

Chapter 4

Developing ACLEI: further issues for consideration

4.1 During the inquiry the committee identified a diverse range of themes or issues that were of particular interest within the context of ACLEI's future development. The themes fall under three broad categories: those relating to the broader integrity system; those internal to the integrity agency; and those related to the relationship between the integrity agency and the law enforcement agency(ies) under its jurisdiction.

4.2 The themes related to the broader integrity system are:

- a specialist versus generalist model; and
- external accountability mechanisms; specifically the merits of an inspectorate model.

4.3 The issues identified that are internal to the integrity agency are:

- use of agency powers – specifically the power to hold public hearings;
- resourcing needs; and
- real-time access to police complaints systems.

4.4 A number of issues were raised that relate to the integrity agency and its relationship with the law enforcement agency(ies) under its jurisdiction:

- the move towards a cooperative integrity approach and the sub-theme of regulatory capture;
- police secondments to integrity agencies; and
- police corruption controls; specifically the power to suspend and dismiss employees.

The broader integrity system

Specialist and generalist models

4.5 As noted in chapter 2, a specialist model is one in which the agency focuses solely on law enforcement integrity. The OPI, the PIC and ACLEI fall into this category. A generalist model covers the broader public sector as well as law enforcement. The CCC and the CMC are examples of this model.

4.6 Proponents of a specialist model argue that it allows the focus of agency resources on police corruption and enables specialist expertise needed to deal with the specific nature of police corruption to be built up within the agency.¹

4.7 Professor John McMillan, Commonwealth Ombudsman, stated his support for a specialist agency outlining the heightened susceptibility of the law enforcement function to corruption:

[T]he law enforcement function in government is especially vulnerable to transgression. That is not to say that law enforcement officers lack the integrity of other government officials, but that they face unusual temptation in different circumstances. By the nature of their function, law enforcement officers associate closely with members of society who see crime, inducement and bribery as a way of life that can bring uncommon reward. Law enforcement activities are sometimes undertaken secretly and away from close supervision. Strong loyalty and peer group influence can develop among officers and overwhelm other obligations.

Another strand of misconduct – that also now comes within the definition of official corruption – is misuse of the exceptional and coercive powers that are granted to law enforcement agencies. Examples are the powers to interrogate, to arrest, to observe, to pry, and to assemble and present evidence before prosecutors and courts. There is a risk in government that any power can be misused. The danger can be greater when the powers are exercised within a career force by officers who become accustomed over decades to deciding when it is appropriate to use the powers.²

4.8 Mr Don McKenzie summarised the arguments presented for confining ACLEI's jurisdiction to law enforcement:

- The vulnerability of law enforcement operatives to transgression
- The fact that these agencies have access to exceptional and coercive powers
- The particular difficulties associated with investigating law enforcement officers who are familiar with relevant investigative techniques
- If ACLEI can regulate conduct of law enforcement agencies, these agencies will, in turn, be able to regulate the activities of the rest of the Commonwealth public service.³

4.9 However, Mr McKenzie rejected these arguments:

In my view, none of these reasons is particularly compelling. We know from experience in NSW, Queensland and Western Australia that, despite the particular circumstances that might enhance the vulnerability of law

1 Associate Professor Colleen Lewis, *Submission 12*, p. 1 and see Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, the Federation Press, Sydney, 2007.

2 Professor John McMillan, Commonwealth Ombudsman, *Submission 3*, p. 2.

3 Mr Don McKenzie, *Submission 22*, p. 3.

enforcement officers, people in other parts of the public sector are similarly vulnerable, particularly in areas such as procurement and licensing. ...The difficulty in exposing police corruption means extra care is required, however it does not mean that there should be different anti-corruption structures and processes pertaining only to that type of public officer. Finally, leaving the regulation of the rest of the public service to law enforcement agencies overlooks the inherent rationale of anti-corruption agencies, which is to go beyond just responding to complaints, and to confront the whole problem of corruption and to build public sector integrity.⁴

4.10 Proponents of a generalist model argue there are efficiencies to be gained from the integration of police oversight and public sector oversight. Further, several witnesses pointed out that there are non-policing areas of public practice that present commensurate corruption risks.⁵ For example, Mr Don McKenzie highlighted the areas of procurement and licencing.⁶

4.11 Several witnesses argued in support of a generalist model. TIA submitted that there should be an 'an all-encompassing federal integrity agency', which would fill existing integrity gaps at the Commonwealth level.⁷ TIA stated:

As we have long maintained it is a serious limitation on the effective investigation of corruption to restrict it to "law enforcement agencies" as defined.⁸

4.12 Along these lines, the Hon. Mr Jerrold Cripps, ICAC, stated:

I think that, if you are going to be fighting corruption in the sense of promoting confidence in the integrity of government, you cannot pick out just one agency.⁹

4.13 As discussed in chapter 3, from a practical perspective, there are efficiencies to be gained from widening the jurisdiction of ACLEI. Professor Tim Prenzler argued that the integration of police oversight and public sector oversight would achieve these efficiencies.

4 Mr Don McKenzie, *Submission 22*, p. 3.

5 Associate Professor Colleen Lewis, *Submission 12*, p. 1 and see Ross, G., 'Police Oversight: Help or Hindrance?', in M. Mitchell and J. Casey (eds.), *Police Leadership and Management*, the Federation Press, Sydney, 2007.

6 Mr Don McKenzie, *Submission 22*, p. 3.

7 Corruption within the broader public sector currently falls under the jurisdiction of the AFP. However, the AFP's role is reactive only and focuses on matters solely of a criminal nature. Thus, corruption is narrowly defined.

