

Chapter 3

A 'building block' approach

3.1 Unlike its state counterparts, ACLEI was not established in response to evidence of systemic corruption in the Federal law enforcement agencies. Rather, the decision to create a Federal law enforcement integrity agency was proactive; it was designed to enhance public confidence in Australian Government law enforcement agencies and to complement internal integrity arrangements aimed at curbing and preventing police corruption. As ACLEI noted:

ACLEI's creation can be explained as 'precautionary' policy – recognition of the high corruption-risk activities undertaken by the AFP and ACC, and of the reliance that Government has placed on those agencies, as demonstrated by their expanding functions and increasing budgets in recent years.¹

3.2 This is not to suggest that Federal law enforcement agencies are completely free of corruption. As a number of witnesses observed, there will always be 'some corrupt people doing corrupt things'.² The Commonwealth Ombudsman, Professor John McMillan, remarked:

I am strongly of the view that it is misguided to work from the premise that we have not seen corruption and, therefore, that it does not exist and it is not a problem. Firstly, corruption has been a problem for every police force internationally and it would be wrong to assume that it cannot be a problem for any policing agency in Australia.³

3.3 At the time that the LEIC Act was introduced it appeared that law enforcement agencies at the Commonwealth level were free of endemic corruption. For this reason, ACLEI was established on a 'building block approach'. That is, an approach in which the jurisdiction of the agency is initially limited⁴ and different arms or capabilities of the agency – for example physical and technical surveillance capabilities - are able to be added to over time as the corruption risks are better understood:

In a 'building block' approach to agency development, ACLEI has been funded at a level that provides for basic operations to commence while

1 ACLEI, *Submission 4*, p. 5.

2 The Hon. Len Roberts-Smith, CCC, *Committee Hansard*, 17 November 2008, p. 15.

3 Professor John McMillan, Commonwealth Ombudsman, *Committee Hansard*, 1 October 2008, p. 35.

4 As noted in chapter 1, ACLEI currently has oversight of the AFP, the ACC and the former NCA. Other Commonwealth agencies with a law enforcement function are able to be brought under ACLEI's jurisdiction by regulation.

further information is gathered about the resources that will be required to meet the corruption environment ACLEI encounters.⁵

3.4 By contrast, for those jurisdictions in which serious and systemic corruption is manifest, the approach of 'catastrophic change'⁶ may well be appropriate and effective. A full-scale agency with all or most of its investigation capabilities in place may be needed to meet the evident corruption challenge. As discussed in the previous chapter, this was the case in NSW, Queensland and WA, with each integrity agency established following Royal Commissions of inquiry. Victoria Police links with gangland killings led to the establishment of that state's integrity agency.

3.5 However, as ACLEI was not set up in response to a crisis – to evidence of flourishing and widespread corruption - the more cautious 'building block approach' adopted for the founding of ACLEI was measured. As Mr Daryl Melham MP commented during the second reading debate for the LEIC Bill and associated bills:

I can see an argument as to why there has been a limitation on the number of agencies in the first instance because of resource and other implications. To get the body up and running, you do not give it too much too early which would set it up for failure in the first instance. You let it get its procedures and processes right before you expand the number of agencies.⁷

3.6 It was envisaged that the 'building block' approach would enable ACLEI to gain an understanding of the corruption-risk profile of a limited number of agencies.

3.7 ACLEI described its relationship to the agencies it oversees as an 'integrity partnership'.⁸ This description refers to a number of features of the ACLEI model:

- The obligation under the LEIC Act on the heads of the ACC and AFP to notify ACLEI of all corruption issues;
- A division of the responsibility for corruption matters between ACLEI (serious and systemic corruption) and the agencies it oversees (corruption matters of a lesser nature); and
- The capacity to undertake joint investigations with the agencies it oversees.⁹

The building blocks

3.8 This section discusses the issues that arose during the inquiry that have implications for the 'building block' approach.

5 ACLEI, *Submission 4*, p. 7.

6 Commissioner Andrew Scipione, NSW Police Force, *Committee Hansard*, 18 November 2008, p. 25.

7 Mr Daryl Melham MP, *House of Representatives Hansard*, 21 June 2006, p. 23.

8 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 10.

9 ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 4.

