

Chapter 2

The law enforcement oversight environment

External law enforcement oversight

2.1 Modern police accountability has seen a shift away from police control of disciplinary processes and an increase in external or civilian control through the processes of review and, increasingly, investigation. Professor Tim Prenzler explained that the impetus for this trend was the perception that police could not be wholly trusted to investigate themselves:

Civilian review was initially developed as a counter to the charge that police internal investigations were compromised by the natural tendency to close ranks and cover-up misconduct.¹

2.2 Recognition of the high corruption-risk nature of policing also drives the view that some form of external oversight is critical to minimising police corruption and providing effective accountability:

Given the propensity for corruption in the high-risk occupation of policing, there is little argument by non-police about the need for effective accountability mechanisms and oversight of the operations of police.²

2.3 Whilst there is considerable support for some form of external oversight, the most effective model and the relationship between the oversight agency and the bodies it oversees continue to be debated and explored. Some oversight bodies are predominantly 'reactive': they monitor and review the way in which complaints are managed by police. Other oversight agencies are, in different ways, proactive. For example, they may have the power to conduct own-motion investigations into police misconduct and/or have a dedicated prevention and education function.³

2.4 Mr Don McKenzie noted that a distinction is emerging between anti-corruption agencies and complaint management agencies. He explained that complaint management bodies tend to be concerned with process and anti-corruption agencies tend to be outcomes-oriented:

Complaint management agencies are generally process focused. They are about ensuring that each individual has meaningful recourse to the misapplication of authority. Management systems in the subject agency may improve on account of an effective complaints management process,

1 Professor Tim Prenzler, Griffith University, *Submission 2, Attachment 1*, p. 86.

2 Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, the Federation Press, Sydney, 2007, p. 150.

3 Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, the Federation Press, Sydney, 2007, p. 150.

but this is a secondary issue to ensuring that a worthwhile complaint process is in place and operating effectively.

Anti-corruption agencies are more outcomes focused. They are about impacting on the standards of integrity of designated agencies. Their actions may be based on complaints made to them, but these are a resource for them, not their *raison d'être*. They are not required to deal with all complaint matters/information sources equally. Rather, they steer their resources to where they can maximise their impact on integrity standards.⁴

2.5 Ombudsmen agencies play a key role in complaint management: their primary purpose is to investigate and address complaints reported by individual citizens who believe they have been treated unfairly, unreasonably or improperly by a government department or agency.⁵ Law enforcement and public sector integrity agencies increasingly focus on serious misconduct and corruption. Through their investigations they endeavour to expose the truth in order to curb and prevent corruption. Through risk analysis, research and education they aim to raise standards of integrity.⁶

External police oversight in Australia

2.6 In Australia, every police force has been subject to some form of external oversight since 1986. The nature of this oversight, however, varies significantly. In some states law enforcement bodies are subject to external, independent review by anti-corruption agencies, while in other states the oversight of police conduct falls solely within the jurisdiction of the Ombudsman.⁷

2.7 Law enforcement agencies in all states and territories are subject to the scrutiny of their respective Auditor-General and in most jurisdictions their administrative decisions are open to review by their respective Ombudsmen. In the Northern Territory and Tasmania this is the extent of the external police integrity arrangements.⁸

2.8 In South Australia a Police Complaints Authority was established under the *Police (Complaints and Disciplinary Proceedings) Act 1985*. The SA Police Complaints Authority was created to monitor internal police investigations of complaints. With a few exceptions, the Authority does not conduct primary

4 Mr Don McKenzie, *Submission 22*, p. 2.

5 See for example, www.comb.gov.au/commonwealth/publish.nsf/Content/aboutus_role. Of course, in different ways, the various state and Commonwealth Ombudsmen do more than process complaints, for example, conducting own-motion investigations into administrative matters, undertaking research and conducting compliance audits.

6 For a useful summary of the differences between a complaint-handling body and an anti-corruption body see ACLEI, *Annual Report of the Integrity Commissioner 2006-07*, p. 18.

7 Professor Colleen Lewis, Monash University, *Submission 12*, p. 1.

8 In Tasmania the Government is considering establishing a broad public sector ethics commission.

investigations of police complaints.⁹ Investigations into public sector and police corruption in SA are predominantly carried out by the Anti-Corruption Branch of the South Australia Police (SAPOL).¹⁰

2.9 The AFP is responsible for policing in the ACT. The AFP provides this service through its community policing arm, ACT Policing.¹¹ ACT Policing officers are, therefore, subject to the oversight of the Commonwealth Ombudsman and ACLEI.