8 TIA, *Submission 16*, p. 2.

9 The Hon. Jerrold Cripps, ICAC, *Committee Hansard*, 18 November 2008, p. 51.

4.14 Mr McKenzie similarly reasoned that an expanded jurisdiction would allow for a critical mass of resources. Along with this, he explained that from a practitioner perspective a broader jurisdiction provides staff with a 'regular turn-over of investigative opportunities' to build up experience and refine their skills.¹⁰

4.15 A number of witnesses pointed out the difficulty of investigating police, who are alert to investigation techniques. Mr John Pritchard, PIC, commented:

Police are trained investigators and they very often employ the same strategies that you yourself employ as an investigator, so police misconduct is very different from public sector misconduct.¹¹

4.16 Similarly, Associate Professor Glenn Ross noted the skill of trained police officers 'with surveillance and counter-surveillance' and argued that a specialist model – particularly one with a limited prevention function - can place the agency at funding risk because police investigations can be more complex and results therefore more difficult to achieve:

If you have a concentration just on your policing functions, there is a potential that you are setting up the organisation to fail in that they are perhaps tougher eggs to crack than some other areas, particularly if you are only doing the prosecutorial and not too much corruption prevention. Activities can go on for years without a result, so it can make the agency look a very good area when the razor gang needs to trim back.¹²

4.17 Along these lines, Mr Don McKenzie stated:

[A] broader jurisdiction will allow for ongoing capacity building which is not confined to difficult law enforcement agency investigations. It will also mean that the agency will be seen to be operating and having impact, which is critical to the overall influence of the agency. An academic I once interviewed said to me, "An anti-corruption agency must not only have teeth, it must be seen to be using them".¹³

4.18 Of course this presents its own risk: a generalist integrity agency could be tempted to focus on the easy targets in order to produce – and be seen to produce – results. This could result in a targeting of resources away from police corruption and to public sector matters.

4.19 On this basis, ACLEI informed the Committee that in its discussions with other integrity agencies it was evident that police corruption required 'dedicated

10 Mr Don McKenzie, *Submission 22*, pp 3-4.

11 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 6.

12 Associate Professor Glenn Ross, *Committee Hansard*, 17 November 2008, p. 64.

13 Mr Don McKenzie, *Submission 22*, p. 3.

attention and resources' even if it was co-located with broader public sector oversight and other functions.¹⁴

4.20 The committee can see some merits in an 'all-encompassing' federal integrity agency - notably, the opportunity it would provide to build up sufficient investigation expertise, as well as to develop an education and prevention function with the emphasis on developing and supporting a public service culture of integrity.

4.21 The committee also observes that the lack of a public sector anti-corruption body does not mean that there is a complete absence of integrity-related initiatives at the Federal level. The committee points to the work of the Australian Public Service Commission and notes, in particular, the recent funding announcement for the 'Public Service Ethics Advisory Service', which will be established within the Australian Public Service Commission and will be operational from April this year.¹⁵ The committee will monitor the development of the Public Service Ethics Advisory Service.

External accountability: an inspectorate model

4.22 In NSW, Qld and WA, the integrity framework includes an inspector or commissioner, who oversees the respective integrity bodies. In Victoria, the Office of the Special Investigations Monitor monitors the OPI's compliance with relevant legislation (see chapter 2).

4.23 There is, however, no common inspectorate model. Each state body performs some distinctive functions and each has a unique relationship with its respective parliamentary committee.¹⁶

4.24 ACLEI outlined the reasons underlying the provision of these particular accountability measures for agencies with coercive information-gathering and reporting powers:

First, governments seek to ensure that executive oversight agencies should not become 'star-chambers' – essentially a concern about abuse of power;

Secondly, governments recognise the potential for the oversight agency to be captured either by corrupt causes or 'closeness' to the agencies being overseen – essentially a misuse or diversion from an agency's proper function; and

14 ACLEI, *Submission 4*, p. 12. See also, Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 6.

15 Senator John Faulkner, Special Minister of State, 'Public Service Ethics Advisory Service', 4 December 2008, www.smos.gov.au (accessed 27 January 2009). A further example includes the current House of Representatives inquiry into *whistleblowing protections within the Australian Government public sector*.

16 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 6.

Thirdly, it is sometimes thought that a special complaint-handling process is appropriate for an agency that deals with the investigation of corruption issues.¹⁷

4.25 In NSW, the Police Integrity Inspector functions are:

- to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State,
- to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.¹⁸

4.26 The Hon. Peter Moss QC informed the committee that he can exercise his powers as Inspector in the following ways:

- on his own initiative;
- at the request of the relevant minister; or
- in respect of other named entities.

4.27 Mr Moss explained that the Committee on the Office of the Ombudsman and Police Integrity Commission has the power to monitor the Inspector but cannot direct him.¹⁹

4.28 In Queensland, the Parliamentary Crime and Misconduct Commissioner has two principal functions:

- audits the CMC's compliance with various legislation and the CMC's intelligence holdings; and
- provides assistance to the Parliamentary Crime and Misconduct Committee (PCMC) to review the CMC's management of complaints.

4.29 The Commissioner acts on the referral of the PCMC and reports to the PCMC. The Commissioner does not have own motion powers.²⁰

4.30 In WA, the Parliamentary Inspector has the following functions:

- to audit the operation of the Act;
- to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State;

17 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 5.

18 The Hon. Peter Moss QC, Inspector of the PIC, *Committee Hansard*, 18 November 2008, p. 36.

19 The Hon. Peter Moss QC, Inspector of the PIC, *Committee Hansard*, 18 November 2008, pp 36-37.

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

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- to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector;
 - to audit any operation carried out pursuant to the powers conferred or made available by this Act;
 - to assess the effectiveness and appropriateness of the Commission's procedures;
 - to make recommendations to the Commission, independent agencies and appropriate authorities;
 - to report and make recommendations to either House of Parliament and the Standing Committee;
 - to perform any other function given to the Parliamentary Inspector under this or another Act.²¹

4.31 Mr Malcolm McCusker QC, the former Parliamentary Inspector, summarised:

Essentially, my functions as parliamentary inspector are to audit the operations of the Corruption and Crime Commission and to deal with any complaints that any member of the public may make against the commission or any of its officers.²²

4.32 The Parliamentary Inspector may act on his/her own initiative, in response to a matter reported to the Parliamentary Inspector, at the request of the Minister or in response to a reference from the Joint Standing Committee on the Corruption and Crime Commission or either House of Parliament.²³

Achieving a balance

4.33 Mr Christopher Field, Ombudsman WA, emphasised the importance of getting the regulatory balance right:

The framework that we bring to any of these issues is to make sure we are absolutely clear what the need is, that we are clear that we have evidence that justifies our regulatory intervention and that, when we are looking at the regulatory intervention, we are pretty clear about the burden it will impose—the compliance costs and the opportunity costs. We want to be satisfied that there is a net benefit to the public before we go down that path.²⁴

4.34 Mr Field spoke positively of the WA parliamentary inspector model and noted it was worth considering at a Commonwealth level:

21 *Corruption and Crime Commission Act 2003*, Part 13, s. 195.

