator CAMERON—Have you benchmarked that against other similar organisations in terms of their commitment to integrity internationally or domestically?

Mr Malone—Yes, we have.

Senator CAMERON—What was the outcome of that?

Mr Malone—We came out with a very good result, basically being ahead in most areas. This was from an international perspective. There were a couple of learnings to come out of that for us, where we could increase our exposure to the wider community, allowing them access to the internal mechanisms and the internal complaint arrangements. We actually have a link strategy where we are trying to get our details embedded in the external website so that people can come through from the website as well as through the traditional methods, such as the telephone or

what is called the TERC, the Tax Evasion Referral Centre—which is mainly not about staff, but we do get some referrals from that.

Senator CAMERON—That is more a customer relationship, isn't it, as distinct from an internal one?

Mr Malone—Yes.

Senator CAMERON—That is not what I am asking. I am asking whether you have had a look at, say, other international bodies of a similar makeup to the ATO and at their internal integrity and corruption approach. Have you done that?

Mr Malone—Yes, I have. I did that on behalf of the tax office and reported on that to our Integrity Advisory Committee in July 2008. Basically, that was comparing ourselves against Her Majesty's Revenue and Customs in the UK, the Independent Police Complaints Commission in the UK, the Audit Commission in the UK, the Serious Fraud Office in the UK, treasury and Inspector-General of Taxation in the United States and the Internal Revenue Service of the United States.

Senator CAMERON—Could you provide us a copy of that report?

Mr Malone—I believe I can. It might have to be changed. It is an in-confidence report at the moment just because of the nature of some of the information in it. But it would not need much.

Mr Cranston—We will take that on notice.

Senator CAMERON—That is fine. If this committee took the view that we needed to expand ACLEI and that it should include the ATO, could you work within that framework?

Mr Cranston—That is a hard question to answer given my limited knowledge of how the framework actually works. I would probably like to take on notice.

Senator CAMERON—Sure.

Senator PARRY—Do the 96 directly engaged in investigations work with AFP mainly?

Mr Cranston—Yes.

Senator PARRY—You said that in addition to that there were tax investigators involved, and you used the example of Wickenby. How many additional people would be engaged on an ongoing basis in addition to those 96?

Mr Cranston—In relation to officers that are conducting audits for the purposes of the tax acts?

Senator PARRY—Yes, or any form of investigation.

Mr Cranston—Officers that do that and work with Project Wickenby and other task forces are about 220.

Senator PARRY—So we are looking at just over 300 officers on the ground at any one time, roughly, who would be involved in direct investigation work?

Mr Cranston—Those 220 do taxation audits, which is not investigation work.

Senator PARRY—Are they desk audits or are they external audits?

Mr Cranston—They are actual field audits.

Senator PARRY—So the main risk of corrupt activity or serious and organised crime involved within the Taxation Office would be inappropriate use of information. That would be the main risk. There is no money that can be stolen or misappropriated? That would be the main risk?

Mr Cranston—Yes, I would say so.

Senator PARRY—You seem hesitant.

Mr Cranston—Hypothetically there are other things that could happen. I probably do not want to elaborate.

Senator PARRY—Have those other things been taken into account in any form of risk assessment?

Mr Cranston—The reason why we take those things into account is that when we build our processes and checks and systems we do that to make sure. For example, with a particular case that may be selected you could not self-select it as an individual. With the processes and the sign-off points and the system checks, it would be impossible to select a particular case that you were doing for some means other than your duty as an officer. As you are saying, possibly there is an example where maybe an officer may start something for some other reasons. But that is why we explore those hypothetical matters.

Senator PARRY—I am just looking at where potential corruption can occur. So it can really occur with officers in the field who are working with other officers?

Mr Cranston—Yes.

Senator PARRY—So it would not hurt then if ACLEI's jurisdiction—and this is 'if'—were expanded to include the ATO as an entire agency, because the exposure basically would really be as to those officers directly engaged in field operations with other agencies. Your internal audit mechanisms should be sufficient to pick up anything else internally. Is that a fair statement?

Mr Cranston—I would rather not comment. It is just that probably it is a lack of understanding of what ACLEI actually does and what is required. If it is about the resourcing and extra integrity checks, they are often welcome. As I said, we are not concerned about

external scrutineers. But it is probably about not being involved with that particular commission. It is hard to comment on exactly what it would mean for us.

