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JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY

Reference: Law enforcement integrity models

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JOINT STATUTORY COMMITTEE
ON AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Friday, 26 September 2008

Members: Ms Parke (*Chair*), Senator Fierravanti-Wells (*Deputy Chair*) and Senators Carol Brown, Cameron and Parry and Mr Chester, Mr Clare, Mr Hayes and Mr Pyne

Members in attendance: Senators Cameron and Parry and Mr Chester, Mr Hayes and Ms Parke

Terms of reference for the inquiry:

To inquire into 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.

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Committee met at 11.05 am

CHAIR (Ms Parke)—Good morning everyone. I call the committee to order and declare open this public meeting of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity. Today's public hearing is the first hearing for the committee's inquiry into law enforcement integrity models. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. I also ask that people in the hearing room ensure that their mobile phones are either turned off or switched to silent. I also ask witnesses to remain behind for a few minutes at the conclusion of their evidence in case the Hansard staff need to clarify any terms of references. Before I welcome our first witnesses, I remind members of the committee that the Senate has resolved that government officials should not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions asked to a superior officer or to a minister if that is appropriate. This resolution does not include questions asking for explanations of policy or factual questions about when and how policies were adopted.

[11.07 am]

BACHE, Mr Peter, Acting Executive Director, Australian Commission for Law Enforcement Integrity

MOSS, Mr Philip, Integrity Commissioner, Australian Commission for Law Enforcement Integrity

SELLARS, Mr Nicholas, Manager, Policy and Research, Australian Commission for Law Enforcement Integrity

VINCENT, Mr Anthony, Principal Lawyer, Australian Commission for Law Enforcement Integrity

CHAIR—I welcome the commissioner and senior officers from the Australian Commission for Law Enforcement Integrity. I now invite you to make a short opening statement at the conclusion of which I will invite members of the committee to ask questions.

Mr Moss—I have no substantial opening remarks other than to say it is a pleasure to be with you again and also to congratulate you, Ms Parke, on your appointment as chair of this committee.

CHAIR—Thank you.

Mr Moss—I acknowledge also the new members, two of whom are here today. I look forward to getting to know you in the course of our work with the PJC on ACLEI and in my role as Integrity Commissioner. I have no further opening remarks to make. Thank you.

CHAIR—Perhaps I will open the batting. Commissioner, in your submission at page 7, you have set out the various investigation capability building blocks relevant to the work of integrity agencies. Are you able to provide a summary of ACLEI's current capabilities and future capabilities that have been budgeted for?

Mr Moss—Let me start by outlining briefly the integrity framework in which ACLEI operates, which is also outlined in our submission. We have the corruption oversight of two agencies—that is, the Australian Federal Police and the Australian Crime Commission—as well as the former National Crime Authority. I have powers to detect, investigate and prevent corruption in relation to the ACC and the AFP. Those powers include both the power to hold hearings and the power to require witnesses to attend before me and to provide evidence. I also have other powers to assist me in investigations, such as telecommunications interception, surveillance, assumed identities and controlled operations.

At the moment the staff that I have to assist me in my role of detection, investigation and prevention of corruption number 14, of which nine are ongoing, including me. I have three seconded officers, two temporary staff and one casual staff. As a result of the budget in 2008, ACLEI received an increase in funding to the tune of \$7.5 million over the next four financial

years. That will enable ACLEI to increase its ongoing staff numbers. Is there any further information required at this stage in response to your question?

CHAIR—No. We will proceed and then we will see from there. A number of submissions to this inquiry emphasise the importance of the prevention and education function of integrity bodies, yet it appears that the legislation gives a much greater weighting to ACLEI's investigatory function with only a limited focus on prevention and education. I seem to recall from reading your specific role, as set out in the act, that it does not specifically say 'prevention and education', although that is a function of ACLEI.

Mr Moss—Yes.

CHAIR—So, how important in your view is the prevention and education function, and what activities does ACLEI undertake around prevention and education?

Mr Moss—The Law Enforcement Integrity Commissioner Act does focus largely on the mechanics of investigation because coercive and intrusive powers are involved. There is considerable focus in the provisions on how those powers can be used. As to prevention and education, there is less specific reference to that role, but I certainly regard it as a very important one for ACLEI. As I have previously mentioned before this committee and as stated in the last and only annual report of the Integrity Commissioner, this financial year I intend to conduct the first review of the anticorruption plans of both the Australian Crime Commission and the Australian Federal Police to see whether they are adequate and to see also whether the corruption risks that these agencies face are adequately addressed by those plans in their implementation.

CHAIR—Is that the end of the answer?

Mr Moss—That is all my comment is for the moment, yes.

CHAIR—Okay. I would like hand over to Senator Parry.

Senator PARRY—Thank you again, commissioner. I just want to lift that up to a broad level. Obviously, our inquiry is focusing on all the models in Australia. Through your observations, do you have knowledge of any outstanding models of law enforcement integrity anticorruption processes of any state jurisdiction that you are prepared to comment on? Do you see any gaps at the state level? I know we have had recent private conversations about Tasmania, in particular, and the lack of any form of corruption investigation body from a government perspective.

Mr Moss—ACLEI is closest, of all the models that exist in the states, to the Police Integrity Commission in New South Wales. With the PIC being given responsibility and oversight for the New South Wales Crime Commission, that puts us in a parallel situation with the PIC. I think that the other one that is close to ACLEI is, of course, the Office of Police Integrity in Victoria, but our situation now, because of our both having oversight of the police and also the crime commission, puts us closest together.

The only comment I make about the PIC is that something I find attractive in their model that may be useful for ACLEI—and it is stated in their submission to this inquiry—is that the PIC

has access to all complaints made about police on the police database and it may examine that database to see whether there is any matter that it wants to investigate itself. The New South Wales Ombudsman also has a role in investigating matters about New South Wales police, and the PIC can at any time choose to look at a matter that the Ombudsman may be looking at or a matter that the police themselves are looking at. I think this is an advantage that ACLEI would benefit from. Having said that, all these things come with a resource implication. To take full benefit of access to the database would require the staff to use it effectively. There is no legislative underpinning of this arrangement; it simply is an administrative one between the PIC, the New South Wales Ombudsman and the New South Wales Police Force.