22 Mr Malcolm McCusker, QC, Parliamentary Inspector of the CCC, *Committee Hansard*, 17 November 2008, p. 50.

23 *Corruption and Crime Commission Act 2003*, Part 13, s. 195.

24 Mr Christopher Field, Ombudsman WA, *Committee Hansard*, 17 November 2008, p. 47.

I think Western Australia is a good case in point for the success of such a parliamentary inspector. ...Is it something the Commonwealth could look at? Yes, absolutely. It could potentially be a model worthy of consideration.²⁵

4.35 Associate Professor Glenn Ross argued it is important to achieve a balance between an integrity agency's independence and the sufficient oversight of that agency. He explained that with insufficient checks in place there is the risk of an agency becoming a 'law unto itself'. With too onerous an oversight framework the agency may be restricted in performing its functions:

It seems to me, when we are looking at what models we need for an integrity agency, one of the central questions that we need to answer is: what degree of independence does it require as against what mechanisms of control it needs to have? ...There needs to be a balance of independence and control. If it is on some sort of continuum, it is where you put the cleaver through that is important. If it is too far to the left, the body might be very independent and have the confidence of the community, but it may engage in things that it perhaps should not. If it is too far to the right, the agency might have too much control and lose the confidence of the community and the ability to perform its function.²⁶

4.36 Professor Tim Prenzler advised the committee that the most effective form of oversight of integrity agencies is a joint parliamentary committee and a parliamentary inspector:

I think the best model is a cross-party parliamentary committee that has an inspector or a commissioner—I think inspector is a better term—who is a kind of mini standing commission themselves and has all those powers to subpoena witnesses and walk into commission offices and obtain documents or order the release of documents, and can act on request from the parliamentary committee. But I think they should also be able to receive complaints from staff or the public about the integrity commission and be able to investigate those. ... a parliamentary oversight committee must have some sort of executive arm that can act for it, a person who can go out and ask questions.²⁷

4.37 Professor Prenzler noted that as well as acting on behalf of the committee and taking complaints about the integrity agency, the parliamentary inspector should also have an 'independent own motion power'.²⁸

4.38 The committee recognises that in ACLEI's case there are already legislative arrangements in place to regulate ACLEI's use of its powers, to protect against capture

25 Mr Christopher Field, Ombudsman WA, *Committee Hansard*, 17 November 2008, pp 47-48.

26 Associate Professor Glenn Ross, *Committee Hansard*, 17 November 2008, p. 60.

27 Professor Tim Prenzler, *Committee Hansard*, 14 November 2008, p. 6.

28 Professor Tim Prenzler, *Committee Hansard*, 14 November 2008, p. 6.

by the agencies under its oversight, and to provide a complaint-handling process for complaints about officers of ACLEI.²⁹

4.39 The committee believes that it is too early in the life of ACLEI to assess whether these arrangements are sufficient. The committee notes, however, that an integrity inspector with the requisite investigation powers could assist the monitoring of ACLEI.

Internal integrity arrangements

Public hearings

4.40 One of the features that the four state integrity agencies and ACLEI share in common is the power to hold hearings in public. However, views on the merits of public hearings varied.

4.41 Mr Malcolm McCusker QC, former Parliamentary Inspector of the Corruption and Crime Commission, explained that in WA and more broadly there is ongoing debate as to whether integrity agencies should have the power to conduct public hearings. He emphasised the possible damage a public hearing could have to an individual's reputation:

[T]he person who is the subject of a public hearing and against whom allegations are made and propositions are put has no right to be represented by counsel for the purpose of counsel then questioning witnesses on whose evidence allegations might be based. In short, it is not a court hearing in the normal sense, where there is the requirement for a fair trial, because, as the commissioner quite correctly says, these are not trials. But the outcome of them is treated as if they were trials, and people's reputations can be seriously damaged.³⁰

4.42 Similarly, Professor John McMillan, Commonwealth Ombudsman, noted that the potential negative impact of investigations on individual officers was a 'difficult trade-off' for 'effective independent oversight'. He argued that conducting investigations in private is one aspect of providing protection of those 'against whom untested allegations are made'. Professor McMillan stated: 'I am a firm believer in the model investigate in private and report in public'.³¹

4.43 Professor Prenzler made the broader point that within an inquisitorial system, the powers available to integrity agencies must be matched by sufficient support services for those under investigation:

29 These arrangements are listed in ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 5.

30 Mr Malcolm McCusker QC, *Committee Hansard*, 17 November 2008, p. 59.

31 Professor John McMillan, Commonwealth Ombudsman, *Committee Hansard*, 1 October 2008, p. 34.

An inquisitorial approach – waiving the right to silence and employing a civil standard of proof – must be matched by access to legal advice, an appeal tribunal, and counselling and other support services.³²

4.44 Mr John Pritchard, Commissioner of the PIC, acknowledged that there were advantages and disadvantages to holding hearings in public but argued in favour of them:

[T]he 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.³³

4.45 The Hon. Len Roberts-Smith, CCC Commissioner, noted that the integrity agencies are effectively standing royal commissions and therefore inquisitorial in nature, seeking to expose misconduct and corruption. The inquisitorial character of these agencies lends itself to some degree of public action:

It is important to appreciate that, as effectively a standing royal commission, one of the main purposes of the commission is to expose conduct—to expose misconduct, specifically, or criminal conduct or corruption—within the public sector. So when we have public hearings or table reports into the parliament or make public statements about the conduct of our investigations or activities, that is what it is on about.³⁴

4.46 Similarly, Professor Ross pointed out the likeness to royal commissions, noting that in WA, Qld and NSW, the three integrity agencies were the direct result of, and in a sense the continuation of, royal commissions into police misconduct. He observed, however, that within the royal commission context hundreds of witnesses are called to appear at public hearings and such appearances are not necessarily 'tainted' in the way the infrequently used public hearing of standing agencies may be:

Royal commissions have hundreds of people coming through and it is accepted that a whole lot of people will get brought in and asked questions. If you become very selective about who is coming in and whether it is public or not, it does put a focus on that person and the reason why they are there. As an investigative and educational tool, open hearings could be used a great deal more.³⁵

4.47 Professor Ross noted the tensions inherent in the use of the hearing room power. It is a tension, he observed that is inherent in the inquisitorial versus prosecutorial approach:

32 Professor Tim Prenzler, *Submission 2*, attachment 1, p. 109.

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

34 The Hon. Len Roberts-Smith, Commissioner, CCC, 17 November 2008, p. 8.

35 Professor Glenn Ross, *Committee Hansard*, 17 November 2008, p. 62.

If you are looking to use the hearing room as an investigatory tool, then you need it to be heard in public because, by exposing a particular issue, people ring up and say, 'I know a bit about that case,' or, 'I've got a similar story to tell about something else.' As an investigatory tool, it draws more people in to provide information that you would not otherwise have.