Ms LEY—I have some questions about the processes within the ATO. I will take three areas of tax administration: the issuing of rulings, either private or public; the review of decisions which relate to tax assessments and tax payable, so that internal review; and the resolution of audit investigations where a decision is made about the final amount of tax payable. Within those areas is there a team approach to the final decision or is it the case that one tax officer can make that final decision?

Mr Cranston—In relation to all those areas, and I have touched on this particular matter before, you cannot start that work unless senior people have signed it off. It is recorded on systems. The systems have milestone dates that, again, have to be signed off. There are call-over processes and panels throughout different areas of the organisation that look at issues of timeliness and accuracy and ensure that the work is going forward in the most efficient manner. Also, we have our legal area, our tax counsel network, which has to sign off on a particular precedent. We have centres of expertise and tax counsellors that have to sign off on certain ATO views especially if they are views that the tax office has not formed before. So there is quite a lot of scrutiny in relation to all that work. To be able to do the advice work you need accredited officers to be approving officers, and we have built a particular system that has been in place for some time. It is our work management system. It is like one system for the ATO so that people can review at different points all through that work. In addition to that, we have had in place before a technical quality review process. That review looks at the particular accuracy of the assessments and the interpretation of the law in those assessments and the processes that followed. Now we are turning that particular process into something a little bit more current, so it does pre- and post-checks of those processes as well.

Ms LEY—But there is a fair amount of discretion in the application of the law, as far as determining the legal stance of an individual or a company regarding their tax obligations goes. There is also a fair degree of discretion around settling cases, particularly those that have gone on for a long time and that have accrued large quantities of penalties and interest owing. A reasonable approach needs to be taken to resolve the case and I make no criticism of that fact. I am asking: to what degree are those discretionary decisions reviewed or checked on? I know your QA process can come back in afterwards and have a look at that particular case but at the time of making the decision is it so that one tax officer makes that decision?

Mr Cranston—No, the actual case officer has to have support. Depending, again, on the work and the particular area, the officer has to have approval by a senior manager. Another good example would be for settlements. We have settlement guidelines that provide the framework for settlements. It is currently under review by the Inspector-General of Taxation but in settlements we need very senior people in the organisation to sign off settlements.

Ms LEY—As far as applying the law or determining tax that is owing, is there a specific rule that more than one person has to look at it?

Mr Cranston—Yes. That is to be sure on the accuracy of the facts and the application of the law.

Ms LEY—So it is not possible for one person to sign off on a ruling, a review of a decision within the ATO or a decision about tax owing? It is not possible for one person to have that final say?

Mr Cranston—In total isolation? No. Somebody may have the final say as the final approving officer.

Ms LEY—You are obviously talking about a process where more than one person has looked at it as it has gone along but at the actual sign-off stage it may well be that there is one final approving officer?

Mr Cranston—Yes.

Senator CAMERON—One issue that concerned me when you made your submission was that you were unaware of what ACLEI does and I am a bit surprised that you would come here, with the possibility that a recommendation goes to government from this committee, including from the ATO, and you have not considered your position on an understanding of ACLEI. I invite you to talk to ACLEI and maybe put a submission to us on the basis of a better understanding of what ACLEI does.

Mr Cranston—It is not that I do not understand what ACLEI does. It is just that at the ATO, when I outline our role, we feel that we have that robust process in place and we have sufficient external scrutineers.

Senator CAMERON—I heard these arguments from the New South Wales police at one stage. I have heard these arguments before in the public arena, ‘We are robust and everything is okay’. I am never convinced by that and I think for good reason.

Mr Cranston—With those particular robust processes, we have not found any systemic problems in the organisation.

Senator CAMERON—And I have heard those arguments as well. I am just saying to you that I do not need a huge dissertation. I am just asking you—

Mr Cranston—We will take it on notice.

Senator CAMERON—I invite you to do that and then consider whether the ATO should put another written submission to us on the reasons why you should not be included.

Mr Cranston—Generally, I thought whether we were included or not is a matter for government. I am here today to say that the ATO, as I said, feels that they have a robust process in place. We are not asking to be under the commission but I will take that on notice.