Senator PARRY—From an ACLEI perspective, do you feel as though you need to be comforted that each state jurisdiction, when they are supplying officers to work with the Federal Police or ACC, needs to have impeccable or certainly robust integrity measures in place?

Mr Moss—I just missed the first part of your question.

Senator PARRY—Do you think ACLEI needs some sort of comfort that each state's jurisdiction has some form of robust integrity mechanism, because when we have joint operations—and obviously you have some form of responsibility for joint operations if there is any alleged act of corruption—

Mr Moss—As is suggested in some of the submissions made to this inquiry, there seems to be a two-level approach to integrity oversight. The term used in one of the submissions is 'softer', and that would be those states that do not have a dedicated integrity agency. If you are talking about joint investigations ACLEI might enter into with a state integrity agency, if we take Tasmania as an example, it would be a question of working with the Tasmanian Ombudsman. I would have no problem in a joint investigation with that agency. If your question relates to the secondment of, say, a Tasmanian policeman or policewoman to a Commonwealth body, then I would direct the focus to the need for, say, the Australian Crime Commission, which, as you know, receives secondments, to have standards in place that would ensure that the right quality of person was seconded to do national law enforcement work.

Senator PARRY—To me, a glaring gap exists—and we have just had a private briefing this morning with the Australian Crime Commission—when Australian Crime Commission operatives or officers have detailed scrutiny of their assets and financial affairs yet an officer coming from another jurisdiction may not have that, so you have two officers working side by side and there just seems to be a gap. Do you see any way of remedy, or do you feel as though that could impinge upon the integrity of operations where they are jointly conducted?

Mr Moss—I agree this is a challenge where law enforcement officers from different jurisdictions work together and different standards may apply. In fact, it is one of the focuses that I will be bringing to my review of anticorruption plans, particularly in the ACC—which has, as you know, routine secondments from various law enforcement jurisdictions in Australia—to see that they do in fact have sufficient focus on the different standards that may be brought by secondees. Some matters have come to my attention where it appears that this very issue has been raised. In fact, one of those matters is currently under investigation by the Police Integrity Commission in New South Wales involving a seconded officer.

Senator CAMERON—I am new to this committee, so please bear with me if my questions are not quite on point. In your submission, you talk about receiving corruption information irrespective of the source. I am interested in how you deal with a vexatious situation against an officer and how you deal with something that could be a set-up from corrupt forces external to the agency. If you are simply saying, ‘We will take information from anywhere,’ then, in fairness to the officers, how do you put the checks and balances in place on that? I am just not sure.

Mr Moss—It is a very interesting question you ask, Senator, because when the bill was first debated in the parliament this very question was raised as to whether there should be a provision to relate to vexatious matters. The thinking was that sometimes a person might raise a corruption issue out of a malign motivation. Nevertheless, the substance of the allegation could be important and therefore the parliament decided that in the words of that provision it would allow that kind of complaint to come forward so you could in fact get to a corruption issue despite the motivation or its source. It was seen to be, on balance, the more important way to go.

Senator CAMERON—How do you deal with that? Do you have a standard operational procedure to deal with all claims that are made or do you have some internal checks and balances?

Mr Moss—Yes.

Senator CAMERON—Obviously there might be some about which you say, ‘Look, we know this is vexatious claim,’ or there may be a vexatious approach. How do you deal with that?

Mr Moss—We undertake assessment of all corruption issues raised with us. Assessment is not a word used in the legislation. It is something we have developed administratively within ACLEI’s processes. It enables us to look carefully at the circumstances of a corruption issue being raised with ACLEI. At that point, we would be trying our very best to ensure that we get to those kinds of issues—that is, the basis of the matter being raised, the motivation and also to test of course its suitability for investigation. Under section 26 of the LEIC Act there are a number of options which I can use in order to deal with a corruption issue. So that assessment process is how we would deal with that particular issue that you raise, Senator.

In fact, recently I have appointed to the staff a person who is dedicated to that role of assessments officer. That officer receives all matters coming in and makes recommendations as to what should be done with the matter. That process is a very rigorous one because I have to be sure that when I go into investigation mode that I have good grounds to do so. Once I am in investigation mode, certain things must then follow. For instance, I must report to the minister on the outcomes of my investigation. So I have to be sure before I get to that point that I know there is substance there and that I know some of the real background to it.

Senator CAMERON—The reason I am pursuing this is that once an investigation takes place against an officer it can have quite devastating effects, even if corruption is not proved. In respect of the assessments officer you have, what is the balance between value judgements that you make and proper methodology that you use to pursue an issue? Is there an international best practice that you can point to that says, ‘This is how you deal with this in a very fair way to the officer’? You have huge powers, and the officer is really on their own to a great extent against these powers.

Mr Bache—It is a case of each matter on its own merits. To have some context, one of the reasons we say that we will accept information from any source is that we really do not want to dissuade people from coming forward. For instance, in a whistleblower scenario, where someone may not necessarily be a party to the activities themselves but has some knowledge, we want them to be in a position where they can come forward.

The assessment process is, as the commissioner stated, quite involved. Let me give you an example: if someone were to come to us with a purely vexatious allegation and, just on face value, we can see that there is no substance to it then it is unlikely that we would pursue it further. We may, however, seek from the agency concerned, whether it be the AFP or the Australian Crime Commission, a copy of any file that they might have relating to that matter, we may seek to interview the person raising the allegation and we may seek to interview any person that might be named as a witness—just to verify whether there is some verifiable substance to that allegation.