However, it can then limit the capacity to go on to prosecute that person, because they have given the evidence in the inquiry.³⁶

4.48 The committee notes that under the LEIC Act the Integrity Commissioner may decide to hold a hearing - or part of a hearing - in public or in private with regard to the following conditions:

- whether evidence that may be given, or a matter that may arise, during the hearing (or that part of the hearing) is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
- any unfair prejudice to a person's reputation that would be likely to be caused if the hearing (or that part of the hearing) took place in public;
- whether it is in the public interest that the hearing (or that part of the hearing) take place in public;
- any other relevant matter.³⁷

4.49 Further, the committee notes that under section 89 of the Act, a witness may request that his or her evidence be taken in private.

4.50 ACLEI's procedures tend towards investigating in private³⁸ and, at this stage, the Integrity Commissioner has not found it necessary to conduct a hearing in public.³⁹

4.51 The committee and ACLEI are at one in being particularly mindful of the impacts that an investigation could have on an individual's morale, reputation and professional and personal relationships. The committee notes that while the integrity agencies hold much in common with select royal commissions, they tend to differ on an important point. Select royal commissions are a response to an allegation or suspicion of wrong-doing that has already been made public. This is far less often the case with investigations undertaken by integrity agencies.

4.52 The committee believes that there is a role for public hearings within the law enforcement integrity context. However, the committee concludes that this power should be employed with care.

36 Professor Glenn Ross, *Committee Hansard*, 17 November 2008, p. 62.

37 LEIC Act, s. 4.

38 ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 5.

39 ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 46.

Adequate resourcing

4.53 Several witnesses stressed that sufficient resourcing is critical in enabling an integrity agency to discharge its duties effectively.⁴⁰ As Associate Professor Colleen Lewis stated:

It does not matter how powerful an oversight body is - powers without adequate resources translates into no powers.⁴¹

4.54 Associate Professor Lewis outlined a range of negative repercussions that can arise from inadequate resourcing:

- Delay in assessing complaints/notifications and finalising investigations, which, in turn, can cause undue stress to those under investigation and diminish complainants' confidence in the system;
- Prevent the integrity body from undertaking community awareness campaigns and consequently fail in the objective to improve public confidence in law enforcement;
- Prevent the integrity agency from engaging in 'meaningful' preventative activities; and
- Cause internal tensions – for example, competing for resources between agency divisions.⁴²

4.55 Further, Professor Lewis claimed that despite a funding increase in the 2008-09 budget, ACLEI remains insufficiently resourced:

[O]ne issue needs attention immediately, for despite only being operational since 1 January 2007, it is already abundantly clear that the ACLEI requires a significant increase to its budget. ...The Government has responded positively to the need to provide additional resources to the oversight body by granting it, in the 2008 budget, an additional \$7.5 million over four years. But it seems that these additional resources are not sufficient to allow the ACLEI to operate effectively.⁴³

4.56 Professor Colleen Lewis was not alone in suggesting that ACLEI is underfunded. For example, reflecting on ACLEI, the Commissioner of ICAC, the Hon. Jerrold Cripps QC, commented:

[I]f you want an anticorruption body to function properly, it will have to be either by the extension of its jurisdiction or, by the infusion of money, made to be efficient. The difficulty I have in what I have seen about this particular

40 See for example, Mr Don McKenzie, *Submission 22*, p. 3, Transparency International Australia, *Submission 16*, p. 4 and The Hon. Len Roberts-Smith, Commissioner, CCC, 17 November 2008, p. 6.

41 Associate Professor Colleen Lewis, *Submission 12*, p. 3.

42 Associative Professor Colleen Lewis, *Submission 12*, pp 3-4.

43 Associate Professor Colleen Lewis, *Submission 12*, p. 5.

proposed organisation, or organisation, is that, without the cooperation of other agencies, I doubt whether it could do all the things that, for example, we do in New South Wales and which we feel are necessary to do in New South Wales.⁴⁴

4.57 In response to questioning from the committee about the sufficiency of ACLEI's resources the Integrity Commissioner, Mr Moss, informed the committee that he has joint investigation arrangements in place in order to utilise his intrusive powers. He noted, however, that if these arrangements became unsatisfactory, additional resources would be required:

So that really is the model for ACLEI, and it is the response to the funding levels that we have. But you could also regard it as a transition, because, should those joint investigations prove to be unsatisfactory, then I really would need to be asking the government for the building block approach that we have started with to be continued.⁴⁵

4.58 Mr John Pritchard from the PIC, argued that the capacity of an agency to fulfil its requirements as set out in its legislation should form the basis for determining if an agency has sufficient funding. He reflected on the PIC's situation:

We have a staff of about 100. Our budget is about \$18 million or \$19 million per year. ... We operate efficiently but, in terms of what the Act says I am required to do or the commission is required to do, I cannot say that I am prevented from discharging that from a funding point of view.⁴⁶

4.59 A broad observation could be made that the four state integrity bodies are considerably better resourced than ACLEI.⁴⁷ As well as agency size there are several other features that need to be taken into consideration when comparing ACLEI's resourcing with that of its counterparts. ACLEI submitted that:

Other factors explain the other obvious differences between ACLEI and its counterparts, but perhaps mask some problems with economies of scale that challenge smaller autonomous agencies like ACLEI. These differences relate to function and jurisdiction, specifically:

- the number of agencies oversighted;
- the size of the risk to be controlled in those agencies; and
- the scope of the functions performed by the oversight agency.⁴⁸

44 The Hon. Jerrold Cripps QC, ICAC, *Committee Hansard*, 18 November 2008, p. 48.

45 Mr Philip Moss, ACLEI, *Committee Hansard*, 26 September 2008, p. 10.

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

47 It is worth pointing out that the integrity agencies the committee had the opportunity to speak with seemed reasonably satisfied with the resources allocated to them. For example, the Hon. Len Roberts-Smith, Commissioner of the CCC agreed with the observation that there was not any financial constraint upon the CCC in relation to its operational effectiveness, *Committee Hansard*, 17 November 2008, pp 11-12.