2.10 The remaining four states - New South Wales, Queensland, Victoria and Western Australia - have external law enforcement integrity agencies in place.

2.11 The four state bodies and ACLEI operate according to an inquisitorial investigative system. Unlike a prosecutorial system in which the objective is to establish whether or not a person(s) is guilty with respect to criminal charges, an inquisitorial approach seeks to establish what happened; to expose the truth. Within this system the integrity agencies each have the power to compel witnesses to answer questions.

2.12 These five agencies also have a similar range of other coercive powers. A summary of these powers is provided at Appendix 3.

2.13 However, while sharing some fundamental features, these agencies vary in terms of function and breadth of jurisdiction. Three principal functions have been identified: a misconduct function; a prevention and education function; and an organised crime function.¹² Of these, various terms are used to describe the mix of functions that may be given to any one agency:

- The existence of the misconduct function and the organised crime function in one agency is referred to as the *merged model*;
- The *bifurcated model* describes the approach of having separate agencies responsible for each of the misconduct and organised crime functions;
- An agency which oversees police activities solely – such as the NSW Police Integrity Commission – is referred to as the *specialist model*; and
- An agency whose jurisdiction extends to all public sector officials is referred to as the *generalist model*.¹³

9 SA Police Complaints Authority, www.pca.sa.gov.au (accessed 20 January 2009).

10 South Australia Police, *Submission 7*, p.1.

11 AFP, www.afp.gov.au/act.html (accessed 20 January 2009).

12 Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, the Federation Press, Sydney, 2007, pp 154-158.

13 Associate Professor Glenn Ross and Ms Bernadine Tucker, *Submission 15*, pp 2-3.

Misconduct function

2.14 A further division is found in the misconduct function, with serious misconduct the responsibility of the external integrity agency and misconduct of a lesser nature dealt with by the respective state ombudsmen and/or internally by the organisation being oversighted.

2.15 The PIC outlined the advantages of dividing minor and serious complaints between the Ombudsman and the integrity agency:

- The integrity agency can focus its specialist powers and resources on the most serious forms of corruption – 'its role is undiluted by legislated obligations to manage a complaint handling process'; and
- The separation of the two functions into two agencies means that the two functions do not have to compete internally for resources.¹⁴

2.16 The states in which this division occurs are NSW, WA, and Qld. Similarly, at a Commonwealth level, ACLEI deals with corruption matters, while the AFP, the ACC and the Commonwealth Ombudsman manage misconduct that does not raise a corruption issue.

2.17 A potential disadvantage of dividing serious and minor complaints is the possibility for duplication to occur.¹⁵ The PIC indicated that this can be avoided through the clear categorisation of complaints and ongoing communication between the relevant agencies.

2.18 A further, related potential disadvantage is for confusion to exist between the agencies responsible for complaint management if the division between agency roles and the categories of misconduct are not sufficiently clear. The Commonwealth Ombudsman, Professor John McMillan, raised this matter with respect to the relatively broad definition of corruption within the LEIC Act. He argued that such a broad definition could lead to uncertainty between the agencies that have obligations under the Act.¹⁶

2.19 ACLEI noted that the somewhat non-prescriptive definition of corruption was included in the LEIC Act so that ACLEI's jurisdiction pertains both in circumstances beyond criminal conduct and in circumstances that may involve unprecedented forms of corrupt behaviour.¹⁷ In order to preserve the existing definition but clarify

14 PIC, *Submission 1*, p. 2.

15 PIC, *Submission 1*, p. 2.

16 Professor John McMillan, Commonwealth Ombudsman, *Submission 3*, p. 3.

17 This recognises that the concept of corrupt conduct is not static. Changes in community standards and expectations or the environment in which corrupt behaviour could manifest mean that what constitutes corrupt conduct may change over time. ACLEI, *answer to question on notice*, 16 December 2008 (received 16 January 2009), p. 1.

jurisdictional boundaries, the Commonwealth Ombudsman, ACLEI, the AFP and the ACC have been working jointly to clarify and refine administrative arrangements about classification, notification and referral of corruption issues between agencies.¹⁸