CHAIR—I thank you very much for taking the time to give evidence today.

Mr Cranston—Thank you.

[2.50 pm]

LARKINS, Ms Alison, First Assistant Secretary, Compliance and Case Resolution Division, Department of Immigration and Citizenship

LINDSAY, Mr Hamish, Acting Assistant Secretary, Program Integrity Risks Branch, Department of Immigration and Citizenship

NOYEN, Mr Benjamin, Acting Assistant Secretary, People Services Branch, Department of Immigration and Citizenship

CHAIR—I welcome witnesses from the Department of Immigration and Citizenship. The committee has accepted your submission as submission No. 16. Are there any changes you would like to make to it before we proceed?

Ms Larkins—No.

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.

Ms Larkins—In opening I thought I would explain my role and that of my colleagues to better help members direct questions. In his normal job, Ben Noyen is responsible for running the values and conduct area of the department, so he has a good operational understanding of particular fraud and integrity risks in the department from a staff perspective. Hamish Lindsay runs Program Integrity Branch within my division and has an oversight role of integrity risks in the department's operations more broadly. I run a part of the department that has the largest law enforcement functions in the department. There are two groups of law enforcement functions; those that operate at the border and those that operate within Australia. I run the law enforcement functions that relate to onshore compliance. Officers in our network have the power to detain citizens and we also have investigative powers.

CHAIR—Could I ask all of you what you consider to be the main corruption risks that you agency faces in respect of your law enforcement activities and in respect of your activities more broadly?

Ms Larkins—If I might start by saying that we are an organisation where we have had some failings in our law enforcement activity, particularly in relation to the operation of our detention and other coercive powers. It is our view that they have not been corruption related but more maladministration. As a general comment we feel that we have benefited enormously from the oversight and engagement of agencies such as the Ombudsman and the Public Service Commission in active and continued oversight of our operation of those powers. To make the general point, we think that there is a really strong and beneficial role for external oversight in that area. However, if we were to make an assessment of where the risk lies in our organisation, it is probably not so much in the law enforcement areas but is probably more in relation to the granting of visas, which is interesting in terms of the discussion that you have been having with

other agencies about whether the law enforcement parts of departments should be confined to law enforcement agencies or not.

CHAIR—Do you have a view about that?

Ms Larkins—I would think if you were considering recommending extending to our agency, from our experience, the corruption risks relate to the granting of a visa inappropriately. Looking at our work and using ACLEI as criteria for where risk lies, the work that is done in the compliance area and the decision to detain is now extremely well controlled both internally and externally. It is also a group activity so there is very little decision making that is not done with a lot of exposure. Also there are not a lot of benefits in that space. On release from detention you are usually released on a temporary visa for a short period. It is in the visa space and the citizenship space where there are significant benefits that you might get from within our department.

CHAIR—If ACLEI's jurisdiction were to be extended to the Department of Immigration and Citizenship, do you think that it should then relate to all employees in the department and not just the law enforcement officials?

Ms Larkins—Perhaps if I just say that, from our perspective, the greater risk in terms of corruption is in those parts of the department because that is where the greater benefit would be.

CHAIR—Do you perceive there to be a gap in the integrity system at the Commonwealth level, then? What agency or section would deal with fraud or corruption in the granting of visas?

Ms Larkins—I might pass to Ben to talk in more detail. Most of the discovery of cases is through internal allegations or external allegations at the moment. If an allegation is raised with us that goes to the question of criminal activity, we immediately refer that to the AFP. That is the practice. If criminality or systemic organised activity is not an element we usually manage that internally, perhaps sometimes referring to the APSC.

CHAIR—What would happen if there was a serious conflict of interest, where it was inappropriate that someone was dealing with a particular visa, for example, but it was not a criminal matter?

Ms Larkins—As an agency we have had a lot of direct and relevant recent experience in the additional value of having external oversight by people who are not seen to have a conflict of interest, basically. Where there is any doubt, we tend to refer the case to an external agency so that we can be completely sure that any risks in the department's operation are managed and subject to full oversight.

Mr Noyen—Essentially, if an allegation of corruption occurred there would be initial inquiries to determine the extent or to get some general background and, if some sort of serious criminal activity was indicated, it would be referred to the AFP. There may be occasions in which the AFP determine that they will not accept the investigation. If that occurs, the next step would be for us to look at undertaking the investigation ourselves. We would develop a brief of evidence that would then be provided to the Commonwealth DPP for consideration.