The other issue is that we are always mindful of the potential for persons involved in court proceedings in the judicial process to try and use an ACLEI investigation to thwart that process. To that end, we often have contact with the DPP to ascertain their view on a particular matter. So the assessment goes beyond simply looking at the material provided by the—if I can use the term—informant. We do not have a tick box that says ‘If you get to 10 points, we will investigate.’ It is very much a judgement call, and I believe that is the best way of dealing with each matter, as I said, on its own merits.

Senator CAMERON—I am not trying to chase the rabbit right down to the end of the burrow on this, but it is an issue I am quite concerned about. Commissioner Moss says you will try your very best to deal with this, but I think, with such an important issue, trying your very best is not a very comforting response, to be honest, when a person’s career and life could be destroyed by your investigation. Is there international best practice that we can point to so that we can have a methodology to deal with this?

Mr Bache—I will just add there that this is an assessment phase where we are determined to investigate. The act allows for the commissioner to determine how a matter will be investigated. An investigation may be and generally is conducted in private; therefore, on the issue you are raising about a person’s reputation being put out there, we are very careful that—

Senator CAMERON—I am not just saying reputation; just the process of investigation could destroy an officer’s confidence and destroy an officer’s capacity to do his job.

Mr Bache—That, unfortunately, is a consequence of any form of investigation where an officer is being investigated, particularly if the outcome of that investigation finds that the person is exonerated. It is equally important for us—I believe, and it is something that we take seriously—if an allegation is vexatious that it is proven to be such. It is not just left uninvestigated. That could have a more devastating effect. If an allegation were to come to us and we say, ‘It is unsubstantiated,’ and just totally leave it, it never reaches a conclusion. It is open for someone to say, ‘ACLEI didn’t investigate for whatever reason.’ We take it also to the point where we are saying: ‘This is a serious allegation against a person. It could have serious consequences. Therefore, if it is necessary and those consequences are of such seriousness, we should investigate to show that that person did not behave in that manner.’ We do that. We take

your point. We take it very seriously. The commissioner has said quite often, 'Hard on the issue; soft on the people.' We are mindful that, at the end of the day, our investigations concern people.

Senator CAMERON—Can I just put you on notice that I might come back to this in future hearings? I just think that the individual's rights are important as well in this process.

Mr Bache—Sure.

Mr Moss—I agree with you on this point. It is a very, very important issue, and it is fundamental to the work of ACLEI and to the approach of the Integrity Commissioner. It is uppermost in my mind whenever I am considering this balance of issues that occurs—that is, to get to the bottom of a corruption allegation but also to be mindful of the situation in which individuals involved are placed by that process.

Mr Vincent—Also, under this very rigorous assessment process, if the information does glean that the complainant or the complaint is vexatious, or the person has provided false or misleading information to the Integrity Commissioner, there are provisions under the Criminal Code for ACLEI to make recommendation to the DPP to consider prosecution of that person. That option is always open to ACLEI as well.

Senator CAMERON—Would you say that that is the check and balance on your operation? That is the operation of court system.

Mr Vincent—In some respects, yes.

Senator CAMERON—If there were some findings of various degrees of culpability or crime, I suppose, some would simply mean termination from the position internally, say, in the Victorian police force. Would there always be a charge, or do your operations sometimes simply lead to termination with no criminal charges?

Mr Moss—Yes, they certainly could end up in that situation.

Senator CAMERON—Where does that officer then go to if they want to appeal your determination or your investigation?

Mr Moss—I would make a recommendation to the head of the agency to consider disciplinary proceedings against that particular member of the agency. That then is dealt with under the arrangements for that agency for dealing with disciplinary matters. It is for me to make a recommendation. Also, we are talking about my focus here as Integrity Commissioner and that of ACLEI, which is for serious and systemic corruption. I am focused towards the very serious end of that continuum. Matters such as misconduct or matters that may be of a lesser importance or standard than misconduct are dealt with by the agencies themselves and, in the case of misconduct, with the oversight of the Commonwealth Ombudsman.

Senator CAMERON—But for this systemic corruption, some officers could get caught up at the extremities of that serious misconduct—

Mr Moss—Yes.

Senator CAMERON—and it could just be at the lower end of misconduct—not filling the diary in or not doing something which is a procedural issue but is not involved in the broader corruption.

Mr Moss—Yes. I would be seeking to separate those issues out.

Senator CAMERON—You can do that?

Mr Moss—I can do that. I can send those issues back to the agency to pursue without my having to deal with them.

Senator CAMERON—I am not trying to protect anyone or diminish your capacity to find corruption wherever it is happening, but I think we have to balance it against these officers' rights. So it is in that context that I am raising this.

Mr Moss—Your concerns are well noted, Senator.

Mr CHESTER—Commissioner, I noticed in your submission that you referred to the corruption prevention programs and the issue of strategic marketing. I am wondering how someone with a complaint to make or someone with some information even knows of your existence or how they go about tracking you down, if you like. I am aware that you are quite a new organisation. Is there enough awareness in your operation about the issues you respond to?

Mr Moss—Probably not. We have a website. Increasingly, we are becoming known, but at this stage there is no organised program to get our existence out there. A person with a concern about a law enforcement agency might end up going elsewhere, such as the Commonwealth Ombudsman or the professional standards unit of the law enforcement agency itself, and by that process they would be directed towards ACLEI if the issue covered ACLEI's responsibilities. But, yes, I agree. For instance, I went to the Sydney office of the AFP about six weeks ago and met the senior officers there. I asked them what they thought the knowledge of ACLEI was in the Sydney office and they said 'Probably minimal', so I have made arrangements for the Commission to go back and speak to a gathering of as many as I can get together at some future date to try to at least put the message out there. I speak at every opportunity that I am invited to, both to agencies and externally, about ACLEI. That process continues and, over time, I am sure awareness of ACLEI will increase.

Mr CHESTER—As a follow-up—would the additional resources you referred to in your opening comments or earlier on assist in that process? Is it resourcing that you need to get awareness out there amongst your stakeholders or is it a product of being in the organisation?

