

The Parliament of the Commonwealth of Australia

**PARLIAMENTARY JOINT COMMITTEE
ON THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY**

Inquiry into Law Enforcement Integrity Models

February 2009

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RECOMMENDATIONS

Recommendation 1

5.12 The committee recommends that the Australian Government undertake a review of the Australian Commission for Law Enforcement Integrity's funding levels, as a matter of urgency.

Recommendation 2

5.18 The committee recommends that, as a matter of priority, the Australian Government fund the establishment of a prevention and education unit in the Australian Commission for Law Enforcement Integrity. Further, the committee recommends that the prevention and education unit undertakes, but is not limited to, the following activities:

- education of law enforcement personnel
- public education and awareness-raising
- corruption-risk reviews
- research

Recommendation 3

5.19 The committee recommends that the corruption prevention and education function be strengthened in the *Law Enforcement Integrity Commissioner Act 2006* following the review of the operation of the Act, which is due to report no later than 30 June 2010. Specifically, it is recommended that a corruption prevention and education function be included under section 15 (Functions of the Integrity Commissioner) of the Act.

Recommendation 4

5.38 The committee recommends that the Australian Government initiates the establishment of a national forum through which matters of mutual interest to state and federal law enforcement integrity agencies can be addressed.

Recommendation 5

5.41 The committee recommends that the Australian Government consider in the longer term the establishment of an integrity inspector to assist in the oversight of the Australian Commission for Law Enforcement Integrity.

Recommendation 6

5.44 The committee recommends that as a priority the Australian Government fund the establishment and ongoing maintenance of a secure hearing room, associated technical infrastructure and personnel support.

Recommendation 7

5.50 The committee recommends that the Australian Government review existing obligations on employees of Commonwealth law enforcement agencies to report misconduct. The review should consider whether these arrangements need to be strengthened, including by legislative means, and whether there are sufficient measures in place to support and protect whistleblowers.

Recommendation 8

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

ACRONYMS AND ABBREVIATIONS

ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
AGD	Attorney-General's Department
CCC	Corruption and Crime Commission (WA)
CJC	Criminal Justice Commission (CJC)
CMC	Crime and Misconduct Commission (Qld)
ICAC	Independent Commission Against Corruption (NSW)
LEIC Act	<i>Law Enforcement Integrity Commissioner Act 2006</i>
LEIC Regulations	<i>Law Enforcement Integrity Commissioner Regulations 2006</i>
NCA	National Crime Authority
OPI	Office of Police Integrity (Vic.)
PCMC	Parliamentary Crime and Misconduct Committee (Qld)
PIC	Police Integrity Commission (NSW)
QCC	Queensland Crime Commission

Chapter 1

Introduction

Terms of reference

1.1 On 15 May 2008, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity initiated an inquiry into state-based law enforcement integrity models pursuant to subsection 215(1)(d) of the *Law Enforcement Integrity Commissioner Act 2006*:

To report to both Houses of the Parliament on any change that the Committee thinks desirable:

- (iii) to the Integrity Commissioner's functions or powers; or
- (iv) to the procedures followed by the Integrity Commissioner; or
- (v) to ACLEI's structure

1.2 The terms of reference required the committee to examine the various Australian state-based law enforcement integrity agencies in order to inform possible changes to the governance structure and operational processes of the Australian Commission for Law Enforcement Integrity (ACLEI) to enhance its current operation and support the potential extension of ACLEI oversight to other Commonwealth agencies with a law enforcement function.

In particular the committee was required to examine and report on:

- (a) the responsibilities and powers of the various state law enforcement integrity agencies;
- (b) the organisational structures and internal governance arrangements of the various state law enforcement integrity agencies;
- (c) the governance structures that underpin the state law enforcement integrity agencies' relationships with external bodies including:
 - (i) state ombudsmen
 - (ii) parliamentary oversight committees
 - (iii) intelligence-gathering agencies
 - (iv) other relevant agencies
- (d) the legal rights and obligations of the various state law enforcement integrity agencies to investigate corruption issues involving law enforcement officers formally or informally seconded to national law enforcement agencies or participating in joint operations with national and/or state law enforcement bodies;

- (e) existing state corruption prevention programs;
- (f) the internal anti-corruption processes of the state law enforcement bodies and the protocols and processes in place for reporting corruption matters to their respective integrity agency;
- (g) the adequacy and applicability of existing state law enforcement integrity approaches to the structure and operations of ACLEI.

Background to ACLEI

1.3 ACLEI was established by the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act). The LEIC Act commenced operation on 30 December 2006.

1.4 The Act established a new office of Integrity Commissioner, supported by a statutory agency, ACLEI.

1.5 The main purpose of ACLEI is to 'enhance the integrity of Commonwealth law enforcement agencies by providing independent and effective external investigation of possible instances of corruption' in those agencies.¹

1.6 ACLEI's role is 'to detect, investigate and prevent corruption in law enforcement in Australian Government agencies that fall within its jurisdiction – currently the Australian Crime Commission and the Australian Federal Police'.² ACLEI also has jurisdiction over the National Crime Authority (NCA), which was the forerunner to the Australian Crime Commission (ACC). Other Commonwealth agencies are able to be brought within ACLEI's jurisdiction by regulation.³

1.7 ACLEI's outcome and output as designated in the 2007-2008 Portfolio Budget Statements are:

Outcome: Assurance that Australian Government law enforcement agencies and their staff act with integrity.