3.9 ACLEI has broadly characterised the 'building blocks' as follows:

The reference to 'building blocks' includes consideration of what basic level of resources are needed as workloads are established, as well as to issues of investigation capabilities and jurisdiction.¹⁰

3.10 The range of investigation capability building blocks includes:¹¹

- Infrastructure for hearings and investigations
 - Perimeter security
 - Secure hearing room, interview rooms, and waiting rooms
 - Task force facilities
 - Evidence vault
- Legal support services
 - Counsel assisting
 - Answering legal challenges
- Operations and covert information-gathering
 - Target identification program (including financial analysis and profiling)
 - Telecommunications and data interception capability
 - Covert investigation (physical and technical surveillance) capability
 - Covert Human Information Source (CHIS) capability
 - Controlled operation capability
 - Assumed identity capability
 - Integrity testing capability
 - Computer forensics capability
 - Specialist corporate support services for covert activities
 - Specialist information technology services to support covert activities
 - Personnel security considerations
 - Operational training program
 - 'Whistle-blower' arrangements
 - Witness protection arrangements
- Prevention
 - Corruption risk assessment capability
 - Research, publishing and communication program

¹⁰ ACLEI, *Submission 4*, p. 7.

¹¹ List from ACLEI, *Submission 4*, pp 7-8.

- Strategic direction
 - Parliamentary & Policy program
 - Corporate governance and internal assurance programs

3.11 The main themes that emerged concerning the investigation building blocks were: the need to find cost-effective ways to access investigation capabilities; the integral nature of a secure hearing room; and the importance of developing a prevention and education function.

Cost-effective ways to access investigation capabilities

Sharing investigation capabilities

3.12 A number of witnesses commented on the high costs associated with technical surveillance, noting in particular the cost of keeping pace with technological change. For example Mr John Pritchard, Commissioner of PIC commented:

In the area of electronic eavesdropping, the technology changes so rapidly, and it is very expensive to keep up with. The service providers rapidly change and you always get the impression that the law enforcement area is catching up. There are prepaid mobile phones and then trying to trace mobile phone numbers and who has them. It is just so easy to get mobile phones and to give false names these days, for example, and law enforcement agencies are presented with some difficulties in keeping up with that. For each agency to have its own electronic eavesdropping capacity is very costly.¹²

3.13 Similarly, the Hon. Jerrold Cripps QC, Commissioner of ICAC, informed the committee that ICAC at times accesses the NSW Crime Commission's telephone intercept service. He explained that 'telephone tapping' and transcribing are time-consuming and costly:

...they have got the better equipment to do it. You have an inquiry and suddenly you will read in the paper that this was said on the telephone. What you probably do not realise is that someone has listened to a telephone for 20 hours to get that and then someone has to type it up. That is the biggest resource drain we have. Surveillance is not so much of a drain, although it can be.¹³

3.14 ACLEI also noted the considerable costs associated with electronic surveillance capabilities and raised the possibility of centralising or otherwise sharing capabilities:

ACLEI notes that a major expense of technical support for operations is the cost of keeping pace with technological change. Presently that cost is borne

12 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 7.

13 The Hon. Jerrold Cripps QC, ICAC, *Committee Hansard*, 18 November 2008, p. 54.

separately by each agency. One possible solution might be to formalise a cooperative program in coming years amongst the integrity agencies.¹⁴

3.15 Mr Pritchard reflected on ACLEI's proposal and commented that along with the expense of the technology, the limited pool of skilled covert operatives presented a further challenge:

The one benefit that instantly leaps to mind is cost. I do not know whether that would be a decisive factor. There are other issues, but from my own perspective I think that, given the proliferation of integrity agencies at the state level and now one at the national level, there is going to come a point where there has to be some consideration given to consolidating certain aspects of their functioning. One of those is electronic eavesdropping. As I said, the technology in that area is changing rapidly. It is costly. It is very costly to maintain. It is costly to find people. You only have to look at the employment ads on the weekends to see the intelligence agencies constantly looking for people with an electronic information and technology background in the area of information gathering and intelligence gathering by way of electronic means.¹⁵

3.16 The Commonwealth Ombudsman, Professor John McMillan, expressed the view that centralising telephone interception could work. However, he was less convinced about the centralisation of other covert activities noting that:

There is a strong argument against it, which is that using people to shadow the movements of others on a 24-hour basis is quite a different function from sitting with a couple of headphones on and intercepting telephone calls.¹⁶

3.17 ACLEI reported that the Australian Government Attorney-General's Department is considering the prospect of 'consolidating the telecommunications interception function in Australia', as has been achieved overseas.¹⁷

Purchasing capabilities on a needs basis

3.18 ACLEI does not currently have a 'permanent covert investigative capability' and its strategy to access covert investigative support is to 'purchase services from other integrity or law enforcement agencies'.¹⁸

3.19 It can be argued that the more investigation capabilities that are in-house the greater the independence of an integrity agency and the greater the security of

14 ACLEI, *Submission 4*, p. 13.

15 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 13.

16 Professor John McMillan, Commonwealth Ombudsman, *Committee Hansard*, 1 October 2008, p. 31.

17 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 7.

18 ACLEI, *Submission 4*, p. 13.

sensitive information. Mr Stephen Lambrides from the CMC concluded, however, that it was necessary to weigh up the benefits and the costs:

Look, the situation is that you can get a lot of those [investigation capabilities] offshore—outside the organisation. It depends on the number of jobs you have and the amount of work you have. Sometimes it is just not worth having personnel there within the organisation when they are just not going to be engaged sufficiently. ...It really comes down to the demand on the organisation for that particular service.¹⁹

3.20 One particular investigation capability that witnesses were more inclined to see as belonging in-house, however, was a secure hearing room.

Secure hearing room

3.21 One of the principal powers of the four state integrity bodies and ACLEI is the power to conduct coercive hearings. Mr John Pritchard, Commissioner of PIC, emphasised the importance of the hearing room power noting in particular, the capacity to hold public hearings:

The hearing room power I think is an effective one. ...the capacity to conduct a public hearing I think is an important one. You have to use it properly. If you look at the forerunner to the CCC in Western Australia, the old Anti-Corruption Commission, one of the arguments that was put up for the failure of that body was that it could not hold public hearings.

It does not mean that you have a public hearing every day, and it does not mean that the first thing you do when you get a complaint is have a public hearing, but the capacity to do it when the occasion arises is important.²⁰

3.22 In order to conduct hearings, a secure hearing room with appropriate technical and physical infrastructure such as a waiting room, technical equipment and public seating, is required. Currently ACLEI does not have its own hearing room. As the Integrity Commissioner, Mr Philip Moss, explained, in the absence of a dedicated ACLEI facility, he has used other agencies' facilities:

Increasingly, I am conducting coercive information-gathering hearings, and to have the proper facility to do that is important. No such facility exists in Canberra. I have used the AAT hearing room for this, but, when I use the hearing room of the Police Integrity Commission in New South Wales, as I have, or the hearing room of the New South Wales Crime Commission, as I have—we have also used the Office of Police Integrity hearing room in Melbourne—I really then do have the requirements to make effective use of that power.²¹

19 Mr Stephen Lambrides, CMC, *Committee Hansard*, 14 November 2008, p. 42.

20 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 15.

21 Mr Philip Moss, ACLEI, *Committee Hansard*, 26 September 2008, p. 11.

3.23 Witnesses noted that a secure hearing room fitted out with the requisite technical infrastructure was integral to the work of integrity agencies and that an in-house facility was desirable. The Hon. Len Roberts-Smith, CCC Commissioner stated:

I would have thought it would be very difficult for an anticorruption agency exercising coercive hearing powers to operate without its own hearing room. There is a lot more to conducting a coercive hearing than simply having the equivalent of a courtroom where people can sit around and you have things like benches and bar tables or whatever else. The proper conduct of hearings of that kind requires a lot of technical and infrastructure support. If one is going to be playing surveillance device footage or telecommunication intercepts or doing things of that kind, one needs to have the technology integrated into the courtroom to enable that to be done, and done quickly and effectively, from a forensic point of view.²²

3.24 Similarly, whilst open to the idea of accessing various capabilities 'offshore', Mr Stephen Lambrides from the CMC was supportive of an in-house hearing room. He observed:

I think you need a secure hearing room. The one thing that distinguishes our organisation from the Police Service is coercive hearings. You will rely more and more on coercive hearings if you are doing your job properly. I think you do need to have dedicated hearing rooms for that purpose, and you need to develop expertise in that area, because it does require expertise.²³

3.25 Clearly, an on-site hearing room would enhance ACLEI's ability to conduct its investigations. Hearings could be conducted as soon as necessary rather than being scheduled around the availability of an 'offshore' facility. There would also be cost-savings with respect to travel and staff time. More importantly, public hearings would hold more authority if held in a dedicated agency facility.