Mr Moss—I think it is a mixture of both. It is a question of the work output of the agency, which might get publicity, and also people pursuing their particular responsibilities and being in contact with members of the public and agencies.

Mr CHESTER—Another part of your submission refers to providing advice on the 'trends and changes'. Are there noticeable trends that you can advise us on? I understand it is our role, in conjunction with you, to provide that advice. How does that process come about—is it through the state agencies? How do you perform that role?

Mr Moss—I am required to report in each annual report on trends in corruption, and I will be doing so, as I did last year, in my annual report. We are in contact with our equivalent state bodies and are alert to issues that are coming for them. We look at the matters being raised with us by notification—by heads of agencies or by referral from other sources. From this we can discern the trends. I must say at this stage it is very basic, but, with our close engagement, in a proactive way, with agencies through our review of anticorruption plans, I hope our understanding will be furthered as we progress.

Mr CHESTER—Is the challenge there to try and be ahead of the game? Is that possible in your field?

Mr Moss—It is, and this is the point of our review of the anticorruption plans—to be proactive and, rather than just wait for notifications or referrals, get out there and test the agencies' own arrangements for detecting corruption. After all, they have responsibility for their own integrity; it is not a responsibility that falls just to me. We are working cooperatively in that regard.

CHAIR—Commissioner, following on from the comments and questions from Mr Chester concerning resourcing, we have had some submissions to the inquiry suggesting that ACLEI is considerably under-resourced. For example, the Commonwealth Ombudsman notes:

... ACLEI does not currently have the resources to establish the machinery to exercise its special investigation powers. Unlike many counterpart State bodies, ACLEI does not have a covert operations unit, or the capacity to undertake telephone interception or electronic surveillance. Moreover, ACLEI has an office only in Canberra, and yet its function is to oversight law enforcement activities undertaken both nationally and internationally.

Another example of a submission to this effect was from Associate Professor Colleen Lewis, who commented:

... an oversight body can be prevented from achieving its full potential if it does not have the resources needed to operationalise its legislative powers.

Could I have your comments on those comments, please?

Mr Moss—I am pursuing my second instinct here, and that is of restraint—my first being not to have restraint because you have opened the issue for me. I think that you have to look at a number of factors when that issue is raised, and you have raised one of them—that is, the unique model that ACLEI is now in. This resource question has put us into a unique model. One of the factors in that model is that we were not established in crisis, so, when comparison is made—as it has been in various submissions, and you have referred to them—with state counterparts, we have a much smaller staff and much smaller funding.

CHAIR—And indeed with the bodies that you are oversighting.

Mr Moss—Yes, indeed. We started with the Attorney-General introducing legislation into the parliament saying he was doing so when there was not a significant problem with corruption in the two agencies concerned. So that is a different starting point from the other four. All of them

were established with some serious public loss of confidence in the integrity of the agencies that were to be oversighted by these new agencies.

I have this important aspect of notification by the heads of agencies. I do not have to go looking for it; they have got to tell me, under the provisions of the legislation, when they become aware of a corruption issue. So, to that extent, the information is brought to my attention. Another unique aspect of the ACLEI model is that I am in more or less full partnership with the professional standards units of both the ACC and the AFP. On that point, the AFP has a very well-developed professional standards unit. The ACC is developing its capacity in that regard. But, where the question is raised that I may not have the resources to use some of my intrusive powers, then my response at this stage, at this point in ACLEI's development, is that I could go to the agencies and seek them to use those powers on my behalf in a joint investigation. So far that has happened and we are developing a capacity to do that, certainly with the AFP—I have not tested it yet with the ACC—and, indeed, to go into joint investigation with interstate agencies.

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. As you know, we started with modest funding and staffing and then, as I mentioned previously, we received increased funding of \$7.5 million in the last budget, for the next four years. So there is some progress in that direction in relation to resources.

Senator CAMERON—You did say that the agency was established differently from the other agencies because of the serious loss of confidence in some of the agencies where this approach was taken. But also in your submission, on page 6, you say it is premature to comment on the relative corruption risks of various agencies. So we could not with any confidence say that there is no corruption or there is no capacity for a public loss of confidence in either of the agencies, because it is too premature for you to do that.

Mr Moss—I am not giving any guarantees about their integrity. At least we have ACLEI now in place and the capacity to rise to any issue should it come to light.

Senator CAMERON—With the building block approach, when would you think it would be a mature time to comment? How long will it take to comment on that? Is that a 'how long is a piece of string' question? The agency is established and we need to have some understanding that it is performing its function. Part of that performance of function is to say, 'There are problems and we have to deal with them and we are going to deal with them this way.' And if there are no problems then what is the point of continuing?

Mr Moss—It is a question of whether ACLEI has got to produce some results to justify the funding or whether we need further funding to get the results. I am not quite sure where we would fall.

Senator CAMERON—What would be your preferred position and what is the time frame to make the judgement?

Mr Moss—As I said just a minute ago, we are trending in the right direction in terms of resources. That will come into effect fully for ACLEI as of 1 July 2009. So it is not until the beginning of next financial year that the full impact will flow through. There is a review of ACLEI, as required in the legislation, to be conducted by this PJC after three years of operation. That would fall around the beginning of the year 2010, so it might be a very good time to look at that particular question again in the light of another 18 months or so. ACLEI is just over halfway through that three-year period, and the issues will be clearer then, I am sure.

Senator CAMERON—If there were a decision to widen the jurisdiction, what would be the most appropriate time frame to make that assessment?

Mr Moss—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. That would be my prime interest in that argument. To have a whole range of agencies brought under my responsibility in itself is insufficient; it is not attractive in itself. But 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. For instance, at this stage there is not much we can do concurrently as a group. We can do an annual report, and that takes a good deal of our agency's focus. I can run a series of hearings, which I did about four weeks ago. I ran five hearings in three weeks. That pretty well took ACLEI's focus. I can recruit staff, and it pretty well takes a significant proportion of ACLEI's resources just to do that. To have a capacity to do more than one or two things at any given time would be very appealing to me.