Output: Detect, investigate and prevent corruption in prescribed Commonwealth law enforcement agencies; assist law enforcement agencies to maintain and improve the integrity of staff members.⁴

1 *Law Enforcement Integrity Commissioner Bill 2006*, 'Explanatory Memorandum', p. 1.

2 ACLEI, *Annual Report of the Integrity Commissioner 2006-07*, p. 1.

3 The Hon. Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 29 March 2006, p. 9.

4 ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 20.

1.8 ACLEI's appropriation for 2007-2008 was \$2.013m. In the 2008-2009 Budget ACLEI was allocated additional funding of \$7.5 million over four years.⁵ In 2007-08 there were eight ongoing staff and six casual, temporary or seconded staff.⁶

Australian Federal Police (AFP)

1.9 The AFP is the primary law enforcement agency of the Australian Government. Its principal role is to enforce Commonwealth criminal law and protect Australian interests from crime within Australia and overseas.⁷ As at 30 June 2008, the AFP employed 6598 staff, comprising 2855 Sworn Police Officers, 1341 Protective Service Officers and 2402 unsworn staff.⁸

1.10 The AFP Professional Standards Operations Monitoring Centre develops and monitors professional standards within the AFP including by overseeing and investigating complaints about the conduct of officers and staff. Minor complaints are handled by workplace managers and overseen by Professional Standards, and more serious complaints are investigated by Professional Standards. Complaints alleging corruption are notified by the AFP Commissioner to ACLEI.⁹

1.11 The AFP underwent considerable changes to its internal integrity arrangements in accordance with recommendations arising from a review of AFP professional standards by Justice William Fisher AO QC in 2002. The *Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006* repealed the *Complaints (Australian Federal Police) Act 1981* and amended the *Australian Federal Police Act 1979* to update the AFP's complaints and professional standards regime. In essence, the new system established a managerial model for professional standards to replace what was a legalistic and formal regime.

Australian Crime Commission (ACC)

1.12 The ACC is Australia's national criminal intelligence and investigation agency. It works with other national, state and territory law enforcement agencies to counter serious and organised crime. As at 30 June 2008, the ACC employed 585 staff.¹⁰

5 Parliamentary Joint Committee on the Australian Commission for Law enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2006-07*, p. 23.

6 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 65.

7 AFP, *Annual Report 2007-08*, p. 9.

8 AFP, *Annual Report 2007-08*, p. 16.

9 AFP, *Professional Standards*, 4 June 2008, <http://www.afp.gov.au/about/complaints/standards.html> (accessed 27 January 2009).

10 Excluding contractors and resources provided by other jurisdictions but including staff seconded to the ACC from other agencies. ACC, *Annual Report 2007-08*, p. 94.

1.13 The ACC has an internal professional standards program that is focused on aligning ACC practices and policies with its integrity goals. It also deals with complaints of misconduct made against ACC staff. As ACC employment is under the *Public Service Act 1999*, the Australian Public Service Code of Conduct¹¹ applies to ACC employees, including to staff formally seconded from other agencies.

1.14 Complaints concerning seconded police officers are usually referred to the officer's home force. Any corruption issues involving seconded officers are notified to ACLEI, and the ACC will notify the home force of the referral to ACLEI.¹² ACLEI does not have jurisdiction over staff from state and territory agencies participating in joint ACC operations or other ACC-Board approved task forces who have not been seconded to the ACC.¹³

Conduct of the inquiry

1.15 The committee advertised the inquiry in *The Australian* newspaper and on the committee's website. In addition, the committee wrote to a number of organisations inviting submissions.

1.16 The committee received 23 submissions, 20 of which were published on the committee's website. Three submissions were classified as confidential. A list of submissions is contained at Appendix 1.

1.17 In addition, the committee held public hearings in Canberra, Melbourne, Brisbane, Perth and Sydney. The witnesses who appeared before the committee are listed in Appendix 2.

Structure of the report

1.18 The report comprises five chapters. This chapter provides background to the inquiry.

1.19 Chapter 2 outlines existing law enforcement integrity arrangements in Australia. This includes an overview of the external integrity models in place across the states, and an overview of the internal integrity arrangements of the state police services that provided evidence to the inquiry.

1.20 Chapter 3 focuses attention on the 'building block' approach adopted to establish ACLEI and discusses various issues that relate to this approach and to the building blocks required for an integrity agency to fulfil its functions effectively.

11 *Public Service Act 1999*, s. 13.

12 ACC, *Submission 5*, pp. 2-3.

13 ACC, *Submission 5*, p. 2. Sections 29 and 30 of the LEIC Act outline how the Integrity Commissioner may deal with corruption issues that relate to the conduct of seconded employees. However, this does not cover 'informal' secondees. This is discussed in chapter 5.

1.21 Chapter 4 discusses other dominant themes or issues that emerged during the course of the inquiry. It looks at various aspects of the state models and broader research on anti-corruption, which provide helpful lessons and opportunities for the development of ACLEI.

1.22 Chapter 5 outlines the committee's conclusions and recommendations for change.

Acknowledgements

1.23 The committee wishes to express its appreciation to all parties that contributed to the conduct of this inquiry, whether by making a written submission, by attendance at a hearing or, as in many cases, by making both written and oral submissions.

1.24 The committee is also grateful to the members of the Queensland Parliamentary Crime and Misconduct Committee (PCMC) who met privately with the committee to discuss the parliamentary oversight role: Mr Paul Hoolihan MP (Chair), Mrs Christine Smith MP and Mrs Liz Cunningham MP. Thanks are extended to Mr Stephen Finnimore and Ms Renee Easten, PCMC secretariat, for their role in organising this meeting.