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

4.60 A fourth factor is the complexity of the agencies oversighted. While the size of the AFP and ACC combined is still significantly less than each of the police services in NSW, Victoria, Queensland and WA, the geographical spread of the AFP's jurisdiction creates particular challenges for its oversight body, ACLEI. Professor McMillan cited ACLEI's 2006-2007 Annual Report to explain:

The...unique...challenge facing ACLEI is to discharge its functions on a national basis. Australia is a large country. National law enforcement activity occurs across the continent, and internationally. Even the simple task of interviewing a single complainant or witness in a distant or remote location can be a time-consuming and resource intensive activity for ACLEI, which operates from a single office in Canberra.⁴⁹

4.61 As previously noted, the committee is supportive of the 'building block' approach, provided that this approach enables the Integrity Commissioner to meet the demands of current and future workloads and achieve the outcome and output designated in the 2007-2008 Portfolio Budget Statements (outlined in chapter 1). The committee does not believe that ACLEI is sufficiently resourced to fully accomplish this.

Real-time access to police complaints system

4.62 Representatives from the state police services informed the committee about the increasing sophistication of their internal complaints management systems. At the integrity agency level, some of the agencies have obtained real-time access to these complaints systems.

4.63 External access to an online system can serve four purposes for the oversight agency:

- as a form of notification of serious misconduct/corruption – online access can be used as a means of identifying the matters that fall within the integrity agency's jurisdiction;
- as a mechanism to monitor and review internal investigations of police complaints;
- as an additional information source for integrity investigations; and
- as a source for data mining to assist in the detection of corruption.⁵⁰

4.64 Examples of external agency access were provided from NSW and Queensland.

4.65 Acting Deputy Commissioner Paul Carey, NSW Police Force, explained that in NSW all complaints are entered into an electronic system called c@tsi.⁵¹ The PIC

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

50 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 3.

and the NSW Ombudsman have complete, real-time access to the c@tsi system. Through this online access they can monitor the progress of an investigation.⁵²

4.66 Mr John Pritchard explained that it is through the c@tsi system that the PIC is notified of complaints that fall within its jurisdiction. Therefore, the PIC is responsible for assessing which complaints warrant its investigation:

As soon as a complaint goes onto that system we see it. We trawl that weekly to pick off matters that we see as falling within our jurisdiction and those categories of matters that I have just mentioned, and we make an assessment as to whether we will take it over.⁵³

4.67 In Queensland, the CMC also has real-time access to the Queensland Police Service's complaints system. Assistant Commissioner Peter Martin explained:

We have an internal complaint management system throughout the organisation that enables people to record complaints as they come in and enables commission officers in the organisation to assess that complaint at the appropriate level. Of course, the CMC has access to that information in real time.⁵⁴

4.68 Assistant Commissioner Martin further explained that the QPS has commenced complaints profiling. That is, analysing the complaints data to identify trends in individual officer and work unit behaviour. He expressed the view that complaints profiling is an area worth developing:

Already, I have seen some incredibly optimistic work being done in that regard. That is not to say that we are doing things as well as we possibly can, but I think that, certainly with regard to the future, the opportunity to identify an officer or a work unit that is being overrepresented in complaints or particular types of complaints, the notion of getting more at the proactive end of the problem as opposed to the reactive, is where the game needs to be played.⁵⁵

ACLEI's situation

4.69 ACLEI does not currently have access to the complaints systems of the agencies under its jurisdiction. However, ACLEI has commenced discussions with the

51 Acting Deputy Commissioner Paul Carey, NSW Police Force, *Committee Hansard*, 18 November 2008, p. 23.

52 Commissioner Andrew Scipione, NSW Police Force, *Committee Hansard*, 18 November 2008, p. 23.

53 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 3.

54 Assistant Commissioner Peter Martin, Qld Police Service, *Committee Hansard*, 14 November 2008, p. 14.

55 Assistant Commissioner Peter Martin, Queensland Police Service, *Committee Hansard*, 14 November 2008, p. 15.

AFP about gaining real-time access to the AFP's case management system 'PRS-PROMIS'.⁵⁶

4.70 ACLEI informed the committee that it is satisfied with existing notification arrangements and the principal purpose of gaining access to the AFP's system would be to view material that may be of relevance to ACLEI investigations. For this reason, it was noted that the capacity to access agency databases covertly would be required.⁵⁷

4.71 ACLEI further emphasised the potential for early detection of corruption through data mining and analysis:

Through data-mining and analysis, complaint and other misconduct information can reveal patterns of behaviour and risk that might detect corruption or provide an 'early warning' about the potential for corruption to occur.⁵⁸

4.72 ACLEI commented that with further resources it would develop an 'in-house corruption-detection capability' that includes data-mining.⁵⁹

4.73 The committee sees considerable potential in ACLEI gaining real-time access to the databases of the agencies it oversees. As ACLEI observed, it would provide another information source for investigations and has the potential to increase ACLEI's capacity to fulfil its detection function.

4.74 The committee also sees merit in integrity agencies using real-time access to monitor and review police complaint-handling. The committee believes that police complaints of a less serious nature should be managed by the police. This is in line with the positive trend of law enforcement agency heads holding primary responsibility for the integrity of their staff and working in more of a partnership arrangement with their oversight agencies. The monitoring and review function of integrity agencies provides assurance to government and the public that the task of complaint-handling is responsibly and fairly managed. The committee will maintain an ongoing watch on the adequacy of the notification and monitoring arrangements between ACLEI and the agencies it oversees.

Relationship between the integrity agency and the agency it oversees

A cooperative integrity approach

4.75 Dr Jann Karp argued that 'corruption is a symptom of an ineffective system and not simply a slackening of effective control by senior management'.⁶⁰ This

56 It is worth noting that the AFP intends to upgrade its case management and intelligence system.

57 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 3.

58 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 3.

59 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 4.

60 Dr Jann Karp, *Submission 17*, p. 7.

observation resonated with the evidence from the NSW, Queensland, Victoria and WA police services, who described a changing police culture, which includes:

- a greater focus on values – and embedding those values throughout the organisation;⁶¹
- a tempering of police solidarity⁶² – through encouraging diversity in recruitment, and encouraging and protecting whistleblowers;
- an early intervention and risk management approach to managing and preventing corruption; and
- a shift from a more punitive disciplinary model to a managerial-remedial model of managing misconduct.