Senator CAMERON—So you want to be able to walk and chew gum at the same time.

Mr Moss—Yes, something like that. One of the building blocks that I am foreshadowing in my annual report for the period ending 30 June 2008 is the need for a hearing room. 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. So, this is another indication I offer now, in terms of a building block and moving forward.

Senator CAMERON—Thank you.

CHAIR—I just want to clarify a point. On page 13 of your submission, you note that the current inquiry we are conducting now is a:

... useful step in the Committee's consideration of the jurisdiction question. It also provides the Committee with the opportunity to familiarise itself with the differences in risk profile (and response) of the various State and Territory law enforcement agencies.

- ACLEI suggests that one further step towards consideration of the Integrity Commissioner's jurisdiction might usefully be to determine criteria that would lead to the prioritisation of agencies that could be added, based on each agency's corruption-risk profile and ACLEI's ability to make a cost-effective difference to that profile.

Such a project would complement ACLEI's 'Anti-Corruption Review' pilot program.

In your submission, are you suggesting that this committee carry out that project of determining the criteria leading to prioritisation of agencies, or would that project be added to your Anti-Corruption Review pilot program?

Mr Moss—I guess what is being offered here is a method for determining how ACLEI's jurisdiction should be extended if that were the decision. As to who would do it, I remember having this same discussion with Senator Campbell. We sort of batted across, trying to end up with one having responsibility for it. I think we left it open in that discussion. Whether it would be feasible for me to take that on, I could not be sure. I would certainly be happy if the PJC thought that a worthwhile inquiry to undertake at some future point. As I said earlier, I can shift the focus of ACLEI in various ways, but I do so to the detriment of other work, which is then not progressed. To commit to what one would say are corruption risks in the Australian Customs Service, the Australian Taxation Office, aspects of Immigration or any other area would be quite an undertaking for the small group that ACLEI is.

CHAIR—The Commonwealth Ombudsman feels that it would be useful if the concept of corruption was more fulsomely defined. Do you have any feelings on this subject?

Mr Moss—Yes. I have written back to the Commonwealth Ombudsman to say, 'What a great idea. Let's do it together.' And I also suggested that we include the ACC and the AFP in that process.

CHAIR—Another issue that has been raised is regulatory capture, that is, the danger of an overly familial cosy relationship between the integrity body and the agency. How do you achieve a good working relationship with these bodies you oversight while avoiding falling prey to such regulatory capture?

Mr Moss—It is a very important issue and the model that ACLEI is using right now where we would have to enter into joint investigations with either of the agencies to use our intrusive powers does, I think, raise the risk that it might get too cosy. It really is a question for us of being alert to that. I have involvement in operational decisions and I am conscious of a proper arms length approach in dealing with the agencies. We in ACLEI represent a diversity of backgrounds, not just law enforcement backgrounds and this diversity of backgrounds assists us, I think, to make sure that our relationship with the agencies is proper and on the right basis.

CHAIR—Have you identified any problems with ACLEI's existing legislative framework that could present problems for your operations?

Mr Moss—I think the framework is standing up well and I am particularly pleased that there is a mandatory notification requirement on heads of agencies. Where there may be a deficiency is not so much in the legislative framework but, I think, in the resourcing. I am concerned at the moment that my investigative capacity is good and sound, but the ability that I have to convert

investigations into final reports to the minister is a concern to me and it is a concern that I have expressed previously before this PJC. It is an issue that I am working through to try and resolve. There are other matters I would have liked to have had in the minister's hands by now but just simply have not been able to get those matters finalised.

CHAIR—In your submission you suggest that:

The Committee might consider whether it would be feasible and appropriate to require State and Territory law enforcement agencies, and other Federal government agencies with law enforcement powers, to provide information to the Integrity Commissioner about corruption issues concerning staff who are working with, or who may recently have worked with, the ACC or AFP.

Have you had any discussions with the states and territories about this issue? Are there any informal arrangements in place to facilitate exchange of information?

Mr Moss—We have very good relations with all the state integrity agencies and that is at both commissioner and officer level. There is a free flow of information and the view taken is a very enlightened one that we share our processes and experiences with each other. Of course, being the newest, we are at the receiving end of that more often than not. We say that wherever we have found something that has worked well we are prepared to share it with you. For instance there is the software that the Queensland Crime and Misconduct Commission made available to me. That is the sort of operation we have. To have a requirement in some legislative form that they pass information to me or to cooperate I do not think is needed. It is certainly there already.

CHAIR—It is in your submission that you think the committee might consider that.

Mr Bache—That was to try to address perhaps one of the issues that Senator Parry raised about the secondment of state agency police officers to federal law enforcement bodies. Obviously, there is state legislation that each of those state agencies must comply with and, to the extent that state agencies are able, we exchange information where appropriate. It would seem that exchange of information might be better facilitated with legislation and also that it would perhaps enhance our ability to protect the integrity of the agencies that we oversight if there were a mandated requirement for us to be informed of issues against officers that may be seconded to those agencies or may have been seconded so that we are then, as part of the risk profiling, able to assess whether there is some additional risk to the agencies that we are looking at.

Mr HAYES—Are you suggesting that if you had those profiles in advance it would allow ACLEI to either target or to monitor those officers after they have been seconded to one of our agencies—presumably the AFP or the crime commission?

Mr Bache—Those being the two agencies that we have responsibility for at the moment, yes. If, for instance, there were a cloud over a particular seconded officer that may—

Mr HAYES—I expect, if there were a cloud, that the officer would not get there in the first place.

Mr Bache—One would hope, but it may be that the officer is there and then an issue is raised. If information is found then it would be useful if that information was passed to us so that we might then make some enquiries to see whether there was an increased risk to the agency. It may be that the home agency can make inquiries and clarify that issue for us.