CHAIR—On what grounds would the AFP decide not to deal with it?

Mr Noyen—Essentially they take on serious or major fraud or criminal activity. They may look at the case and determine that the level of corruption does not fit that criteria. It is really done on a case-by-case basis.

CHAIR—How many cases, say in the last 10 years, would you have had of corruption in the granting of visas?

Mr Noyen—If I was to use the last calendar year, there have been no substantiated cases of corruption in the department. There certainly have been allegations of corruption, and we have investigated all of those. Generally, we find that most allegations are vexatious in nature—perceived poor customer service and that type of thing.

CHAIR—How many cases would you have had of corruption in the granting of visas not just in the last year but—

Mr Noyen—I would not be able to break it down to that—

CHAIR—approximately.

Ms Larkins—We could take that on notice. I am not entirely confident we could do it for the whole 10-year period.

CHAIR—Have you had cases?

Ms Larkins—We have. We have had two over the last two or three years. We can provide you with more details. We had a case in Queensland where one of our staff members was prosecuted for asking for sexual favours in return for granting a visa. We had a case in Victoria where an officer had asked someone to pay a significant amount of money. I think the promise there was to hasten the visa process.

Mr Noyen—Yes. There are very few cases where you would be able to obtain sufficient evidence to substantiate the allegation.

Ms Larkins—Which also, in terms of your terms of reference, is an issue for us in terms of ACLEI's powers. Our capacity to investigate allegations is sometimes limited because of the power that we have.

Mr Noyen—Obviously we do not have powers that allow certain investigative inquiries to take place.

Ms Larkins—Both of those cases came as a complaint from the client and they were both prosecuted for those offences.

CHAIR—Do you ever have department of immigration employees overseas—for example, working together with UNHCR or IOM on particular cases?

Ms Larkins—We have close to 1,000 employees overseas. One hundred of those are A-based staff, so they are Australian staff posted overseas. We have another 800 to 900 locally engaged staff in over 60 posts around the world. I am looking for the numbers—I am getting them off the top of my head; I will give you more accurate numbers, if you like.

CHAIR—Thank you. Would you say there is a particular risk associated with those people who are posted away?

Ms Larkins—We are aware of the risks and try to manage those risks by the posting of Australian staff to some particular high-risk posts. There are active controls in place to try to manage that risk. Certainly, a fair number of the allegations we get would come from that cohort. That often would relate to people seeing a perceived misuse of power by locally engaged staff. Again, we have not had a substantiated allegation of that that I can remember.

Ms LEY—As local members we do receive allegations of locally posted immigration officials exercising undue influence. I think that the visa processing within Australia is fantastic, and I have never been able to fault it, but I do wonder about these instances overseas. Of course, the person who would have the ability to take it further notionally does not have the ability because they are a disadvantaged applicant for a visa. What do you have in place to make sure that that is not happening?

Ms Larkins—We have a regular process of audit of our offshore network and the compliance with our offshore network. Some areas are—and I will say this carefully—potentially more risky than others in terms of corruption. We are aware of those and try to manage that through placement decisions of Australian based staff. There is also a quite comprehensive offshore audit process. There is also a complaints side to that so that when we do get complaints we send investigators overseas to do an investigation—and, in fact, Ben has just come back from Beijing. There are controls in place.

We are moving to further refine and mature our understanding of risk to the program overseas and our overseas functions will move over the next few years to be more fully focused on having greater numbers of staff where we have greater risk in relation to our program processing. That should also strengthen our capacity to deal with risks at posts. We are aware it is an area of vulnerability.

Ms LEY—Is there any evidence that in any of these hotspots, if I can call them that, there has been infiltration by organised crime groups or opportunities for organised crime groups?

Mr Noyen—There is no evidence—not that I have seen—of anything like that, no.

Ms LEY—Do you think it is more ad hoc, an opportunity of the moment?