2.20 In Victoria, by contrast, the Office of Police Integrity (OPI) is responsible for assessing all police complaints. Some complaints are investigated by the OPI. However, the majority of complaints are referred back to Victoria Police for investigation, with the OPI playing an oversight and review role.¹⁹

2.21 In support of this approach, Associate Professor Colleen Lewis argued that the external integrity agency should be a central receiving point for all complaints and should be responsible for assessing and classifying all complaints. Further, she argued that the integrity body should monitor and supervise the processing of complaints that are returned to the police body for investigation. Professor Lewis explained that the external integrity agency should be the 'gatekeeper' of all complaints because citizens lack confidence in the police to investigate complaints objectively and fairly.²⁰ The committee notes also that complaints from members of the public can be a source of information that may indicate the existence of corrupt conduct.

2.22 The complaint handling process is given further consideration in chapter 4.

Serious and organised crime function

2.23 Two state integrity agencies – in Queensland and Western Australia - have a serious and organised crime function as well as a misconduct function.

2.24 The arguments for having a merged model are summarised as follows:

- The royal-commission-type powers vested in external oversight agencies and not normally granted to police can be harnessed in serious and organised crime investigations;
- 'there is a demonstrated link between organised crime and corrupt police officers' therefore dealing with organised crime and corruption under the one roof facilitates information exchange on overlapping matters; and
- Cost-savings can be achieved through the co-location of these two functions.²¹

18 ACLEI, *answer to question on notice*, 16 December 2008 (received 16 January 2009), p. 1.

19 OPI, *Submission 10*, p. 1.

20 Associate Professor Colleen Lewis, *Submission 12*, p. 2. See also Ms Tamar Hopkins, *Submission 23*, p. 2 & pp 8-10.

21 Kennedy summarised in Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, The Federation Press, Sydney, 2007, pp 157-158.

2.25 Arguments against a merged model are:

- The police service is the 'principal law enforcement agency' and there is no clear evidence that it has dealt inadequately with organised crime;
- It may lead to a 'loss of focus' within the agency;
- The capacity for the 'infiltration of corruption' into the agency is increased;
- The potential for the duplication of effort in intelligence gathering; and
- A loss of confidence by the public in the independence of the agency.²²

2.26 NSW has a separate agency responsible for serious and organised crime: the NSW Crime Commission. Victoria does not have a separate crime commission. Rather, it has a Chief Examiner who, under the *Major Crime (Investigative Powers) Act 2004*, has the role of using coercive information-gathering powers in relation to organised crime in Victoria.²³

Prevention and education function

2.27 A prevention and education function focuses attention on research, corruption risk-reviews, community awareness raising and education of agency staff about integrity matters. The prevention and education function is discussed in more detail in chapter 3.

An overview of state integrity arrangements

2.28 This section provides a general overview of the four state integrity bodies: the Police Integrity Commission (PIC) in NSW, the Crime and Misconduct Commission (CMC) in Queensland, the Office of Police Integrity (OPI) in Victoria and the Corruption and Crime Commission (CCC) in Western Australia. It further outlines the broader integrity framework in which these agencies sit.

New South Wales²⁴

2.29 NSW has a bifurcated, specialist police integrity model. Serious and organised crime is the responsibility of the NSW Crime Commission while police misconduct is the responsibility of the PIC. The PIC is responsible for the oversight of police only, with a separate body – the Independent Commission Against Corruption (ICAC) – responsible for corruption in the broader public sector.

22 Kennedy summarised in Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, The Federation Press, Sydney, 2007, pp 157-158.

23 ACLEI, *Submission 4*, p. 6.

24 This section is based on a submission from the PIC - *Submission 1*.

2.30 The PIC and the Office of the NSW Ombudsman play complementary roles in overseeing police integrity. The Ombudsman is a complaints administration body and focuses on complaints concerning 'administrative efficiency and decision making within NSW Police and other NSW public sector agencies'. Complaints are dealt with in an open manner with ongoing communication with the complainant. The PIC is a 'specialist investigative agency with special powers and resources to assist, detect, investigate and prevent police corruption'. Investigations tend to be covert with minimal contact with the complainant, and focus on serious complaints.