Mr HAYES—Without being too precious about the point, as much as I believe in meritorious appointment to these organisations, I imagine that if there is the slightest doubt about integrity it does not matter how meritorious a person might appear on paper, they would not get there in the first place. If they did, I would have thought your investigation should be on who is doing the appointment then and not on the officer concerned. But that does actually reshape the direction of where ACLEI would see itself coming from, either investigating corruption and integrity within those organisations or running a longitudinal investigation tracking people through who might be considered suspects.

Mr Bache—If I can just continue with that, our legislation provides, were there to be a corruption issue involving a state police officer on secondment, that we can refer it back to the state agency itself or we can enter into a joint investigation with them or whatever other option the commission might choose, which would normally be the case. I think it is more an issue of the risk profiling, so that we are aware of what is there. We do not intend to take over the role—please correct me, Commissioner—of making protracted investigations of state-based police officers when the state agencies can do that quite adequately. It is really a matter of us seeing an opportunity here to manage the risk we are facing.

Mr HAYES—Thank you for clarifying that.

Mr Moss—I would just like to follow up on that. There is one instance where, by ACLEI's existence—which filled the gap at the Commonwealth level in terms of relationships with similar integrity agencies—there was a question of an appointment being made. Because we were able to receive information, that appointment did not proceed. So, you are right; where there is a cloud or a doubt even, that can now be better addressed because of ACLEI's existence and the links it has with its state agencies.

Mr HAYES—Thank you.

CHAIR—Commissioner, is there any other information you would like to give us today?

Mr Moss—Yes, I would like to make a short statement, if I may. In yesterday's edition of the *Age* there was a front page article about an ACLEI investigation. In that article, an AFP assistant commissioner was named. If anyone were to draw an inference from the article that the assistant commissioner had been involved in corrupt conduct then that inference is undeserved and unwarranted. It is my policy not to comment on any investigation that is underway or even to confirm the existence of an investigation. However, it is of concern to me that, by being involved in an ACLEI investigation, a law enforcement officer's reputation would publicly be brought into question. Accordingly, I have made this statement. Through the PJC secretariat, I have previously offered a confidential briefing about this matter should it be required.

CHAIR—Yes, and I think that might be a useful way for the committee to proceed on that. Thank you for that. Are there any more questions from my colleagues?

Senator CAMERON—I would like to digest this—maybe next time.

CHAIR—As there are no further questions, we thank you very much for giving your time to give evidence today.

[12.01 pm]

HARRIS, Ms Sue, Assistant Director, Law Enforcement Coordination Section, National Law Enforcement Policy Branch, Attorney-General's Department

KELLY, Ms Elizabeth, First Assistant Secretary, Criminal Justice Service, Attorney-General's Department

QUINN, Ms Annette, Assistant Director, Law Enforcement Coordination Section, National Law Enforcement Policy Branch, Attorney-General's Department

WALTER, Mr Andrew, Director, Law Enforcement Coordination Section, National Law Enforcement Policy Branch, Attorney-General's Department

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

Ms Kelly—Thank you. We will make a short statement. This is my first week in the job and I will endeavour to answer the questions as best I can. If I cannot, I will refer them to my colleagues. A number of submissions have raised a number of issues, and I thought it might be useful to address those in the opening statement. The first issue is the issue of ACLEI's jurisdiction. ACLEI was established in 2006 as one of a number of measures taken at the time to strengthen existing approaches to law enforcement integrity at the Commonwealth level. Other measures, as the commissioner has just spoken of, were the overhaul of the AFP's professional standards regime contained in the AFP Act and the changes to the Ombudsman Act.

As well as covering the AFP, the jurisdiction of ACLEI was extended to the Australian Crime Commission, primarily because it has a unique role as a law enforcement and intelligence agency, given its coercive powers and the relative independence of its examiners. The act also applies to ACC's predecessor, the National Crime Authority. Whether the jurisdiction of ACLEI should be extended to other law enforcement agencies is of course a matter for government. The act allows for the extension of ACLEI's jurisdiction to any Commonwealth agency that exercises a law enforcement function and that is prescribed by regulations. There are a range of factors government would need to consider before deciding to extend ACLEI's jurisdiction. A major consideration would be that an extension would have clear resource implications for ACLEI. Another significant consideration would be that, while other agencies may have a law enforcement function, law enforcement is not necessarily their primary focus, and there would be a need to have a detailed deliberation on how the law enforcement functions of those agencies would be distinguished from their other functions.

Another issue raised in the submissions is that of the education and prevention role. I note that the Commonwealth Ombudsman's submission calls for ACLEI to be given an education and prevention function. There is no express education and prevention provision in the legislation, as ACLEI was originally intended to be primarily an investigatory body. 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. Any extension of the functions of ACLEI would of course be a matter for government and would also have funding implications.

Funding has also been raised as an issue. ACLEI was originally provided with funding of \$2 million a year, and earlier this year the present government announced that an additional sum of \$7.5 million over the next four years would be provided to the agency to address its current workload priorities. Any further increases to ACLEI's budget would need to be considered by government through the normal budgetary processes.

In relation to changes to the functions or jurisdiction of ACLEI, I note that a number of submissions to the inquiry propose significant amendments to ACLEI's functions or jurisdiction. As you are aware, section 223A of the act requires the minister to cause an independent review to be undertaken of the first three years of the operation of the act. The department is of the view that three years is an appropriate time to assess how the ACLEI model is working. We would be concerned about making fundamental changes to the ACLEI model until this review has taken place.

In conclusion, ACLEI commenced operations in January 2007 and the department considers that it has performed well in its short existence. As a new agency, it has faced many challenges to become a fully functioning Commonwealth body, and there will be more in the future. The department is confident that ACLEI will successfully address these challenges and we will continue to support the agency as appropriate.