Mr Noyen—Yes, it is ad hoc and it generally relates to the outcomes of particular visas that people may be applying for. Like I said before, a lot of complaints are vexatious in nature or there is some motivation behind the complaint. That is generally what we determine when we start to look into it. I will give you a recent example from overseas. The complainant went to considerable lengths to get affidavits from a variety of witnesses and prepared a number of documents to support their complaint. When we went to the post to investigate we were able to

conclusively determine that those documents were false and there was a certain amount of dishonesty in the affidavits. That is essentially because of those community members putting pressure on those people after the visa application process was completed. That is a very good indication of a lot of the cases that come through where the applicant does not get their visa for some reason or another and effectively makes a complaint, because they are quite keen, or desperate even, to get to the country.

Senator PARRY—Does the program integrity area look after everyone, internal and external—overseas?

Mr Lindsay—No. It includes issues about making sure that the government's programs for immigration and citizenship are meeting the standards required. It does not look at the corruption aspect.

Senator PARRY—So this comes back to Mr Noyen's area. Can I call it 'internal affairs' or 'internal investigations'? What do you call it?

Mr Noyen—It is an internal investigation area. It is basically responsible for managing internal integrity issues.

Senator PARRY—And misconduct.

Mr Noyen—That is correct.

Ms Larkins—We call it 'values and conduct'. It is the values and conduct section.

Senator PARRY—So it is your internal affairs section, which is called values and misconduct. How many staff?

Mr Noyen—There are currently about 10 or 11 staff.

Senator PARRY—And that is for the entire organisation?

Mr Noyen—That is for the entire organisation, yes.

Senator PARRY—How many people do you have, 15,000?

Ms Larkins—No, 8,000, including our staff overseas.

Senator PARRY—We have just got you down from 15,000 to 8,000—you have had your efficiency dividend! What are the qualifications of the staff?

Mr Noyen—The investigative staff would be qualified at the certificate IV level.

Senator PARRY—Are there any ex-police?

Mr Noyen—Yes. All the investigative staff are either ex-police or ex-military police from a variety of different agencies.

Senator PARRY—How many matters would you deal with on an annual basis?

Mr Noyen—We would probably receive between 220 and 280 allegations a year through staff or external people making allegations through a number of channels, but generally through our external global feedback unit for people making allegations externally. The allegations might sometimes come through managers. We also have an internal contact point as well so that staff can contact us.

Senator PARRY—Of the 280 reports a year, how many would be forwarded on to the Australian Federal Police?

Mr Noyen—I would probably have to take that question on notice. I would not be able to give you an accurate figure.

Senator PARRY—Fewer than 20?

Mr Noyen—Oh, yes. It would be fewer than 20.

Senator PARRY—Of the matters that you deal with internal, does the disciplinary action range from dismissal through to just financial penalties? I do not know whether you can charge them and ask them to pay a fine.

Ms Larkins—Yes.

Senator PARRY—Okay. Do you feel that that works well?

Mr Noyen—I think that it works well. We utilise the options in the Public Service Act well. It is all done on a case-by-case basis. Effectively, we are trying to get the message out there while being fair and reasonable with the staff with our decision making.

Senator PARRY—What if any oversight mechanism is there? Who checks what you do?

Mr Noyen—Basically what happens is that when an investigation is complete there will be a recommendation made by the investigator or the section. That goes to independent delegates, senior people in the organisation.

Senator PARRY—How are these independent delegates drawn?

Mr Noyen—Generally through their experience. We look at—

Senator PARRY—They are still departmental employees.

Ms Larkins—They are members of the senior executive.

Senator PARRY—So they are SES members.

Mr Noyen—That is correct.

Ms Larkins—It is a small cohort.

Mr Noyen—That is right. There are probably about six to eight people who we would use. That has only expanded just recently.

Senator PARRY—And do they then ratify or otherwise your decision?

Mr Noyen—Yes, they make their own independent decision. That gets handed down. If a staff member does not agree and wants to have the matter reviewed, they have the option of having that review done through the Merit Protection Commissioner. If it is a particularly serious matter or a matter that for some reasons requires a level of independence for some reason, we may not get involved internally. We may actually get an external provider.

Senator PARRY—Who would you use then?

Mr Noyen—We would seek an appropriate external body to do an independent investigation.

Senator PARRY—Would you welcome something like ACLEI being able to do that and assist you?

Mr Noyen—I think it would be welcome in certain circumstances. In the most serious circumstances it could be welcome and might be useful.