Police Integrity Commission

2.31 The PIC was established in 1996 by the NSW Parliament on the recommendation of the Royal Commission into the NSW Police Service. It is completely independent of the NSW Police Force.

2.32 The *Police Integrity Commission Act 1996* sets out the principal functions of the PIC. These functions are:

- preventing, detecting or investigating serious police misconduct; and,
- managing or overseeing other agencies in the detection and investigation of serious police misconduct and other police misconduct.

2.33 PIC is also empowered to manage those matters not completed by the Royal Commission. Other functions of PIC described in the Act relate to: police activities and education programs (s.14) and the collection of evidence and information (s.15).

2.34 On 5 June 2008, the NSW Police Minister David Campbell announced that the NSW Crime Commission would be brought under the oversight of PIC.

Parliamentary oversight committee

2.35 The Committee on the Office of the Ombudsman and Police Integrity Commission is a joint statutory committee. It was established in 1990 by amendment to the *Ombudsman Act 1974* to monitor and review the functions of the Ombudsman's Office. The Committee's jurisdiction was extended under the *Police Integrity Commission Act 1996* to include oversight of the PIC and the Inspector to the PIC.

Police Integrity Inspector

2.36 The Police Integrity Commission Inspector oversees the legality and propriety of the operations and activities of the PIC and any complaint of misconduct on the part of its officers.

Queensland

The Crime and Misconduct Commission

2.37 The CMC was established on 1 January 2002 when the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) merged to form the new organisation.

2.38 The CJC had been established by the *Criminal Justice Act 1989* following a recommendation from the Fitzgerald Inquiry into police corruption that a permanent anti-corruption commission be established.

2.39 In addition to investigating police and public sector misconduct, the (former) CJC worked with the police to investigate organised and major crime.

2.40 In 1997 this crime function was taken over by the newly formed Queensland Crime Commission (QCC), under the *Crime Commission Act 1997*. The QCC was also given the task of investigating paedophilia.

2.41 In 2001 the Queensland Government decided to amalgamate these two commissions and form a single independent law enforcement body to fight crime and public sector misconduct — the CMC. The legislation under which the new body was created was the *Crime and Misconduct Act 2001*.

2.42 The functions of the CMC are to combat major crime in Queensland, including organised crime and paedophilia, and official misconduct in the Queensland public sector. The CMC also has a witness protection function.

Parliamentary oversight committee

2.43 The Parliamentary Crime and Misconduct Committee (PCMC) was established under the *Crime and Misconduct Act 2001*.

2.44 The committee has an ongoing role in monitoring and reviewing the CMC and also conducts specific inquiries in respect of matters pertaining to the CMC. This includes assessing and reviewing complaints about the CMC and in this sense, it diverges from the Parliamentary Committees in NSW and WA and the role of this committee – the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.

2.45 It is through the committee that the CMC is accountable to the Parliament and to the people of Queensland.

Parliamentary Crime and Misconduct Commissioner

2.46 The Parliamentary Crime and Misconduct Commissioner provides assistance to the PCMC in its role of monitoring and reviewing the CMC. The Parliamentary Commissioner may investigate complaints against the CMC or its officers on the

direction of the PCMC, and conducts audits and reviews of the CMC's activities. The Parliamentary Commissioner does not have an 'own-motion' power.

- 2.47 The CMC explained that the Parliamentary Commissioner regularly:
- acts on referrals from the PCMC to review the CMC's management of complaint matters
 - audits the CMC's compliance with legislation governing covert instruments and the use of surveillance devices and assumed identities
 - inspects registers that the CMC is required to maintain
 - audits the CMC's intelligence holdings²⁵

2.48 The Parliamentary Commissioner may make recommendations about possible improvements to processes or procedure. The Parliamentary Commissioner reports to the PCMC.²⁶

Victoria

Office of Police Integrity

2.49 The OPI was established in November 2004 under the *Police Regulation Act 1958*. The *Police Integrity Act 2008* was assented to on 1 July 2008 and re-established the Office of Police Integrity. The introduction of the OPI's own Act, enabled adjustments to be made to the OPI's objects and powers, as recommended by the Special Investigations Monitor in November 2007.²⁷ The OPI is an independent organisation; it is not part of the Victoria Police.