1.25 The opportunity to inspect the NSW Police Integrity Commission's hearing facilities during the course of the inquiry enabled the committee to gain a greater appreciation of the significance of the hearing room in corruption investigations and corruption prevention, and the resources required to set up and maintain such a facility. Accordingly, the committee would like to thank Mr John Pritchard, Commissioner of the Police Integrity Commission, and Mr Digby Morrison, Mr Allan Kearney, Mr James Flood and Ms Gabrielle Wanner for taking the time to brief the committee and demonstrate the audio-visual features of the hearing room.

Note on references in this report

1.26 References to Committee Hansard are to the proof Hansard. Page numbers may vary between the proof and the official Hansard transcript.

Chapter 2

The law enforcement oversight environment

External law enforcement oversight

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

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

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

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

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

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

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

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

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

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

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

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

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

External police oversight in Australia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Misconduct function

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Serious and organised crime function

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

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

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

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

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

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

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

2.25 Arguments against a merged model are:

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

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

Prevention and education function

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

An overview of state integrity arrangements

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

New South Wales²⁴

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

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

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

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

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

Police Integrity Commission

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

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

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

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

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

Parliamentary oversight committee

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

Police Integrity Inspector

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

Queensland

The Crime and Misconduct Commission

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

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

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

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

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

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

Parliamentary oversight committee

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

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

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

Parliamentary Crime and Misconduct Commissioner

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

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

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

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

Victoria

Office of Police Integrity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Office of the Special Investigations Monitor

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

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

Commissioner for Law Enforcement Data Security

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

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

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

Western Australia

Corruption and Crime Commission

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

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

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

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

2.65 The CCC has two main purposes:

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

Parliamentary oversight committee & Parliamentary Inspector

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

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

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

ACLEI: a broad comparison

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

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

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

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

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

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

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

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

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

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

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

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

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

Internal law enforcement integrity controls

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

New South Wales Police Force

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

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

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

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

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

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

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

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

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

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

Queensland Police Service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Victoria Police

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

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

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

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

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

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

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

Western Australia Police

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

- 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.

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 led - 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).

Chapter 5

Conclusion and recommendations

5.1 As discussed in chapter 2, the integrity models vary considerably across the states. In part, the establishment of each state law enforcement integrity agency has drawn on the structure and experience of agencies that came before it.¹ Equally, the four state integrity agencies have been tailored to respond to the specific context in which they were founded. Professor Ross and Ms Tucker told the committee that this has taken place with little support in the form of research into good practice models for police oversight:

A review of the literature has revealed that there is no agreement, or indeed little discussion as to what would constitute a good model for police oversight although the issue has been well recognised.

...The history of external police oversight models, such as those mentioned above, is not a long one. As a consequence, there are no longitudinal studies and little information to assist decision makers in the development of legislation and governance arrangements.²

5.2 Notwithstanding the absence of substantial comparative data on the different models, evidence presented to the committee suggests that there is not necessarily a best model and that each approach has its advantages and disadvantages as well as forming a unique response to local circumstances.³

5.3 At the same time, the committee believes that there is much to be gained from cross-agency discussion. The opportunity to meet with ACLEI's counterparts and other stakeholders in the Australian integrity systems through the course of the inquiry greatly enriched the committee's understanding of law enforcement integrity and anti-corruption programs. More specifically, through its examination of the various state models the committee gained insight into a range of issues, which it believes usefully inform the future directions of ACLEI.

5.4 In chapter 3 it was explained that a 'building block' approach was adopted for the creation of ACLEI. As the corruption-risk environment is better understood and basic operations are up and running, ACLEI's capabilities could be added to and its jurisdiction expanded to include other Commonwealth agencies with a law enforcement function.

1 Associate Professor Glenn Ross and Ms Bernadine Tucker, *Submission 15*, p. 2.

2 Associate Professor Glenn Ross and Ms Bernadine Tucker, *Submission 15*, p. 3.

3 The committee recognises that this is a relatively new field of study and will follow with interest research that aims to understand good practice in law enforcement oversight. In particular, the committee looks forward to the results of Ms Bernadine Tucker's research, as outlined in Submission 15.

5.5 Whilst the committee supports the 'building block' approach, it does so with several qualifications. First, it is essential that there are sufficient resources to establish procedures and recruit an adequate number of staff to meet the current work load. Second, where capabilities are yet to be established it is imperative that these capabilities can be accessed by other means without compromising investigations. Third, building blocks must be set in place as they are required. This means that the timely allocation of additional resources is critical. Fourth, the expansion of ACLEI's jurisdiction to other agencies would need to be accompanied by commensurate resources.

5.6 The Hon. Len Roberts-Smith, Commissioner of the CCC, outlined seven 'essential preconditions' for the purging and prevention of corruption:

- political will
- independence
- appropriate powers
- adequate access to information
- sufficient resourcing
- the capacity to report publicly on findings
- a dedicated corruption prevention program

5.7 He explained:

[F]irst, the political will. Political will is absolutely imperative to dealing effectively with corruption and, indeed, with public sector misconduct. Second is the independence of the organisation. We have, in the Corruption and Crime Commission, complete independence. We are not responsible to the executive government. This commission reports directly to the parliament and is overseen by a parliamentary joint committee and a parliamentary inspector who is also responsible to that committee.