Senator PARRY—Thank you.

Senator CAMERON—Ms Larkins, I have just had a look at your website. You actually have a wider range of responsibilities than you have outlined here today. I am not criticising you, but you have visas, immigration, refugees, citizenship, managing Australia's borders and business services, as outlined on your website. My relationship with the department, fleeting as it was apart from when I came here in 1973—

Senator PARRY—Our first response was—

Senator CAMERON—Some people are saying you should not have let me in! But my first encounter after that was in the 457 visa area, and I have to say to you that I was appalled at some of the conduct that went on within the department in relation to 457 visas. I know there has been some internal analysis and things have moved on from three years ago. One of the areas where I believe there could be significant capacity for corruption and maladministration is the 457 visa area. It is clear now that there are groups that have organised people to come in. Workers on 457 visas have been massively exploited both by agencies overseas and within Australia and by companies within Australia. What responsibility does the department see itself as having to ensure that, if it grants a 457 visa, people who come in on a 457 visa are treated according to the law and fairly?

Ms Larkins—I will respond broadly, but it is not my area of expertise so I would prefer to come back to you with some further comment. Certainly the minister has just announced some fairly significant changes to the oversight of employers in relation to skilled migration, so there is a fairly significant package of reforms, including an expanded role and capability for the department to audit employer compliance with that set of conditions. I can provide you with some more information on that. Just to go to the point, Ben runs the investigations area that focuses on staff; Hamish and I run the investigations area that focuses on corruption against our programs, if you like. Certainly that area has been very active over the last year in relation to employment matters, particularly the activity of labour hire companies and other people who have been facilitating exploitation of people here on visas—not 457 visas, I would have to say, but a range of other visas—or people who have overstayed visas. In that context it might be useful to note that when we look at that caseload, where we are seeing quite organised corruption, we do not see a connection to departmental officers involved in facilitating that.

Senator CAMERON—When you say ‘we do not see’, you mean you have not detected it.

Ms Larkins—We have not detected it—that is exactly right—but we are doing joint operations with a number of other agencies in relation to labour hire companies, for example. One of the ones that I can talk about publicly is that we undertook quite a significant operation in relation to the meat industry earlier this year across a number of states and with a number of other agencies. We are finding identity fraud and offences against the Migration Act and a number of other Australian laws, but we are not seeing a connection back to staff in those areas. That is just another source of information. When you refer to your concern about staff, you are really talking about the responsibility of staff to oversight conditions for those workers?

Senator CAMERON—No, I am talking about the potential for staff to be corrupted in their duties because there is money involved in this area. There is exploitation—and there is clearly some systematic exploitation. That is the problem you have in the police force as well, and when you are interacting in that area there is always the potential. Whether it is detected, not detected or not there at all, the possibility is there. That is the point.

Ms Larkins—Yes, we would agree. The possibility is there, I think.

Senator CAMERON—I must say that your submission is very short, but at least you have put in a submission. In the submission, you have indicated that it is a matter for government to determine whether ACLEI becomes involved in the department. Have you had a look at what the implications may be if ACLEI were involved in the department?

Ms Larkins—Probably not in a great deal of detail. We work with ACLEI at the moment; we have a relationship with them.

Senator PARRY—In what way do you work with them?

Ms Larkins—They are part of the Commonwealth law enforcement agencies and so are we, so we have ongoing relationships with them.

Mr Lindsay—It is important that the committee understands that we also work very closely with the Australian Crime Commission. I am at the part of the joint management group for FIAT.

As Alison mentioned, a lot of the investigation work is done with other agencies, but largely that is the AFP. We might also work with the Workplace Ombudsman and various other people. We have a really wide net of people that we work with in lots of different ways. I am sure you are all aware of the current student environment, and obviously we are working very closely with DEEWR in that space. It is a very broad network that we work in.

Ms Larkins—The obvious issues that we would face are: what types of activities would we refer to ACLEI and how would we distinguish between things we refer to ACLEI, to the Ombudsman and to the Public Service Commission? We need to be clear about those things. Again, as we said in the submission, we think it is a matter for government, but generally our experience has been that the more open we can be as an organisation the better we operate as an organisation.