4.76 Assistant Commissioner Peter Martin from the Queensland Police Service commented that in his 30 years of policing a definite shift had taken place:

On the standard expected of a police officer 30 years ago and the standard expected today, despite the fact that I would like to think I had exactly the same values, the reality is that the expectation from the organisation and the expectation externally have changed considerably. There was a major watershed in Queensland 20 years ago with the Fitzgerald inquiry. It was a very painful experience for the organisation. It was a wonderful cleansing experience, to the extent that it changed the organisation forever in a broad range of dimensions.⁶³

4.77 These trends are also evident at the Commonwealth level. ACLEI observed that the AFP 'is an agency at the forefront of most aspects of internal corruption control'.⁶⁴

4.78 This shift towards the internal promotion and management of a culture of integrity through risk management and early intervention approaches has lead - to lesser and greater degrees⁶⁵ – to a cooperative or 'partnership' relationship between the law enforcement integrity agencies and the agencies they oversee. The aim is to achieve a complementary mix of internal and external corruption controls.

61 For example, Chief Commissioner Nixon, Victoria Police, informed the committee that ethical standards were not just the responsibility of the Ethical Standards Department but of the broader organisation, *Committee Hansard*, 1 October 2008, p. 5.

62 That is, a focus on an officer's loyalty to the organisation over an officer's loyalty to colleagues.

63 Assistant Commissioner Martin, Queensland Police Service, *Committee Hansard*, 14 November 2008, p. 19.

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

65 Professor Prenzler noted that it is important that the nature of oversight is commensurate with the misconduct risk profile of the police agencies being oversighted. In some jurisdictions a more interventionist approach is required. Other jurisdictions have a more cooperative approach, *Committee Hansard*, 14 November 2008, p. 6.

4.79 Police agency representatives and the Integrity agencies spoke positively of their relationships. For example, the Commissioner of the CCC, the Hon. Len Roberts-Smith, and Assistant Commissioner Etter from WAPOL each described a close working relationship between the CCC and WAPOL.⁶⁶ They outlined a range of formal and informal networks,⁶⁷ which, Assistant Commissioner Etter explained, are underpinned by a memorandum of understanding. The memorandum states that:

both organisations will work collaboratively towards improving the culture of policing, enhancing leadership, supervision and management and implementing and applying appropriate corruption prevention strategies.⁶⁸

4.80 The Commissioner of the CCC noted that his regular informal meetings with the Commissioner of Police were particularly beneficial and said:

[W]e simply talk to each other about what is happening operationally or whatever issues we think we need to discuss. Certainly I have found that very helpful, very flexible and a very good way of keeping up with information that you might not otherwise get from within your own stream.⁶⁹

4.81 Mr Pritchard, Commissioner of PIC, described a similar range of communication channels within the NSW context and further noted that regular communication reduced the instances of duplication:

We often share information because there is great scope for duplication. As I said, the police investigate most complaints themselves, and we do not want to tread on each other's feet, so we talk quite a bit.⁷⁰

4.82 Reflecting on the PIC's relationship with the NSW Police Force, Mr Pritchard, stated:

It is generally a healthy relationship. Since the time of the royal commission—and the PIC has been going for about 12 years now—I think everybody has come to accept that we are here. ...It is the sort of relationship that you would expect between an oversighter and an oversightee, I suppose. There are tensions. Our interests are not the same.⁷¹

4.83 Commissioner Andrew Scipione, NSW Police Force, concurred with Mr Pritchard's observations:

66 The Hon. Len Roberts-Smith, Commissioner, CCC, *Committee Hansard*, 17 November 2008, pp 17-18 and Assistant Commissioner Etter, *Committee Hansard*, 17 November 2008, p. 24.

67 This includes a joint agency steering group, an operational liaison group and regular informal meetings between the two organisations.

68 Assistant Commissioner Etter, WAPOL, *Committee Hansard*, 17 November 2008, p. 24.

69 The Hon. Len Roberts-Smith, Commissioner, CCC, *Committee Hansard*, 17 November 2008, p. 18.

70 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 5.

71 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 5.

[W]e have had, over the years that the PIC has been in existence, some robust discussions: clearly, their goals are not necessarily our goals. But, having said that, we deal with each and every issue professionally and, at the end of the day, I think the relationship is one that is mutually respectful and gives us some confidence to know that there is a very good reason for us as an organisation to stay right on top of this integrity issue as best we can.⁷²

4.84 Deputy Commissioner Ian Stewart, QPS, noted the importance of external oversight and described a constructive relationship between QPS and the CMC:

The relationship between us has always been highly professional, in my personal view. ...Having the CMC as an external body—a body that we can turn to in times when we seek advice and also as a check and balance on whether we are getting it right—I think is an incredibly powerful tool.⁷³

4.85 Further, Deputy Commissioner Stewart informed the committee that within this relationship there are points of difference:

We do not always agree—there is absolutely no doubt about that—in relation to particular incidents and events. Sometimes we agree very, very strongly on matters. At other times we differ.⁷⁴

4.86 In Victoria, Assistant Commissioner Wayne Taylor, Victoria Police, stated:

We have an arrangement with OPI that is a very good one at most levels. ...To this day I do not think we have ever had a situation that we could not get around with a meeting and conference to decide who takes primacy or what assistance would be guaranteed from each agency.⁷⁵

4.87 Representatives of the four police services observed that while relationships were, in the main, strong not all officers were supportive of this form of external scrutiny. In Victoria, for example, in which the OPI was only relatively recently established, Chief Commissioner Nixon commented:

It is a positive relationship...but one that takes some time for organisations to come to terms with when you have not had the high profile public scrutiny that is now in place.⁷⁶

72 Commissioner Andrew Scipione, NSW Police Force, *Committee Hansard*, 18 November 2008, p. 21.

73 Deputy Commissioner Ian Stewart, Queensland Police Service, *Committee Hansard*, 14 November 2008, p. 22.

74 Deputy Commissioner Ian Stewart, Queensland Police Service, *Committee Hansard*, 14 November 2008, p. 22.

75 Acting Assistant Commissioner Wayne Taylor, Victoria Police, *Committee Hansard*, 1 October 2008, p. 3.

76 Chief Commissioner Nixon, Victoria Police, *Committee Hansard*, 1 October 2008, p. 7.

4.88 Mr Pritchard similarly commented that in the early days of PIC 'there might have been a bit of resistance'.⁷⁷

Regulatory capture

4.89 While the benefits of a productive relationship between the oversight agency and the agency it oversees are clear, witnesses did point to the risks of an 'overly-familiar' or 'cosy' relationship. Professor Tim Prenzler framed this within the concept of regulatory capture. He explained:

[C]apture theory explains poor performance in regulation with reference to techniques by which the group being regulated subverts the impartiality and zealotness of the regulator. At one end of a spectrum are conscious relationships of bribery or blackmail. At the other end are institutional arrangements generating subtle forms of inappropriate influence, sometimes with the best of intentions in mind.⁷⁸

4.90 The balance that needs to be achieved, therefore, is facilitating a good working relationship between the organisation under oversight and the integrity agency while avoiding an overly-familiar or 'cosy' relationship, which opens the potential for regulatory capture of the oversight agency.