2.50 OPI's role is to ensure that police corruption and serious misconduct is detected, investigated and prevented, and to ensure that members of the force have regard to the human rights set out in the Charter of Human Rights and Responsibilities Act 2006.²⁸

2.51 OPI receives and assesses all complaints about police conduct in Victoria. Some complaints are referred to Victoria Police to investigate. OPI oversees and reviews Victoria Police investigations. Other complaints are investigated by OPI.

2.52 The Director, Police Integrity, has the ability to conduct an 'own motion' investigation into any matter relevant to achieving the objectives of the office, including but not limited to:

- An investigation into the conduct of a member of the Victoria Police

25 CMC, *Submission 20*, p. 4.

26 www.parliament.qld.gov.au/view/committees/PCMC.asp (accessed 15 January 2009).

27 OPI, *Submission 10A*, p. 1.

28 OPI, *Submission 10*, p. 1.

- An investigation into police corruption or serious misconduct generally
- An investigation into any of the policies, practices or procedures of the Victoria Police or of a member of the Victoria Police, or of the failure of those policies, practices or procedures.²⁹

2.53 The OPI's jurisdiction does not include civilian members of the Victoria Police, who remain under the oversight of the Victorian Ombudsman.³⁰

2.54 Under the *Police Regulations Act*, the OPI has been given coercive powers including the power to compel witnesses to answer questions.³¹ OPI's powers include the ability to:

- Summons any person to give evidence on oath and/or to produce documents or things (summonses can be issued by the OPI only in pursuing an own motion or complaints investigation)
- Conduct hearings
- Inspect, copy, and/or seize documents and other items at the premises of public authorities including Victoria Police premises, without a warrant
- Obtain search warrants to enter, search, inspect, copy and/or seize documents or things relevant to an investigation
- Obtain warrants to use surveillance devices
- Seek certain orders under the *Confiscation Act 1997*
- Employ a range of contemporary investigation procedures – (OPI is able to receive telephone interception material. It is also able to conduct covert surveillance and is a registered authority under the *Assumed Identities Act*. Like Victoria Police and other law enforcement agencies, the OPI must have sufficient reasons for deploying these powers and a warrant must be obtained from the appropriate external issuing authority).³²

2.55 OPI cannot take direct action against Victoria Police. The agency can only make recommendations to the Chief Commissioner of Police and the Victorian Parliament. In making these recommendations, OPI cannot compel Victoria Police to act upon or implement its recommendations. It can however report to the Victorian Parliament on the degree of cooperation exhibited by Victoria Police.³³

2.56 The committee notes that the OPI, through education research and working with Victoria Police, seeks to develop and implement corruption resistance strategies

29 OPI, *Submission 10*, p. 2.

30 The Acting Ombudsman Victoria, Mr John Taylor described this as 'an anomaly in the legislation' and concluded that civilian and non-civilian officers of Victoria Police should be under the jurisdiction of the OPI, *Committee Hansard*, 1 October 2008, p. 19.

31 OPI, *Submission 10*, p. 4.

32 OPI, *Submission 10*, p. 3.

33 OPI, *Submission 10*, pp 5-6.

to reduce the risk of corruption and serious misconduct. This task is undertaken by OPI's Corruption Prevention and Education Unit, which works with Victoria Police and other agencies to develop solutions for building police integrity.³⁴

2.57 In order to undertake its role the committee notes that OPI is both well staffed and resourced. In 2007-08, OPI's funding was \$21.3m and the office had a staff of 113 permanent staff and 14 casual/contract staff.

The Office of the Special Investigations Monitor

2.58 The Office of the Special Investigations Monitor is a statutory agency and was created by section 4 of the *Major Crime (Special Investigations Monitor) Act 2004*, which commenced operation on 16 November 2004.

2.59 The role of the Special Investigations Monitor includes monitoring compliance with both the *Police Regulation Act 1958* and the *Major Crime (Investigative Powers) Act 2004* by the Director, Police Integrity and the Office of the Chief Examiner respectively.

Commissioner for Law Enforcement Data Security

2.60 The Commissioner for Law Enforcement Data Security is established under the *Commissioner for Law Enforcement Data Security Act 2005*.

2.61 The Commissioner's principal role is to 'promote the use by Victoria Police of appropriate and secure management practices for law enforcement data'.