3.26 The committee notes that ACLEI's workload is progressively increasing and it is reasonable to expect that the number of hearings conducted by ACLEI will also increase over time. The committee considers the establishment of a secure hearing room to be a priority building block for ACLEI.

Corruption prevention and education

3.27 Evidence to the inquiry focused heavily on the importance of a corruption and education function. The Commonwealth Ombudsman, Professor John McMillan, explained that prevention and education are now regarded as 'essential activities' for Australian anti-corruption bodies.²⁴

22 The Hon. Len Roberts-Smith, Commissioner, CCC, 17 November 2008, p. 7.

23 Mr Stephen Lambrides, CMC, *Committee Hansard*, 14 November 2008, p. 42.

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

Why have a prevention and education function?

3.28 A prevention function enables investigation findings to be placed within a context – to understand the circumstances that enabled corruption to flourish and to communicate those observations to the agencies concerned.

3.29 The OPI described the prevention functions as follows:

In a corruption investigation, the objective is to determine what happened. Prevention takes this one step further by asking questions like:

- How did the corrupt conduct occur?
- What were the circumstances surrounding it?
- What measures does Victoria Police have in place to ensure that this type of conduct does not occur again?

By identifying the factors that enable corruption and misconduct, it is possible to intervene early to stop the behaviour occurring in the first place. Prevention, then, is not a simple task. It requires a detailed understanding of what has gone wrong in the past and why. It also requires a careful consideration of how the working environment can be changed to prevent the same thing happening in the future.²⁵

3.30 The exposure of corrupt individuals through the investigation process can serve as a preventative measure by acting as a deterrent for further corrupt behaviour. A dedicated prevention function seeks to do much more than this. It aims to inform the development of law enforcement anti-corruption controls within a framework of risk management.

3.31 In this sense, corruption prevention is proactive. It pursues the prevention of future corruption rather than being predominantly reactive,²⁶ that is, responding to cases of possible corruption as or after they occur.

3.32 Prevention activities include:

- corruption risk assessments – provide the integrity agency with an understanding of the risk environment and enable the targeting of resources to the greatest risks;
- research – enables the integrity agency to identify new corruption risks and develop ways to manage them, and to keep pace with new investigation techniques and changes in best practice occurring in other jurisdictions nationally and internationally; and

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

26 It is worth noting that the power to initiate 'own motion' investigations, as ACLEI is able to do, enables the integrity agency to be proactive in the sense of intervening early in potential corruption matters.

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- development of good practice tools – assists the agencies being overseen to recognise and manage corruption risks internally.

3.33 The education aspect of this function serves three principal purposes:

- to raise community awareness and, consequently, improve public confidence in the agencies under oversight;
- to increase understanding by officers about ethical issues, conflict of interest and corruption prevention, thereby promoting a greater culture of integrity; and
- to raise awareness about the existence, purpose and role of the integrity agency so that law enforcement officers and others can bring forward information of interest to the integrity agency.

OPI – overview of prevention and education role

3.34 The OPI has a Corruption Prevention and Education Unit, which identifies misconduct and corruption risks, develops 'practical solutions' for improving police integrity and provides recommendations to Victoria Police to assist them in managing and minimising corruption risks.²⁷

3.35 The OPI's prevention function is provided for in section 6 and section 8 of the *Police Integrity Act 2008*.

3.36 The OPI outlined a number of activities undertaken by the Corruption Prevention and Education Unit:

- advice and consultancy to Victoria Police;
- applied research;
- awareness-raising across Victoria Police;
- community education;
- environmental scanning and analysis of corruption trends;
- thematic and systemic reviews; and
- training and education of Victoria Police members.²⁸

CCC – overview of prevention and education role

3.37 Section 17 of the *Corruption and Crime Commission Act 2003*, sets out the CCC's prevention and education function, which includes:

- analysing the intelligence it gathers in support of its investigations into organised crime and misconduct; and

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

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

- analysing the results of its investigations and the information it gathers in performing its functions;
- analysing systems used within public authorities to prevent misconduct;
- using information it gathers from any source in support of its prevention and education function;
- providing information to, consulting with, and making recommendations to public authorities;
- providing information relevant to its prevention and education function to the general community;
- ensuring that in performing all of its functions it has regard to its prevention and education function; and
- generally increasing the capacity of public authorities to prevent misconduct by providing advice and training to those authorities, if asked, to other entities; and reporting on ways to prevent misconduct.²⁹

3.38 The CCC's Corruption Prevention, Education and Research Directorate aims to reduce corruption and to assist public sector agencies to develop their corruption prevention capacity. The Corruption Prevention, Education and Research Directorate's work includes research, consultancy and education.³⁰

CMC – overview of prevention and education role

3.39 The CMC's prevention function is set out in sections 24 and 25 of the *Crime and Misconduct Act 2001*. The prevention function as outlined in the legislation is relatively broad and unrestricted and includes analysis of investigations and agency systems to further its prevention role, informing the community and providing advice and training to agencies.³¹

3.40 The CMC has a dedicated research and prevention section. The CMC explained that it 'seeks to build capacity to prevent and deal with misconduct' in the Qld Police Service and broader public sector through a range of ways including:

- providing advice, support and relevant resources;
- conducting workshops and information sessions;
- meeting with chief executives and senior managers in public sector agencies;
- conducting outreach activities (such as liaison meetings and visiting rural and regional areas);
- working with other oversight agencies;
- working with Indigenous communities;

29 *Corruption and Crime Commission Act 2003*, s. 17.

30 www.ccc.wa.gov.au (accessed 18 December 2008).

31 *Crime and Misconduct Act 2001*, ss. 24-25.

- conducting research; and
- production of materials focussed on a range of misconduct risk areas.³²

3.41 Professor Tim Prenzler observed:

One of the very positive aspects of the work of the CMC is that it has had this large Research and Prevention Division. It has done a lot of survey work and a lot of analysis work. It has often come up with excellent recommendations for improving police practice.³³

PIC – overview of prevention and education role

3.42 Section 13(1)(a) of the *Police Integrity Commission Act 1996*, designates the prevention of police misconduct as one of the PIC's functions. Section 14 of the Act includes provisions to advise police and other authorities on ways in which to reduce police misconduct.

3.43 The PIC undertakes research, develops misconduct risk management plans and produces educational material.

3.44 According to Professor Glen Ross, the PIC's work holds a much greater focus on investigation and its prevention and education role is narrower than other agencies.³⁴

The State agencies in summary

3.45 In summary, the CMC, the CCC and, progressively, the OPI have a strong, dedicated corruption prevention and education function. The PIC undertakes some prevention and education activities, which are underpinned by legislation.

ACLEI – the current situation

3.46 The objects of the LEIC Act include, 'to prevent corrupt conduct in law enforcement agencies'.³⁵ However, prevention and education are not included in section 15, which sets out the functions of the Integrity Commissioner.

3.47 The Attorney-General's Department informed the committee that ACLEI was set up principally as an investigatory body, however, there was the capacity for ACLEI to undertake some prevention and education activities:

There is no express education and prevention provision in the legislation, as ACLEI was originally intended to be primarily an investigatory body.

32 CMC, *Submission 20*, p. 8.

33 Professor Tim Prenzler, *Committee Hansard*, 14 November 2008, p. 8.

34 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. 154.

35 LEIC Act, s. 3(1)(c).

However, there are functions of the integrity commission that lend themselves to education and prevention. For example, the commissioner may make recommendations to the minister in relation to administrative action on issues relating to corruption.³⁶

3.48 Similarly, the Integrity Commissioner, Mr Philip Moss, observed:

The Law Enforcement Integrity Commissioner Act does focus largely on the mechanics of investigation because coercive and intrusive powers are involved. ...As to prevention and education, there is less specific reference to that role.³⁷

3.49 Mr Moss informed the committee, however, that while the legislation emphasises ACLEI's investigatory role he considers prevention and education an important function for ACLEI and has directed resources to it accordingly.³⁸