4.91 Witnesses pointed to an inherent tension between the two parties arising from the different focus or goals of the regulator and the regulated. The points of difference or disagreement described by witnesses above are a symptom of this tension. The Hon, Len Roberts-Smith observed that this tension is an integral factor in ensuring the relationship does not become enmeshed to the detriment of impartial investigation and review.⁷⁹

Police secondments to the integrity agencies

4.92 The employment market for staff with law enforcement and investigation experience is extremely competitive. Further, as ACLEI observed, policing agencies form the largest pool of investigative expertise. ACLEI went on to explain that:

This is even more the case for rarer skill sets such as internal investigations experience in a law enforcement context, surveillance, investigation of serious and complex crimes, and informer management.⁸⁰

4.93 Consequently, recruiting skilled staff presents a particular challenge for law enforcement integrity agencies. In view of this, the committee was interested in how the state integrity agencies dealt with the issue of local police secondments.

77 Mr John Pritchard, PIC, *Committee Hansard*, 18 November 2008, p. 5.

78 Professor Tim Prenzler, *Submission 2*, Attachment 2, p. 662.

79 The Hon. Len Roberts-Smith, Commissioner, CCC, *Committee Hansard*, 17 November 2008, p. 18.

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

4.94 The practices and views on this matter varied. Some witnesses expressed support for the secondment of local police officers to their respective integrity agency. It was seen as an important means for the integrity agency to gain an understanding of local policing culture and a way of further instilling integrity values in the police service via the return of individual police officers. This was felt to outweigh the counter argument that the secondment of local police officers poses a real or perceived risk to the integrity of corruption investigations.

4.95 For example, Assistant Commissioner Etter from WAPOL expressed her personal view that it adds value to have 'police skills' and an 'understanding of the culture' in integrity bodies. She noted, however, that vetting is critical and agreed that a strict rotation policy for local officers is important.⁸¹

4.96 Similarly, Mr John Taylor, Acting Ombudsman Victoria, commented:

I have no problems with officers of a police force working within an oversighting agency. I note that the Police Integrity Commission and the Crime and Corruption Commission do not employ officers from the organisations they investigate. I agree with the Chief Commissioner that that in a sense is an indictment of organisations. ...it is my experience that police forces generally do a good job, but in any large number you are going to have problems. I think the key issue is probity testing of individuals.⁸²

4.97 Conversely, other witnesses argued against local secondments. For example, reflecting on the Queensland context, Professor Tim Prenzler stated that local police secondments lead to a perception of bias:

In Queensland we have a particular problem, in my view, with reliance on seconded police officers to the CMC to conduct investigations. They typically have around 90 police working in the CMC conducting investigations. ...It [CMC] presents itself and it appears to be a wholly independent agency but in fact, particularly in relation to police, most of the hands-on footwork in relation to investigations is done by police. They just happen to be on secondment to the CMC and working out of a CMC office. This creates a perception of bias.⁸³

4.98 Professor Prenzler reasoned, therefore, that in order for an integrity agency to be perceived as independent it is important for the majority of assessment and investigation teams to be 'non-police or non-former police investigators'. He conceded however that 'experienced police officers with a good record definitely have a role to play'.⁸⁴

81 Assistant Commissioner Etter, WAPOL, *Committee Hansard*, 17 November 2008, p. 28.

82 Mr John Taylor, Acting Ombudsman, Victoria, *Committee Hansard*, 1 October 2008, p. 21.

83 Professor Tim Prenzler, *Committee Hansard*, 14 November 2008, pp 7-8.

84 Professor Tim Prenzler, *Committee Hansard*, 14 November 2008, p. 3.

4.99 Ms Tamar Hopkins also argued against police secondments and cited Mr William McDonald from the Investigative Analyst Office of the Police Complaint Commissioner British Columbia, who said that seconding police to the external oversight agency is akin to 'hav[ing] the fox in the hen house'. Ms Hopkins submitted:

It is not merely sufficient to have investigations conducted by an institutionally independent body. Case law indicates that practical independence is required as well.⁸⁵

State arrangements

4.100 In WA, the CCC employs former police officers from a range of jurisdictions. However, it does not second local police officers.⁸⁶

4.101 In NSW, the legislation specifically prohibits the PIC from employing serving and former NSW police officers.⁸⁷

4.102 In Victoria, whilst not mandated by legislation, the OPI has made a policy decision not to second local police officers, and recruits very few former Victorian police officers.

4.103 In Queensland, as noted above, local police are seconded to the CMC. Mr Stephen Lambrides informed the committee that seconded officers work in witness protection, operational support, complaints services and misconduct investigations.⁸⁸

4.104 Mr Lambrides expressed his support for this arrangement:

I have been a very strong advocate of it in Queensland for two reasons: first of all so that there is currency in the sense that people within the commission have officers who are familiar with what is happening in the police services, but more importantly so that police officers can rotate through the commission and take what they have learnt there and the ethos back to the Police Service. I think that is a very valuable thing.⁸⁹

4.105 However, Mr Lambrides argued that secondments should ideally be of a limited tenure – a situation that is difficult to enforce in Queensland because of the strength of the police union:

One of the problems has been that it is an easy life for a police officer compared to being out in the streets. ...they get very comfortable and do not want to go back to the Police Service. What happens is that we cannot force them back and they stay, I think, far too long.