Senator CAMERON—This is a hypothetical. The Queensland Crime and Misconduct Commission resolved the issue about what should be referred by saying that you refer anything and everything. If there is a rumour, you refer it. If there is an allegation, you refer it, and then there is a process to deal with it. Would that be a practical proposition? The other option is that you deal only with high-level misconduct and the daily misconduct allegations are dealt with in the department.

Ms Larkins—I would think that, if all of the allegations went to ACLEI, it would be a practical issue for them more than it would be for us. I note that in our practice with the Ombudsman, for example, the general expectation is that we will deal with investigations internally, and, if that internal process is not sufficient, it would be referred to the Ombudsman. Clients are informed that if they are not satisfied with that process those are the referral pathways, much as if someone is not happy with what Ben does there are other referral pathways.

CHAIR—Could you detail some of the corruption prevention education initiatives that you have within your department?

Mr Noyen—I will start at the high level. There is a governance structure in place in the department, and the internal investigation role reports to one of the governance committees as a start. They have oversight of that and help with steering the direction of the investigation function.

In relation to prevention, there are general internal controls throughout the department. There is a bit of a focus on fraud. There are fraud control plans. To some extent fraud will filter into corruption and there is a certain link between the two. We look at doing risk assessments across the department, particularly in the more high-risk areas, to look at what the potential risks are and to try to mitigate those risks. There is an educational program as well. Any staff member that comes into the department will go through an induction process where they do code of conduct training. That happens every two years from that point.

CHAIR—Is that the APS code of conduct or do you have your own departmental code of conduct?

Mr Noyen—No, that is the APS Code of Conduct. We try to tailor the training to our needs, dealing with the issues that affect the department. We also have a program called IDEAL. I will probably struggle to remember what it stands for: immigration dilemmas, ethics—

CHAIR—Ethics and legal awareness.

Mr Noyen—I will get into trouble for that. Essentially IDEAL is a set of scenarios provided to anyone in any business area and the department. It ranges from dilemmas in recruitment processes to dealing with corruption, to dealing with particular visa processes, and leaders in the department can pull their teams together to discuss issues and discuss those dilemmas and what they need to do to resolve them. It re-emphasises the importance of ethics and the options for them if they detect it.

As well as the governance structure that is in place, there is a range of policies that support the APS Code of Conduct. There are policies to deal with harassment. We have an internal code of conduct guideline—it is not a code of conduct but a guideline, in that it discusses issues that are specific to the department, the sorts of issues that we feel are important. We have a whistleblower policy. We have an internet instruction as well to guide employees' behaviour in relation to the internet. We have myriad options. There is communication through ongoing newsflashes about different issues, to keep re-emphasising ethics in the organisation. I might add one last thing, and that is that the secretary very often in his weekly messages to staff will raise ethical issues.

CHAIR—Do you think there is an active culture in the organisation of encouraging reporting of misconduct? Also, do you have an integrity aspect to recruitment procedures, performance appraisals and promotions?

Ms Larkins—Sorry, can you repeat the first part of the question because I have just been out for a bit?

CHAIR—Is there a culture of encouraging reporting?

Ms Larkins—Yes, and I think that that has come out of the post-Palmer and post-Comrie reforms in the department, where one of the critical thing for the department was that there were people lower down in the organisation who knew that there were significant problems in the management of both those cases, but it was not escalated. We have spent a lot of time encouraging people to raise concerns about operations of the department wherever they see them. That has been an active campaign, with messages on desks and various other ways of enforcing that raising concerns is the way that we make sure that we do not make significant mistakes again. It is an important part of the culture. In terms of the second part of your question, what were you looking at in particular?

CHAIR—When someone is going to be employed, would you look at the aspect of their understanding of integrity requirements of the organisation? When it comes to evaluating performance, is their integrity an aspect of that, and also in terms of their promotions if they have demonstrated good conduct?

Ms Larkins—Each of our selection and promotion decisions, and performance appraisal, is based on our capability framework. One of the indicators within that framework relates to understanding, adherence and, for the leadership cadre, demonstrating by their behaviour their understanding of the values in the code of conduct. That is a critical part of selection processes and performance management in the department.

CHAIR—There are no further questions. I thank you very much for taking the time to give evidence today. I would like to thank all witnesses who have given evidence to the committee today. I now declare this meeting of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity adjourned.

Committee adjourned at 3.25 pm