3.50 The range of prevention and education activities undertaken by ACLEI include:

- corruption-risk reviews of the agencies under its oversight;
- limited research to keep pace with corruption detection, investigation and prevention initiatives;
- presentations to AFP and ACC new recruits and incumbent staff;
- presentations to other agencies about ACLEI and its role; and
- presentations to the public about ACLEI and the integrity system³⁹

3.51 ACLEI noted that while it has limited capacity to 'advertise widely its existence', the awareness-raising activities undertaken so far have produced results and the agency has experienced an increase in the flow of information to it:

it is apparent that as our role becomes known, ACLEI is beginning to attract information reports directly from law enforcement officers pointing to the importance of ACLEI being able to engage in strategic marketing.⁴⁰

3.52 A number of witnesses argued for a stronger corruption education and prevention focus for ACLEI. Professor McMillan stated that:

ACLEI needs to be in a position to devote resources to those activities, as well as to corruption investigation.⁴¹

36 Ms Elizabeth Kelly, Attorney-General's Department, *Committee Hansard*, 26 September 2008, pp 16-17.

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

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

39 ACLEI, *Submission 4*, p. 11 and ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 30.

40 ACLEI, *Submission 4*, p. 11.

3.53 Similarly, Professor Tim Prenzler, argued for a strong corruption prevention and research function and referred positively to the prevention and research work of the CMC :

One of the very positive aspects of the work of the CMC is that it has had this large Research and Prevention Division. It has done a lot of survey work and a lot of analysis work. It has often come up with excellent recommendations for improving police practice.⁴²

3.54 The ACC (one of the bodies that ACLEI oversees) stated that:

The state law enforcement integrity agencies generally have two main streams –investigations and corruption prevention and education. The ACC believes that ACLEI should have a similar model.⁴³

3.55 A risk has been identified in the anti-corruption literature with respect to the prevention/education function. It is argued that there may be an incentive for the integrity agency to ignore or play down potential corruption matters for fear that findings of corrupt conduct will reflect a failure of the integrity agency to adequately fulfil its preventative/educative role.⁴⁴

3.56 The committee believes, however, that the evidence presented to the inquiry indicates that the benefits gained from corruption prevention and education far outweigh this risk. Further, the committee concurs with Professor Prenzler's observation that the focus of an integrity system should be 'on maximising ethical conduct and good police-citizen relations, rather than busting bad cops'.⁴⁵ The committee endorses an integrity approach that is geared towards good practice in policing through its prevention and education activities and, where appropriate, non-punitive management of misconduct.

Good practice in corruption prevention and education

3.57 Associate Professor Colleen Lewis advised the committee that there is not 'any one approach' to corruption prevention and education and argued that in part, this had to do with the level of resourcing dedicated to the function.⁴⁶

3.58 Similarly, Transparency International Australia (TIA) noted that there wasn't one standard model and submitted that it is appropriate that each agency has a tailored approach:

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

42 Professor Tim Prenzler, *Committee Hansard*, 14 November 2008, p. 8.

43 ACC, *Submission 5*, p. 4.

44 Committee on the Office of the Ombudsman and the Police Integrity Commission, *Research Report on Trends in Police Corruption*, 2002, p. 48.

45 Professor Tim Prenzler, *Submission 2*, Attachment 1, p. 109.

46 Associate Professor Colleen Lewis, *Committee Hansard*, 1 October 2008, p. 43.

In my opinion no standard or model program exists since each agency – and in some cases particular divisions of an agency – would ordinarily need to tailor a program to suit its particular needs.⁴⁷

3.59 TIA pointed to a number of examples of good practice initiatives undertaken by the various state integrity agencies. Further, TIA pointed to products of Standards Australia as the foundation for corruption prevention:

In my view the essential elements of a strong corruption prevention program are to be found in the first instance by turning to AS 8001 – 2008 Fraud and Corruption Control produced by Standards Australia as a second edition on that topic. It is part of the well known suite of governance standards produced by that body.⁴⁸

3.60 TIA made the salient point that corruption prevention products and programs are only effective if they are implemented properly.