The third essential requirement for such an anticorruption agency, I would suggest, is to have appropriate powers. ... Information is the point I would list fourth there. ... And, very importantly, the fifth consideration I would suggest is adequate resourcing. An anticorruption agency of whatever name cannot operate effectively without adequate resourcing. That is tied in with the first point I mentioned, namely political will. The last two I would say are reporting—the anticorruption agency must be able to report in a public fashion upon the conduct of its investigations and the things which it has found or the processes which it has put in place or helped agencies put in place to deal with corruption or misconduct—and, the final point, a program of corruption prevention.⁴

4 The Hon. Len Roberts-Smith, Commissioner, CCC, *Committee Hansard*, 17 November 2008, pp 2-3.

5.8 While the committee is confident of the existence of several of these preconditions in ACLEI's case, there are at least two preconditions about which the committee has its concerns: adequate resourcing and the existence of a corruption prevention program.

5.9 Along with these two preconditions, the committee identified a number of other issues that demand further attention. Each of these is discussed below with recommendations for action, as appropriate.

Adequate resourcing

5.10 The committee is confident that ACLEI has made significant in-roads in investigating potential corruption and promoting integrity in the agencies under its oversight. However, in spite of funding increases in the previous budget, the committee does not consider that ACLEI is sufficiently resourced to meet its increasing workload⁵ or to deliver adequately on its designated output.

5.11 The committee will examine further the apparent variance between ACLEI's workload and the resources allocated to it in its examination of ACLEI's 2007-08 Annual Report.⁶ The committee believes that ACLEI's funding should be reviewed as a matter of urgency. The committee notes in particular, the resourcing constraints on ACLEI to fulfil effectively the requirement to prevent corruption. This is discussed in the following section.

Recommendation 1

5.12 The committee recommends that the Australian Government undertake a review of the Australian Commission for Law Enforcement Integrity's funding levels, as a matter of urgency.

Corruption prevention and education

5.13 As discussed in chapter 3, during the set-up of ACLEI attention was principally focused on its role as an investigatory body. And, as reflected in the LEIC Act, limited consideration was given to a prevention and education function.

5.14 The committee recognises that the Integrity Commissioner does devote some resources to prevention and education and notes, in particular, that anti-corruption reviews of the ACC and AFP will be undertaken in the first half of 2009.⁷

5 ACLEI notes that its actual workload has exceeded the workload forecast during the planning of the size of the agency, *Annual Report of the Integrity Commissioner 2007-2008*, p. 64.

6 The committee will report on the *Annual Report of the Integrity Commissioner 2007-08* in the first half of this year.

7 ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 30.

5.15 The committee commends the emphasis the Integrity Commissioner has given to prevention and education and advocates the expansion of activities taken under the umbrella of this function.

5.16 However, the committee is concerned that ACLEI is not currently sufficiently resourced to undertake existing prevention and education activities, and that the Integrity Commissioner is placed in the difficult position of having to allocate resources to one function at the expense of another.

5.17 The committee holds the view that corruption prevention and education is an integral function of law enforcement integrity bodies and, therefore, a priority building block for ACLEI. Accordingly, the committee believes that a prevention and education unit with dedicated resources should be established.

Recommendation 2

5.18 The committee recommends that, as a matter of priority, the Australian Government fund the establishment of a prevention and education unit in the Australian Commission for Law Enforcement Integrity. Further, the committee recommends that the prevention and education unit undertakes, but is not limited to, the following activities:

- education of law enforcement personnel
- public education and awareness-raising
- corruption-risk reviews
- research

Recommendation 3

5.19 The committee recommends that the corruption prevention and education function be strengthened in the *Law Enforcement Integrity Commissioner Act 2006* following the review of the operation of the Act, which is due to report no later than 30 June 2010. Specifically, it is recommended that a corruption prevention and education function be included under section 15 (Functions of the Integrity Commissioner) of the Act.

Real-time access to complaints system

5.20 Law enforcement agencies' complaints or case management systems can provide a vital source of data for corruption investigations and corruption detection. The committee therefore endorses ACLEI's decision to pursue access to the AFP's case management system PRS-PROMIS. The committee will follow with interest ACLEI's negotiations with the AFP on this matter.

Expanding ACLEI's jurisdiction

5.21 The merits of limiting ACLEI's jurisdiction to the AFP and the ACC during ACLEI's set-up phase have been noted. However, the committee believes that to

continue this limited oversight in the longer term would be undesirable. Other Commonwealth agencies with law enforcement powers and the corruption risks associated with these powers should be subject to external scrutiny.

5.22 The committee recognises that the broadening of ACLEI's jurisdiction presents challenges: notably, determining which Commonwealth agencies have the power to exercise law enforcement as defined under the LEIC Act⁸ and distinguishing the law enforcement function from the other functions of agencies.

5.23 On this second point, the committee makes note of the potential difficulties forecast by Dr A J Brown when the *Law Enforcement Integrity Commissioner Bill 2006* was under review. Dr Brown stated:

it is highly likely that the distinction between the 'law enforcement' functions, and non-law enforcement functions, will become operationally problematic; and that some agencies will naturally use the 'law enforcement' distinction to seek to avoid scrutiny even when the government feels it desirable to initiate an inquiry into them – necessitating either legislative amendment or establishment of a separate inquiry.⁹

5.24 The committee notes that further work is needed to determine a systematic and workable process for extending ACLEI's jurisdiction to other Commonwealth agencies with a law enforcement function.

Specialist or generalist model

5.25 ACLEI is founded on a specialist model, however the committee received substantial evidence concerning the arguments for a generalist or all-encompassing public sector integrity model.