CHAIR—Thank you. I think you might have been in the room when we were discussing just now with the commissioner the following part of ACLEI's submission:

The Committee might consider whether it would be feasible and appropriate to require State and Territory law enforcement agencies, and other Federal government agencies with law enforcement powers, to provide information to the Integrity Commissioner about corruption issues concerning staff who are working with, or who may recently have worked with, the ACC or AFP.

Can you comment on the feasibility of this suggestion?

Ms Kelly—There would be a legal issue that would have to be considered. Under the High Court's decision in Hughes, the Commonwealth does not have the power to impose a duty on a state or territory officer. That would be one of the first legal issues to be resolved before proceeding further. I think the commissioner alluded as well to the effectiveness of imposing statutory obligations as opposed to establishing good working relationships and the relative merits of those different approaches. They are the issues that I think would need to be considered in progressing that.

CHAIR—In this era of enhanced Commonwealth-state relations, it would be a possibility for the states and territories to agree to that kind of arrangement.

Ms Kelly—I think that would be something that could be considered if it were progressed—proceeding in that way.

CHAIR—You may also have heard about the suggestion from the Commonwealth Ombudsman that the definition of ‘corruption’ used in the legislation should be more fulsome. Do you have a view on that?

Ms Kelly—The view is that, provided that none of the content of the definition is lost, that is something that could be looked at. But it would also need to be looked at in the context of other definitions of corruption within Commonwealth criminal legislation, to ensure that we had adequately provided for the conduct. Provided it became more specific and the definition did not lose any content, that is something that could be considered.

Mr CHESTER—In your summary, you mentioned that you consider ACLEI, since its formation in January 2007, has performed well. How do we measure the performance in tangible ways? Is it particularly difficult?

Ms Kelly—I think that is an issue that the commissioner is similarly grappling with. It is early days. In terms of having the capacity to respond to matters referred to it, as far as the department is aware, that is proceeding as it should—it is conducting investigations and hearings, as the commissioner has spoken to you about. Those are all the things that ACLEI should be doing and, as far as the department is aware, ACLEI is proceeding to do those things as it should.

Mr CHESTER—Do you get feedback from the agencies about ACLEI? Have you received feedback on its operations?

Ms Kelly—I might refer that to Mr Walter.

Mr Walter—Certainly in the context of individual investigation reports that are provided to the minister, we may have discussions. Where, say, the commissioner has made recommendations that have a policy aspect to them, we may have discussions with the agencies concerned. So far, what we are hearing is quite positive.

Mr HAYES—I know that you say in relation to extending the jurisdiction of ACLEI there would be funding implications. Has there been any serious consideration in looking at—apart from the ACC and the Australian Federal Police—organisations that use the skill base of the Australian Crime Commission or the Australian Federal Police, such as Customs, Taxation and others, that, as I understand, presently second Australian Federal Police into their operations?

Ms Kelly—That is certainly something that could be looked at. As I said, one of the difficulties is confining the functions within those organisations that would be covered by any extension of jurisdiction. That is by no means a clear-cut task and the resource implications that would go with that are a separate issue. Ensuring that the jurisdiction was given was very clearly understood and clearly defined would be a complex task, but not unachievable if that is what government decided, but they would be the impediments.

Mr HAYES—So moving away from other administrative tasks within those organisations?

Ms Kelly—Yes. Identifying the particular tasks that ACLEI was responsible for monitoring in terms of receiving complaints in relation to it, as opposed to the many other functions. Law

enforcement functions are frequently mixed with a range of other administrative roles in organisations like Customs.

Mr HAYES—I suppose there are some unique aspects in terms of the Australian Federal Police or their administrative officers who are all subject to this regime because they are not included under the Public Service Act?

Ms Kelly—That is correct, provided the conduct falls within the definition of ‘corruption’ under the act, then they are amenable.

Mr HAYES—I do not want to be provocative about this but it has been suggested to me that in terms of the prosecutor power, prosecutors of the Federal Police would be subject to ACLEI. However, if the brief then goes to the DPP, the officers fulfilling the same role within the department would not be subject. In other words ACLEI’s jurisdiction would not actually follow the brief of evidence, if you like, in terms of the whole chain of those involved in prosecuting the matter.

Ms Kelly—When you talk about the federal prosecutors within the AFP, is that—

Mr HAYES—To what stage the matter actually then moves in terms of the A-G’s office or under the A-G’s control of the Office of Public Prosecution.

Ms Kelly—The AFP actually do not have, unlike state and territory police forces, police prosecutors, they only have investigating officers. At the point of view when the brief of evidence is completed it is referred to the Commonwealth DPP. The Commonwealth DPP is an independent statutory agency within the portfolio but not part of the department. It operates differently to the way it does at the state and territory level. The Commonwealth DPP is not subject to ACLEI’s—

Mr HAYES—Would that still be considered within the general gamut of law enforcement taking a matter then to prosecution?

Mr Walter—There is actually a specific definition within the ACLEI Act about what a law enforcement function is; you find that in section 5. I think that you could make a fairly strong argument that you could extend it to the DPP. It is, of course, a question of whether you would want to do that. Perhaps something that is also worth making as a general point is that, when ACLEI was set up, it was part of the range of reforms that were made in terms of how the Commonwealth was going to handle corruption generally. The AFP is the primary law enforcement agency and it has a role of investigating corruption activity that occurs in all Commonwealth departments and that would include the DPP. However, because they have that specific role and their general law enforcement role and because of the unique role of the ACC, it was considered appropriate that we have this other body, ACLEI, which would look at corruption within those two agencies. Were you to get that situation where you have an investigation into one of the agencies that might carry through to the DPP, ACLEI does have the option of entering into a joint investigation either with the AFP, which may be problematic although they do have a very strong internal standards regime, or with the ACC to help them in that particular instance if it was confined to the AFP. So they do have some flexibility in how they might go about investigating in that instance.