2.62 'The Commissioner has the power to refer any matter connected with the performance of his/her duties as the Commissioner to the Director, Police Integrity, or the Privacy Commissioner. This may occur if the Commissioner considers that the matter is relevant to the performance of functions or duties undertaken by either of these offices.'³⁵

Western Australia

Corruption and Crime Commission

2.63 The CCC was established on 1 January 2004 following a recommendation from the Kennedy Royal Commission in WA. The CCC is based on the Queensland anti-corruption model.

2.64 The CCC investigates allegations of misconduct by Western Australia police officers and public officers, including officers employed in local government.

34 OPI, *Submission 10*, p. 9.

35 Commissioner for Law Enforcement Data Security website, www.cleds.vic.gov.au (accessed 18 August 2008).

2.65 The CCC has two main purposes:

- to combat and reduce the incidence of organised crime. While the Commission does not investigate organised crime itself, it can grant the Commissioner of Police exceptional powers not normally available to police to investigate organised crime. The use of these powers is authorised and monitored by the Corruption and Crime Commission Commissioner; and
- to reduce the incidence of misconduct in the public service.

Parliamentary oversight committee & Parliamentary Inspector

2.66 The *Corruption and Crime Commission Act 2003* provides for a range of accountability mechanisms to scrutinise the CCC's use of its special investigative powers. This includes a Joint Standing Committee on the Corruption and Crime Commission, whose role is to:

- monitor and report to Parliament on the exercise of the functions of the Commission and the Parliamentary Inspector of the Commission; and
- promote integrity within the public sector.

2.67 The role of the Parliamentary Inspector is to ensure that the CCC exercises its powers and conducts operations in accordance with the law. The Inspector is responsible under Part 13 of the Act to assist the Committee in the performance of its functions.

ACLEI: a broad comparison

2.68 ACLEI has been established as a specialist agency within a bifurcated system. That is, it focuses solely on law enforcement integrity and the function of serious and organised crime is undertaken by a separate agency – the ACC. ACLEI's legislation (the LEIC Act), places greater emphasis on ACLEI's role as an investigative body and gives less prominence to corruption prevention. This is discussed in further detail in chapter 3.

2.69 At the Commonwealth level there is no dedicated public sector anti-corruption body.³⁶ Corruption matters of a criminal nature within the public sector are the responsibility of the AFP. This committee – the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity – provides external Parliamentary oversight of ACLEI. There is no inspector at the Commonwealth level.

36 It should be noted that the Australian Public Service Commission plays a role in the development and promotion of public sector integrity.

2.70 The table below summarises the functions and scope of the four state agencies and ACLEI.³⁷

	Misconduct - Police	Misconduct – Public sector	Prevention & education	Major crime
ACLEI	Yes (corruption only) ³⁸	No	Yes ³⁹	No
PIC (NSW)	Yes	No (separate body – ICAC)	Limited (mainly the responsibility of ICAC)	No
CMC (Qld)	Yes	Yes	Yes	Yes
OPI (Vic.)	Yes	No	Yes	No
CCC (WA)	Yes	Yes	Yes	Yes ⁴⁰

2.71 ACLEI is currently most analogous to the PIC in NSW.⁴¹ This is evident in the following ways:

- They are specialist integrity agencies;
- they sit within a bifurcated model, where serious and organised crime is undertaken by a separate agency;
- they have a limited corruption prevention role and, correspondingly, a greater focus on investigation; and
- they have oversight of their respective jurisdiction's serious and organised crime body.⁴²

37 The table draws on Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, The Federation Press, Sydney, 2007, Table 11.2, p. 155.

38 ACLEI's focus is to investigate serious and systemic corruption issues. The Commonwealth Ombudsman has a more general remit to oversee the handling of complaints, including those that may involve serious misconduct, but not corruption.

39 Resourcing constraints currently limit the attention ACLEI is able to direct to its prevention and education role. This is discussed further in chapters 3 and 5.

40 While the CCC does not investigate organised crime itself, it can grant the Commissioner of Police exceptional powers not normally available to police to investigate organised crime. The use of these powers is authorised and monitored by the CCC commissioner.

41 Mr Philip Moss, ACLEI, *Committee Hansard*, 26 September 2008, p. 3.

42 As noted earlier, the PIC's oversight was recently extended to the NSW Crime Commission.

Internal law enforcement integrity controls

2.72 This section provides a general overview of the four corresponding state police services and their internal integrity arrangements.