5.26 Expanding ACLEI's jurisdiction to include the broader public sector has the dual appeal of achieving a critical mass of resources for ACLEI and overcoming the potential difficulties identified by Dr Brown above. Under its terms of reference, the committee did not enquire specifically into this question, and has not evaluated this option.

5.27 The committee notes the Government's recent initiative to establish an Ethics Advisory Service within the Australian Public Service Commission, and also that the House of Representatives Standing Committee on Legal and Constitutional Affairs is currently inquiring into whistleblower protections within the Australian Government public sector. It is not yet known what effects these events are likely to have on

8 LEIC Act, s. 5.

9 Dr A J Brown, *Submission 8*, p. 3, Senate Standing Committee on Legal and Constitutional Affairs, Inquiry into the provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006.

strengthening public sector accountability. Accordingly, the committee remains open on this point.

A national forum

5.28 It was evident during the inquiry that there is already significant cooperation and discussion between the various state and Commonwealth integrity agencies. In spite of their structural differences, there are a number of areas of common interest between the agencies that call for mutual exchange.

5.29 ACLEI explained that it:

has much in common with each of the State integrity agencies. These common aspects include shared challenges, as well as opportunities to achieve efficiencies and avoid duplication.¹⁰

5.30 ACLEI identified these challenges:

- keeping pace with technological change, particularly in acquiring and updating electronic surveillance capabilities;
- having available a pool of covert operatives who are skilled at overcoming counter-surveillance techniques and who are unlikely to be recognised in a jurisdiction;
- staying up to date with best practice relating to the use of coercive powers;
- keeping up to date with, and driving forward, relevant research agendas to improve practices; and
- in ACLEI's case, the need to access secure and technically-appropriate hearing room facilities in various States.¹¹

5.31 The committee believes that it would be of mutual benefit for all integrity agencies to continue to look for synergies and efficiencies to be gained through cooperation between them.

5.32 In order to facilitate such exchange, there would be considerable value in establishing a national forum - for example, a 'national council' or 'national roundtable'.¹² This would provide an environment conducive to shared initiatives and good practice.

5.33 The committee makes note of two issues that generated limited evidence during the inquiry but which the committee believes should be placed on a national agenda: determining performance measures within the anti-corruption field; and improving cross jurisdictional notification of potential corruption issues concerning officers who have recently engaged in joint investigations.

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

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

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

Measuring performance within the anti-corruption field

5.34 During the inquiry the committee did receive some limited evidence that indicated that performance measurement in the anti-corruption area is difficult and, as yet, under-developed. An understanding of why something is or isn't working well is critical to achieving good practice. The capacity to measure whether performance is up to standard provides assurance to Government and the broader public. The committee believes, therefore, that there would be value in the various law enforcement bodies jointly progressing this matter.

Cross-jurisdictional notification

5.35 The agencies under ACLEI's jurisdiction are regularly involved with other state and Commonwealth agencies through joint operations and the secondment of staff.

5.36 In the committee's view, Sections 29 and 30 of the LEIC Act provide adequate provisions for dealing with corruption issues that relate to the conduct of seconded employees. The Act clearly outlines who has responsibility for managing corruption issues in these circumstances and notification requirements.

5.37 However, as the committee has noted elsewhere, there is less clarity with respect to informal secondments and employees engaged in joint operations.¹³ ACLEI noted that there is currently no formal arrangement through which state, territory or other Australian Government agencies must inform ACLEI of concerns they may have about the integrity of ACC or AFP officers.¹⁴ The committee considers that a national forum would be the appropriate avenue through which to address this matter. Clarifying and formalising notification protocols through memoranda of understanding would enable ACLEI and the state integrity agencies to better profile and manage corruption risks.

Recommendation 4

5.38 The committee recommends that the Australian Government initiates the establishment of a national forum through which matters of mutual interest to state and federal law enforcement integrity agencies can be addressed.

An inspectorate model

5.39 The committee sees merit in the establishment of an integrity inspector to assist in the oversight of ACLEI.

13 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2006-07*, p. 28.

14 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 9.

5.40 The committee recognizes, however, that at this stage in ACLEI's development it does not have the resources available to assist an inspector. Adding to ACLEI's accountability framework could take much-needed resources away from investigations. The committee believes that the establishment of an integrity inspector should be given serious consideration in the longer term, when ACLEI's size and complexity warrants enhanced accountability. In the immediate term, the committee is satisfied that the existing accountability mechanisms offer reasonable assurance.

Recommendation 5

5.41 The committee recommends that the Australian Government consider in the longer term the establishment of an integrity inspector to assist in the oversight of the Australian Commission for Law Enforcement Integrity.

Secure hearing room

5.42 The coercive hearing powers of integrity agencies are integral to the investigation process. The corollary to this is ready access to a secure hearing room with the requisite technical and physical infrastructure and support. At this stage, ACLEI has no such facility and relies on arrangements with other like-bodies to use their facilities in other states.

5.43 The committee notes that a secure hearing room is one of the fundamental building blocks for ACLEI and it considers that there would be important practical and symbolic benefits to the effectiveness of the integrity system were ACLEI to have access to a purpose-built hearing room in Canberra. The committee anticipates that an asset of this type could be used by other agencies with similar needs, such as the ACC.

Recommendation 6

5.44 The committee recommends that as a priority the Australian Government fund the establishment and ongoing maintenance of a secure hearing room, associated technical infrastructure and personnel support.