Mr HAYES—But, in terms of public prosecution, they would not then be subject to the same integrity regime as it presently applies to those other law enforcement agencies.

Mr Walter—Certainly, it does not apply to ACLEI, but they are subject to exactly the same situation as, say, customs, tax or ASIC or any of those other main agencies that have a law-enforcement function.

Mr HAYES—Thank you.

Ms Kelly—I think an important thing to remember is that the Commonwealth Director of Public Prosecutions would not consider itself a law-enforcement agency; it is a prosecutorial agency. It is not an investigative body; it is merely presenting material that has been provided by investigative bodies and forwarded as a brief of evidence. It would not consider itself a law-enforcement agency. That should be considered in the same way as officers of the DPP are, as officers of the court with their professional responsibility obligations in relation to their admission as legal practitioners, and as the Public Service with their code of conduct and that full range of measures in relation to integrity.

Mr HAYES—I have heard the Federal Police tell me they take an oath of office as well. Thank you.

Senator CAMERON—Thank you, Ms Kelly. You were not around in this position when ACLEI was established, but do any of the officers here know whether an assessment was made about the proper funding of ACLEI when it was established? Was there any analysis done of ACLEI's funding as a proportion of the Federal Police or the agency budgets that it is overseeing compared to those of the OPI in Victoria and the PIC in New South Wales?

Mr Walter—Unfortunately, I was not around when that occurred either. There certainly was quite a detailed assessment done of the appropriate funding model for ACLEI, and that went through quite a few iterations. I am not sure of the specific question you are asking in terms of the comparison to the OPI. If I can find further information I will get back to you on that. However, there was certainly a very detailed consideration given, and I think the commissioner earlier has described the model that was ultimately adopted quite well, in terms of the building blocks approach, to say: 'We are initially going to start off with this,' because we do not actually know the size of the problem. As it has become apparent that ACLEI has needed additional funding, that has been forthcoming. There was an intention to start off on a modest scale and get a better handle on the funding requirements for ACLEI and—of course, subject to government approval—then provide additional funding as required.

Senator CAMERON—I must say I am not overly confident, from Commissioner Moss's evidence here this morning, that there is proper resourcing. If we do not have funding to provide secure interrogation resources for ACLEI—why would we be starting to think about expanding if it is not funded effectively now? Has your department looked at any of this? Has there been an assessment as to whether the basic tools are there for ACLEI to do its job?

Ms Kelly—Resourcing questions are an issue for consideration of government in the context of the budget process.

Senator CAMERON—No, I am talking about resourcing that has been allocated. What is the point of having a body that is established to have a certain task and to have certain outcomes if there is not sufficient funding to do basic things? That is what I am asking. I am not talking about future funding. I am saying, ‘What is the position now? Why are there no secure interrogation resources available to ACLEI?’ It just seems bizarre to me.

Ms Kelly—It is difficult to go beyond the issue that that resourcing is a matter for government and that it was recognised that ACLEI was set up very much in a modest way with a view to building blocks being added. The three-year review of ACLEI is really the point at which those more substantial issues can be addressed. It is very much also guided by the commissioner in relation to those issues. But the three-year review would be the obvious point at which government would re-examine issues such as the resourcing base and the use of powers and the facilities provided.

Senator CAMERON—Are you seriously putting to me that we have to wait three years to have a basic functional capacity for interrogation at ACLEI? Is that a serious proposition?

Ms Kelly—Matters of resourcing are considered by government as they are raised by the commissioner as the commission continues to operate. So it is not that they will not be looked at but that certainly would be a good opportunity after that experience of the operation of ACLEI for that period to know what the impact is of the current resourcing base. But as the commissioner has said, the commission is operating, it is conducting hearings, it is conducting joint investigations and it is providing reports to government. Whilst an enhanced resourcing base is something that will be considered in future, the commissioner has given evidence to the committee that ACLEI is currently functioning and is currently providing an effective service.

Senator CAMERON—Is it an enhanced base to have a basic function?

Ms Kelly—I think the commissioner gave evidence this morning that he has developed arrangements where he uses the hearing facilities of the Police Integrity Commission in Sydney, the Office Of Police Integrity in Victoria and elsewhere. So he has developed ways of dealing with the situation while still continuing to perform his functions. The issue is probably in the longer term. If they prove to be inadequate in not meeting the needs then it is an issue that would need to be addressed again.

Senator CAMERON—I will go back and have a look at what the commissioner has said but I am sure it was a bit more critical than ‘Everything is okay because I have made some other arrangements.’ It was raised on the basis that this is a fundamental operation of ACLEI and they do not have their own resources. That is the impression that I got. It was not that everything is okay because we have made some other arrangement.

Ms Kelly—I do not think that there is anything that I can add to what I have already said in response to your question.

Senator CAMERON—Can you provide some details as to when ACLEI was established whether these types of issues were considered in the funding—

Ms Kelly—We will make those inquiries.

Senator CAMERON—and provide me with some details as to what that funding was supposed to provide? I really do not think that we should have a body that is so important being under resourced in the basics.

Ms Kelly—We will make those inquiries and if that information exists then we will provide it to the committee.

Mr Walter—It is perhaps worth just making a general point, which is that as with all the department's agencies we do work with those agencies at the time of the budget to assist them in coming forward with budget proposals. Obviously the agencies are best placed to determine their own resources and what their needs are but when they do come forward the department does play some role in assisting them with that process.

Senator CAMERON—What is your estimation then—that we wait for three years until we make any assessment about widening the jurisdiction?

Ms Kelly—I think that they really are matters for the committee to consider and then later for government to determine its position on.

CHAIR—We do appreciate that you cannot give opinions on matters of policy. Do you have anything that you would like to add to your evidence today?

Ms Kelly—No.

CHAIR—As there are no further questions I thank you very much for giving your time to give evidence today. I would also like to thank all the witnesses who have given evidence to the committee today.

Committee adjourned at 12.24 pm