85 Ms Tamar Hopkins, *Submission 23*, p. 13.

86 The Hon. Len Roberts-Smith, Commissioner, CCC, *Committee Hansard*, 17 November 2008, p. 20.

87 Mr John Pritchard, Commissioner, PIC, *Committee Hansard*, 18 November 2008, p. 5.

88 Mr Stephen Lambrides, CMC, *Committee Hansard*, 14 November 2008, p. 32.

89 Mr Stephen Lambrides, CMC, *Committee Hansard*, 14 November 2008, p. 32.

[I]t is very hard to rotate them, which is one of the purposes of having them there. ...it is a question of trying to rotate them, having fresh skills come in and them taking what they have learnt back to the service.⁹⁰

4.106 Concurring with Mr Lambrides comments, Assistant Commissioner Martin from the QPS noted that officers on secondment to the CMC tended to stay a relatively long time. He emphasised that a balance needs to be maintained between 'knowledge creation' and 'knowledge management'. That is, between acquiring and nurturing corporate knowledge and at the same time ensuring that officers do not get captured by, or become more susceptible to, corruption. Reflecting on officers within the Queensland Police Service's Ethical Standards Command he commented:

When you bring these people into the command and you inculcate them with the things that they need—the attitudes, the values and the skills to do their job—there is an optimum period at which you get good performance out of them. But, similarly, there is a time when they might have reached their optimum.⁹¹

4.107 Assistant Commissioner Martin further argued that limiting the tenure of officers seconded to the CMC or transferred into the internal Ethical Standards Command, meant that the values and knowledge they had acquired would be filtered into the broader police service:

My personal vision is that we need to move those people on because they are incredibly important people to the organisation, and they change attitudes in regions and commands outside the Ethical Standards Command.⁹²

ACLEI's arrangements

4.108 The LEIC Act provides for the secondment of AFP, state and territory, and 'foreign' officers to ACLEI.⁹³

4.109 ACLEI informed the committee that there are two ways in which it may choose to work with employees of the agencies under its oversight. First, through undertaking joint investigations. Second, through the secondment of AFP officers.⁹⁴

4.110 ACLEI has undertaken several joint investigations with the agencies it oversees. This approach accords with the 'integrity partnership' model discussed in chapter 3. In addition, ACLEI noted that cooperative or joint operations and

90 Mr Stephen Lambrides, CMC, *Committee Hansard*, 14 November 2008, p. 32.

91 Assistant Commissioner Martin, Queensland Police Service, *Committee Hansard*, 14 November 2008, p. 16.

92 Assistant Commissioner Martin, Queensland Police Service, *Committee Hansard*, 14 November 2008, p. 16.

93 LEIC Act, s. 199.

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

secondments provide a practical solution to the resource constraints experienced by an agency of ACLEI's size. These resource constraints relate specifically to ACLEI's use of its law enforcement powers.⁹⁵

4.111 ACLEI explained that it has planned to 'move to a joint task-force model' when the need arises:

The design for ACLEI's proposed Operations accommodation, for which capital works funding was provided in the 2008 Budget, will have segregated facilities that will allow for joint taskforce activities to be accommodated, thereby minimising the risk of compromise to ACLEI's other investigations.⁹⁶

4.112 Under this model, secondees to ACLEI will work with ACLEI operations staff on a case-by-case basis.

4.113 The committee recognises that ACLEI's resourcing constraints mean it is necessary for ACLEI to work cooperatively with other jurisdictions. Further, working collaboratively with the AFP and the ACC – both in the sense of joint investigations and through secondments – accords with the partnership model envisaged for ACLEI and the agencies it oversees. The segregation of facilities and the intention to conduct these arrangements on a case-by-case basis will, the committee believes, greatly minimise the risk of corruption contagion and regulatory capture.

The power to suspend and dismiss employees

4.114 Police Commissioners emphasised the importance of holding a 'loss of confidence' power – that is, the power to summarily dismiss an officer - as a last resort measure to deal with police corruption. They characterised it as an important control in their internal integrity system.

4.115 Assistant Commissioner Etter argued that WAPOL's loss of confidence power is an effective deterrence measure:

One power that we have here in WA which I find very effective is our ability to remove people where the Commissioner has lost confidence in that person. That is an important power to have.⁹⁷

4.116 Commissioner Andrew Scipione informed the committee that in NSW there are statutory provisions that enable the Commissioner to 'remove an officer in whose conduct, integrity, competence and performance' he has lost confidence.⁹⁸ He further noted he is able to suspend officers pending an investigation.

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

96 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 11.

97 Assistant Commissioner Etter, WAPOL, *Committee Hansard*, 17 November 2008, p. 26.

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

4.117 New South Wales, Tasmania, Victoria and Western Australia each have specific 'loss of confidence' provisions in their police force legislation.⁹⁹ These provisions allow for dismissal on the grounds that the Police Commissioner has lost confidence in a particular police officer. Queensland and South Australia provide for dismissal or suspension at the discretion of the Commissioner but these are not on the grounds of 'loss of confidence'.¹⁰⁰

4.118 At the Commonwealth level, the *Australian Federal Police Act 1979* does not provide for dismissal on the grounds of 'loss of confidence'. However, the Commissioner may terminate the employment of an AFP employee on the basis that he believes they have engaged in serious misconduct.¹⁰¹ The *Australian Federal Police Regulations 1979* provide for the suspension from duties of AFP appointees.¹⁰²

4.119 In the case of the ACC, the CEO does not hold a 'loss of confidence' or similar power to summarily dismiss employees. Employees of the ACC are engaged under the *Public Service Act 1999* and, as such, the scope to remove temporarily an employee from the organisation while under investigation, or permanently if the CEO has lost confidence in the integrity or capacity of an employee, is more limited.

4.120 The committee notes that employees of law enforcement agencies who have engaged in serious misconduct or corruption could present a considerable risk to investigations through leaks and other acts of subversion. For this reason, the committee believes that the heads of those agencies should have recourse to sufficient suspension and dismissal powers.

4.121 The committee recognises, however, the potential for the misuse of such powers and emphasises that appropriate checks and balances must be in place to prevent such misuse. In particular, the committee emphasises that in the case of dismissal, employees should have a right of appeal to an independent tribunal.

99 *Police Act 1990 (NSW)*, s. 181D, *Police Service Act 2003(Tas.)*, s. 30, *Police Regulation Act 1958 (Vic.)*, s. 68 and *Police Act 1892(WA)*, s. 33L.

100 *Queensland Police Service Administration Act 1990* and *South Australian Police Act 1998*

101 *Australian Federal Police Act 1979*, s. 40K.

102 *Australian Federal Police Regulations 1979*, regulation 5(2).