Obligation to report misconduct

5.45 The committee was pleased to learn that the culture of policing is changing and that the 'code of silence' and adherence to the notion of unfailing loyalty to one's colleagues is being progressively replaced by an environment in which loyalty is first and foremost to the organisation and to the public interest. An increased focus on professional standards and greater encouragement and support for whistleblowers are some of the key factors driving this trend.

5.46 Within this context, the committee notes, as discussed in chapter 2, the statutory obligation on Queensland Police Service officers to report disciplinary breaches and misconduct to the Commissioner of Police and, in certain circumstances, to the CMC. Such a measure, the committee believes, establishes the clear message that an officer's duty is to uphold the professional standards of that agency. It supports

the reporting of misconduct and provides a disincentive for covering-up for fellow officers.

5.47 Presently, at the Commonwealth level, there is no statutory obligation on AFP or ACC employees to report disciplinary breaches or misconduct. However, the AFP Commissioner's Order 2, made pursuant to section 38 of the *AFP Act 1979*, places an obligation on AFP employees to report all contraventions of the professional standards of the AFP. This obligation is supported by other measures in the AFP's integrity system, including the AFP's Confidant Network,¹⁵ which together encourage a pro-disclosure culture.

5.48 Employees of the ACC are governed by the *Public Service Act 1999*. The Act does not place an obligation on Australian public service employees to report disciplinary breaches and misconduct. However, the Act does compel employees to comply with 'lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction'.¹⁶ The ACC's Fraud and Corruption Prevention Policy stipulates that ACC employees must report disciplinary breaches and misconduct.

5.49 The committee considers that there would be considerable value in strengthening arrangements to foster a culture of disclosure in Commonwealth law enforcement agencies.

Recommendation 7

5.50 The committee recommends that the Australian Government review existing obligations on employees of Commonwealth law enforcement agencies to report misconduct. The review should consider whether these arrangements need to be strengthened, including by legislative means, and whether there are sufficient measures in place to support and protect whistleblowers.

The power to suspend and dismiss employees

5.51 The high corruption-risk nature of law enforcement and the significant powers able to be exercised by law enforcement officers carries with it a significant onus on law enforcement agencies to ensure that officers act in a responsible and ethical manner. For this reason, the committee believes it is appropriate that Commonwealth law enforcement agency heads have recourse to adequate measures to temporarily stand down and dismiss employees.

5.52 The committee notes that provisions to temporarily stand down and summarily dismiss employees are available to the heads of other law enforcement agencies. Such provisions provide a crucial deterrent and enhance community

15 The internal Confidant Network provides a secure avenue through which AFP appointees can bring forward misconduct concerns.

16 *Public Service Act 1999*, s. 13(5).

confidence in the integrity of the law enforcement agency. Equally as important, the capacity to summarily stand down and/or dismiss an appointee can be critical to preserving the integrity of investigations. The committee emphasises, however, that there must be appropriate checks and balances in place to ensure that such powers are not misused. The committee notes, in particular, that employees must have an independent avenue through which to appeal dismissal decisions.

Recommendation 8

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

Ms Melissa Parke MP
Chair

Appendix 1

Submissions and answers to questions taken on notice

Submissions

- 1 NSW Police Integrity Commissioner
- 2 Professor Tim Prenzler
- 3 Commonwealth Ombudsman
- 4 Australian Commission for Law Enforcement Integrity (ACLEI)
- 5 Australian Crime Commission
- 6 Ombudsman Victoria
- 7 South Australia Police
- 8 Minister for Police, Corrective Services and Sport, Queensland Government
- 9 Mr David Campbell, Minister for Police; Minister for Illawarra, New South Wales Government
- 10 Office of Police Integrity
- 10A Office of Police Integrity (Supplementary Submission)
- 11 Western Australia Police
- 12 Associate Professor Colleen Lewis, School of Humanities, Communications and Social Sciences, Monash University
- 13 Northern Territory Police
- 14 Committee on the Office of the Ombudsman and the Police Integrity Commissioner, Parliament of New South Wales
- 15 Glen Ross & Bernie Tucker, Edith Cowan University
- 16 Transparency International Australia
- 17 Dr Jann Karp, School of Social Sciences, University of Western Sydney
- 18 Confidential
- 19 Confidential

20 Crime and Misconduct Commission (Queensland)

21 Confidential

22 Mr Don McKenzie

23 Ms Tamar Hopkins

Answers to questions taken on notice

Transparency International Australia, public hearing, 18 November 2008 (received 18 December 2008)

Australian Commission for Law Enforcement Integrity, 16 December 2008 (received 16 January 2009)

Appendix 2

Public Hearings

Friday, 26 September 2008 – Canberra

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Peter Bache, Acting Executive Director

Mr Nicholas Sellars, Manager, Policy and Research

Mr Anthony Vincent, Principal Lawyer

Attorney-General's Department

Ms Elizabeth Kelly, First Assistant Secretary, Criminal Justice Service

Mr Andrew Walter, Director, Law Enforcement Coordination Section, National Law Enforcement Policy Branch

Ms Sue Harris, Assistant Director, Law Enforcement Coordination Section, National Law Enforcement Policy Branch

Ms Annette Quinn, Assistant Director, Law Enforcement Coordination Section, National Law Enforcement Policy Branch

1 October 2008 – Melbourne

Victoria Police

Ms Christine Nixon, Chief Commissioner

Mr Wayne Taylor, Acting Assistant Commissioner, Ethical Standards Department

Ombudsman Victoria

Mr John Taylor, Acting Ombudsman

Mr Dallas Mischkulnig, Director, Legislative Compliance

Commonwealth Ombudsman

Professor John McMillan

Associate Professor Colleen Lewis (Private capacity)