New South Wales Police Force

2.73 The NSW Police Force currently operates under the *Police Act 1990* and *Police Regulations 2008*. The Force has 19 319 employees, which is made up of 15 324 sworn police officers and 3995 civilian staff.⁴³

2.74 NSW Police Force personnel operate under *The Code of Conduct & Ethics* and the *Statement of Values*. 'Those corruption matters of a less serious nature are dealt with internally by the NSW Police Force and are managed by the Professional Standards Command'.⁴⁴ The Professional Standards Command (PSC) has responsibility for setting standards for performance, conduct and integrity within NSW Police and reports to the Deputy Commissioner Specialist Operations. The core business aims of the PSC are:

- Promoting professional standards.
- Investigating serious criminal allegations, corruption, and high-risk matters where police officers may be involved.
- Identifying and responding to high-risk behaviour in people, places and systems where misconduct is a factor.
- Promoting and supporting fair, consistent and effective management of all staff.⁴⁵

2.75 The functions undertaken by the PSC to achieve these aims are:

- Providing advisory, consultancy and review services with respect to investigations, critical incidents, complaint management and employee management.
- Applying investigation, intelligence and integrity testing resources according to risk based prioritisation.
- Developing and applying intelligence to identify and support professional standards through analytical support, audits, assessment of probity issues, and strategic research.
- Developing, or contributing to, reference materials, standard operating procedures, policies and training that support professional standards and the application of best practice.

43 NSW Police Force, *Annual Report 2007-08*, p. 3.

44 New South Wales Government, *Submission 9*, p. 2.

45 NSW Police Force, www.police.nsw.gov.au (accessed 13 January 2009).

- Acting as a primary point of contact within NSW Police for agencies such as the Police Integrity Commission, the NSW Ombudsman, the NSW Coroner, and the Independent Commission Against Corruption.⁴⁶

2.76 The PSC also maintains close liaison with the Police Integrity Commission and the NSW Ombudsman to ensure that the issues of interest to those agencies are considered within the NSW Police complaint management framework.⁴⁷

Queensland Police Service

2.77 The Queensland Police Service (QPS) comprises eight regions dealing with operational and community policing issues. Three commands deal with major crime, specialist operational support and ethical standards, and a corporate services group manages administration, finance, human resources and information and communications technology functions.⁴⁸

2.78 In 2007-08, the Service employed 13 948 personnel consisting of 9833 sworn police officers and 3711 unsworn staff members. All members of the QPS have a statutory obligation under the *Police Service Administration Act 1990* to report any misconduct or breaches of discipline as soon as practicable to the Commissioner of Police and, in the case of misconduct or official misconduct, to the Chairperson of the CMC.⁴⁹

2.79 The standards and principles determining what constitutes ethical, lawful and proper behaviour for the QPS are set out in a *Code of Conduct*, which reflects the standards and principles in the *Public Sector Ethics Act 1994*.⁵⁰ Responsibility for the efficient and proper administrative management of the Police Service lies primarily with the Ethical Standards Command (ESC). The Queensland Minister for Police, Corrective Services and Sport, the Hon. Judy Spence MP, informed the committee that:

All matters of misconduct (which includes police misconduct and official misconduct) must be overviewed by the ESC before any action is taken. The ESC and the CMC audit and review how complaints, regardless of their classification, are dealt with. Breaches of discipline are the responsibility of Regions/Commands and Directorates, dealt with and finalised at the local/regional level with only the outcome of those complaints recorded at ESC.⁵¹

46 NSW Police Force, www.police.nsw.gov.au (accessed 13 January 2009).

47 NSW Police Force, *Annual Report 2007-08*, p. 48.

48 Queensland Police Service, *Annual Report 2007-08*.

49 Queensland Government, *Submission 8*, p. 3. It is worth noting that at the Commonwealth level, there are no statutory obligations for AFP or ACC employees to report misconduct or breaches of discipline. This is discussed further in chapter 5.