3.61 Associate Professor Glenn Ross informed the committee that there is a lack of common understanding around the concepts associated with corruption prevention:

In terms of what corruption prevention is, it is the usual things: education and awareness. From my experience in the corruption prevention area, it is absolutely amazing the differences that people will see in a concept like ‘conflict of interest’ and the lack of understanding of what that means and the lack of understanding of what ‘a perception of a conflict of interest’ means. ... There is not necessarily a shared understanding and there needs to be.⁴⁹

3.62 The committee recognises that to some degree each integrity agency will need to adapt its corruption prevention and education activities to the demands of the local environment. However, the committee believes there would be considerable merit in gaining greater consistency across the various jurisdictions with respect to fundamental concepts and practices.

3.63 Increasingly, law enforcement agencies are undertaking joint operations to deal with cross-border crime. Within this context, achieving greater consistency at both law enforcement agency and integrity agency levels would, the committee believes, enhance the running of joint operations and lead to greater consistency in standards of integrity.

3.64 From discussion with the various integrity agencies it appears there is already a significant level of goodwill and information sharing between the agencies. The committee believes that these relationships could be harnessed to work more closely and formally on research and practice matters of common interest.

47 TIA, answer to question on notice, 18 November 2008 (received 18 December 2008), p. 1.

48 TIA, answer to question on notice, 18 November 2008 (received 18 December 2008), p. 1.

49 Associate Professor Glenn Ross, *Committee Hansard*, 17 November 2008, p. 61.

Expansion of jurisdiction – achieving a critical mass

3.65 As has been discussed, ACLEI's jurisdiction is limited to the oversight of the AFP and the ACC (and the former NCA). Its jurisdiction can be extended to other Commonwealth agencies with a law enforcement function by regulation. One of the difficulties a limited jurisdiction presents is that the agency cannot reach a 'critical mass' of resources and expertise.

3.66 Mr Don McKenzie, a lawyer with considerable experience in police and public sector integrity in NSW, argued that a 'critical mass of resources' is a precondition to making a meaningful impact on corruption:

For investigations into serious corruption or systemic corruption to succeed and have impact, there is generally a need for a critical mass of resources. It is my experience that investigations that count generally need access to a myriad of electronic surveillance options, physical surveillance capacity, computer forensics, covert capacity, a flexible and powerful coercive examination capacity, as well as a team of investigators who can collectively pursue a series of investigative opportunities.⁵⁰

3.67 Whilst Mr McKenzie recognises the opportunities for resource-sharing and joint initiatives he concluded that:

[I]t is difficult to see how ACLEI can provide a consistent impact on integrity standards without its own critical mass of resources.⁵¹

3.68 The Commonwealth Ombudsman, Professor John McMillan, submitted that the expansion of ACLEI's jurisdiction would allow the agency to develop to a more workable size:

ACLEI would be better placed to discharge its present functions if there was an extension of its jurisdiction that enabled it to grow to a critical enough mass to develop the exercise of its special investigation powers.⁵²

3.69 The Integrity Commissioner, Mr Philip Moss, saw benefit in this proposal:

I must say I am very attracted to the Commonwealth Ombudsman's submission because, in that submission, there is a proposition that ACLEI's jurisdiction be extended to a number of other law enforcement agencies. I am attracted to the submission because it talks about that being a means for ACLEI to achieve a critical mass. ... The fact that it would necessarily bring more resources, which I could then deploy between the range of agencies that I would have under my responsibility, would be attractive.⁵³

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

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

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

53 Mr Philip Moss, ACLEI, *Committee Hansard*, 26 September 2008, p. 11.

3.70 The committee has reported elsewhere its support for the extension of ACLEI's jurisdiction to other Commonwealth agencies with a law enforcement function, provided this expansion is undertaken systematically and with appropriate resources.⁵⁴

3.71 Against this backdrop, the committee is drawn to the argument that the significant extension of ACLEI's jurisdiction, coupled with matching resources, could enable ACLEI to achieve a critical mass of resources. This would be a welcome consequence of expanding ACLEI's reach. However, the committee notes that proper resourcing should not be conditional on ACLEI's expansion. Nor should the potential for achieving a critical mass of resources be the primary driver for extending ACLEI's jurisdiction. Managing corruption risks and improving law enforcement and public sector integrity should remain the principal focus for widening the scope of ACLEI.

54 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2006-07*, June 2008, p. 26.