Friday, 14 November 2008 – Brisbane

Professor Timothy Prenzler (Private capacity)

Queensland Police Service

Deputy Commissioner Ian Stewart, Specialist Operations

Assistant Commissioner Peter Martin, Ethical Standards Command

Crime and Misconduct Commission

Mr Stephen Lambrides, Acting Chairperson

Monday, 17 November 2008 – Perth

Corruption and Crime Commissioner of Western Australia

The Hon. Len Roberts-Smith, RDF, QC, Commissioner

Mr Mike Silverstone, Executive Director

Western Australia Police

Assistant Commissioner Barbara Etter, Assistant Commissioner, Corruption Prevention and Investigation

Superintendent Graham Moon, Superintendent, Police Complaints Administration Centre

Superintendent Andrew Tovey, formerly Superintendent in charge, Ethical Standards Division, Corruption and Prevention Portfolio

Acting Superintendent Ann Heitman, Acting Superintendent, Risk Assessment Unit

Acting Detective Superintendent Peter De La Motte, Acting Detective Superintendent, Internal Affairs Unit

Ombudsman Western Australia

Mr Christopher Field, Ombudsman

Ms Michelle Bovill, Investigating Officer

Parliamentary Inspector of the Corruption and Crime Commission

Mr Malcolm McCusker, QC

Edith Cowan University

Adjunct Associate Professor Glenn Ross, Adjunct Associate Professor, School of Law and Justice, Edith Cowan University

Ms Bernadine Tucker (Private capacity)

Tuesday, 18 November 2008 – Sydney

New South Wales Police Integrity Commission

Mr John Pritchard, Commissioner

New South Wales Police Force

Commissioner Andrew Scipione, Commissioner of Police

Acting Deputy Commissioner Paul Carey, Acting Deputy Commissioner, Specialist Operations

Inspector of the Police Integrity Commission

The Hon. Peter Moss, QC

Independent Commission Against Corruption

The Hon. Jerrold Cripps, QC, Commissioner

Transparency International Australia

Mr Michael Ahrens, Executive Director

Mr Harold Werksman, Member

Appendix 3

Special investigative powers of Australia's dedicated corruption-in-government investigation agencies

Source: ACLEI (based on *Office of Police Integrity Annual Report 2006-07, Appendix Four*)

Special investigative powers of Australia's dedicated corruption-in-government investigation agencies

	Agency [Relevant legislation]	Investigation of Complaints/ Allegations	'Own Motion' Investigations	Require person to give evidence	Require person to produce documents	Arrest warrants to ensure attendance	Hearings/ Examination s Public & Private	Compel giving of evidence on oath or by affirmation	Compel self- incriminatory evidence from witness	Non Publication of Evidence	Telecommunications Interception (Commonwealth law)		Power to enter and search public authorities premises and seize or take copies of documents	Apply for and execute search warrants	Recommend criminal proceedings or disciplinary action in misconduct matters
											Eligible authority to receive TI product	Able to intercept services			
Federal	Australian Commission for Law Enforcement Integrity (ACLEI) <i>Law Enforcement Integrity Commissioner Act 2006 (Cwth)</i>	Yes – in relation to prescribed law enforcement agencies s23, s26	Yes s38	Yes s83 (summons) s75, s76 (written requests)	Yes s83 (summons) s75, s76 (written requests)	Yes s99 s93	Yes s82(3)	Yes s87 s93(2)	Yes s96 (summons) s80 (written requests)	Yes s90 s92	Yes s68(db)	Yes s39	Yes s105	Yes s109	s54 (Power to make any recommendation in final report, specifically includes disciplinary action)
	Commonwealth Ombudsman <i>Ombudsman Act 1976 (Cwth)</i>	Yes s5(1)(a) (no jurisdiction over significant corruption issues; discretion over corruption issues –s6(16)&(17))	Yes s5(1)(b)	Yes s9(2) (notice)	Yes s9(1) (notice)	No s11A(2) (May apply to Federal Court for an order to comply)	Yes s8(2) (Only private)	Yes s13 s36(1)(b)	Yes s9(4)(aa) s36(1)	Yes s(8(2)) (All investigations in private)	Yes s(8(2)) (All investigations in private)	No	No	Yes s14 (No power to take copies, only to enter and inspect)	No
New South Wales	Police Integrity Commission (NSW) <i>Police Integrity Commission Act 1996 (NSW)</i>	Yes – in relation to NSW Police Service s23(1)	Yes s23(1)	Yes s38	Yes s26(1) (notice) s25(1) s38 (1) (summons)	Yes s39(1) (Commissioner may issue warrant)	Yes s32 s33	Yes s38(3) s40(1)(a)	Yes s28 s40(2)	Yes s52(1) s53 s54 (confidentiality of summons)	Yes s68(fa)	Yes s34	Yes s29 (except ICAC and NSW Ombudsman offices)	Yes s45 s46 (Office of Commissioner/ Commissioner may issue)	Yes s16(1) s15(1)
	Independent Commission against Corruption (NSW) <i>Independent Commission Against Corruption Act 1988 (NSW)</i>	Yes s20	Yes s20	Yes s35	Yes s22 (notice) s35 (summons)	Yes s36 Commissioner may issue warrant)	Yes s30 s31	Yes s35(3) s37(1)	Yes s26 s37(2)	Yes s112(1) s114(1)	Yes s68(ea) & (eb)	Yes s34	Yes s23	Yes s40 s41 (Office of Commissioner/ Commissioner may issue)	Yes s14