50 Queensland Police Service, *Annual Report 2007-08*, p. 52.

51 Queensland Government, *Submission 8*, p. 2

2.80 The ESC is comprised of three branches: the Internal Investigations Branch - responsible for the investigation of complaints against police; the Ethical Practice Branch – responsible for corruption prevention, risk management and education and training; and the Inspectorate and Evaluation Branch – responsible for the inspection and audit of police establishments. The committee was informed that:

Each of the three branches is headed by a Superintendent who reports to the Assistant Commissioner ESC, who in turn reports directly to the Police Commissioner.⁵²

2.81 The work of the ESC is supported by a strong partnership with the CMC and professional practice managers in each region and command.

2.82 Of note, in 2007-08 the QPS produced a whole-of-Service Corruption Prevention Plan, in accordance with the *Police Service Administration Act 1990* and *Whistle Blowers Protection Act 1994*. The framework for this plan is based on four pillars:

- the QPS corporate governance framework for corruption prevention;
- a strategic framework to ensure that the QPS remains a corruption resistant organisation;
- individual commitment: “Integrity is everyone’s business”; and
- a quick reference guide to ethical decision making, called the SELF Test.⁵³

Victoria Police

2.83 Within Victoria Police's five regions, fifty-six Police Service Areas have been established to deliver policing services. At the end of June 2008, the organisation comprised 14 229 staff, including 11 444 sworn police officers and recruits, 2634 public servants, and 139 protective service officers.⁵⁴ The *Police Regulation Act 1958* is the legislative instrument under which Victoria Police operates.

2.84 The internal integrity of Victoria Police is managed and overseen by the Ethical Standards Department (ESD). ESD's mission is to enhance and promote a culture of high ethical standards throughout Victoria Police through effective prevention, deterrence and investigation of unethical behaviour ensuring the continued respect and confidence of the community.

2.85 The ESD is tasked with receiving and investigating complaints of unethical behaviour and misconduct alleged to have been committed by Victoria Police employees and proactively enhances the ethical health of Victoria Police through

52 Queensland Government, *Submission 8*, p. 2.

53 Queensland Police Service, *Annual Report 2007-08*, p. 54.

54 Victoria Police, *Annual Report 2007-08*, p. 64.

education, training and forming strong community and government partnerships. The Director, Office of Police Integrity, oversees the ESD.⁵⁵

Western Australia Police

2.86 As at 30 June 2008, the Western Australia Police (WAPOL) had 5647 sworn officers and 1879 unsworn staff members.⁵⁶

2.87 Of note, in Western Australia, following the release of the Kennedy Royal Commission Final Report, the Government provided funding for the WAPOL to implement a range of strategies to build a corruption resistant culture.⁵⁷

2.88 In accordance with this requirement, the WAPOL introduced an agency-wide corporate Corruption Prevention Plan that:

- Actively promotes a culture of professionalism, integrity and risk management.
- Strives to reduce the incidence of misconduct and corruption.

2.89 In 2004/05 implementation of corruption prevention plans were formalised through integration into the WAPOL Corporate Strategic Business Plan.

2.90 WAPOL personnel operate under a *Code of Conduct*, which encourages ethical awareness and personal commitment to appropriate behaviour. The *Code of Conduct* also:

articulates the behaviours that the WA Police require of its entire workforce and encourages ethical awareness learning and behaviour that is vital for community trust and confidence in our agency.⁵⁸

2.91 The Corruption Prevention and Investigation Portfolio within WAPOL is responsible for maintaining the standards and the management of behaviour and performance by ensuring efficient and effective accountable management and disciplinary systems are in place.⁵⁹

2.92 The Portfolio is comprised of four branches or units. The Internal Affairs Unit – responsible for the investigation of matters associated with serious misconduct, corruption and criminality; the Risk Assessment Unit – primarily responsible for managing profiles of current police personnel or work areas where an identified pattern of lack of integrity, dishonest behaviour, under-performance or ethical issues

55 Victoria Police, *Ethical Standards Department – Community Service Charter*, www.police.vic.gov.au (accessed 13 January 2009).

56 Western Australia Police, *Annual report 2007-08*, p 38.

57 Western Australia Police, *Submission 11*, p. 2.

58 Western Australia Police, *Submission 11*, p. 3.

59 Western Australia Police, *Submission 11*, p. 7.

are developing; the Ethical Standards Division – which provides a corporate governance role with respect to professional standards of the agency; and the Police Complaints Administration Centre – which records, assesses, allocates and monitors complaints and formal investigation processes that require internal investigation.⁶⁰

60 Western Australia Police, *Submission 11*, pp 7 - 12.