	Agency [Relevant legislation]	Investigation of Complaints/ Allegations	'Own Motion' Investigations	Require person to give evidence	Require person to produce documents	Arrest warrants to ensure attendance	Hearings/ Examination s Public & Private	Compel giving of evidence on oath or by affirmation	Compel self- incriminatory evidence from witness	Non Publication of Evidence	Telecommunications Interception (Commonwealth law)		Power to enter and search public authorities premises and seize or take copies of documents	Apply for and execute search warrants	Recommend criminal proceedings or disciplinary action in misconduct matters
											Eligible authority to receive TI product	Able to intercept services			
Victoria	Office of Police Integrity <i>Police Regulation Act 1958 (Vic) [PRA]; Evidence Act 1958 (Vic) [EA]</i>	Yes s86L(1)(b) s86N(4) [PRA]	Yes s86NA(1) [PRA]	Yes s17 [EA] s86PA [PRA]	Yes s17 [EA] s86PA [PRA]	Yes s86PD [PRA] (Director may apply for a warrant)	Yes s86P(1)(a) [PRA] s19B(1) [EA]	Yes s18 [EA] s86PA [PRA]	Yes s86PA(4) s86Q [PRA]	Yes s19B(2) [EA] (hearing) s86KA(2) [PRA] (confidentiality of summons)	Yes s68(ec)	Yes s34	Yes s86VB s86VC [PRA]	Yes s86W [PRA]	Yes s86QA; s86P(5)(b) [PRA]
Queensland	Crime and Misconduct Commission (Qld) (misconduct function only) <i>Crime and Misconduct Act 2001 (Qld)</i>	Yes s46	Yes s35(f)	Yes s82 (notice)	Yes s 82 s75(2)	Yes s167 Supreme Court issues warrant)	Yes s177	Yes s183	Yes s188(3) s192	Yes s180(3) s84	Yes s68(h)	No (<i>Telecom municatio ns Intercepti on Bill introduce d into Parliame nt 10/02/09</i>)	Yes s73 (in misconduct inquiries)	Yes s86	Yes s49
Western Australia	Corruption and Crime Commission (WA) (misconduct function only) <i>Corruption and Crime Commission Act 2003 (WA)</i>	Yes s18(2)(a) s24	Yes s18(2)(e)	Yes s96(3) (summons)	Yes s96 (summons) s94, s95 (notice)	Yes s148(1) Commissioner issues warrant)	Yes s137 s139 s140	Yes s141; 160(1)	Yes s160(2)	Yes s99(2) s151	Yes s68(j) & (k)	Yes s34	Yes s100(1) (in misconduct inquiries)	Yes s101	Yes s43

Other State-based agencies with an anti-corruption investigation role

	Agency [Relevant legislation]	Investigation of Complaints/ Allegations	'Own Motion' Investigations	Require person to give evidence	Require person to produce documents	Arrest warrants to ensure attendance	Hearings/ Examinations Public & Private	Compel giving of evidence on oath or by affirmatio n	Compel self- incriminat ory evidence from witness	Non Publicatio n of Evidence	Telecommunications Interception (Commonwealth law)		Power to enter and search public authorities premises and seize or take copies of documents	Apply for and execute search warrants	Recommend criminal proceedings or disciplinary action in misconduct matters
South Australia	Police Complaints Authority (SA) <i>Police (Complaints & Disciplinary Procedures) Act 1985 (SA)</i>	Yes – in relation to SA Police Force s23	Yes s22A [Only with Support of Police Commissione r and Minister]	Yes s28(7)	Yes s28(6)	No s28(10)	Yes s28(1) (Only private)	No	No s28(13) (Exceptio n police officers)	Yes s28(1) (All investigat ion in private)	No	No	Yes s28(16) (No power to take copies, only to enter and inspect)	s28(17) (Must apply for warrant to enter in some circumstan ces)	Yes s32(1)(b)(i)(A)
Tasmania	Ombudsman Tasmania (Tas) <i>Ombudsman Act 1978 (Tas) [OA]; Commissions of Inquiry Act 1995 (Tas) [CIA]</i>	Yes s12 [OA]	Yes s13 [OA]	Yes s24 [OA] s22 [CIA]	Yes s24 [OA] s22 [CIA]	Yes s27 [CIA]	Yes s13 [CIA]	Yes s25 [CIA]	Yes s26 [CIA]	Yes s14 [CIA]	No	No	Yes s25 [OA] (No power to take copies, only to enter and inspect)	Yes s24 [CIA]	s28 [OA] (General recommendation powers only)
Northern Territory	Northern Territory Ombudsman (NT) <i>Ombudsman (Northern Territory) Act 1978 [OA] Inquiries Act 2007 (NT) [IA]</i>	Yes s14 [OA]	No s14(2) [OA] [Only for Public Sector]	Yes s20 [OA] s9 [IA]	Yes s20 [OA] s9 [IA]	No s25(1) [OA] (Pecuniary penalty for failure to comply with summons)	Yes s19(2) [OA] (Only private investigation)	Yes s10 [IA] s25(3) [OA]	No s20(5) [OA]	Yes s23 [OA]	No	No	Yes s21 [OA] (No power to take copies, only to enter and inspect) s8 [IA] (power to copy)	No	No s26 [OA] (General recommendation powers only)