



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR  
LAW ENFORCEMENT INTEGRITY

**Reference: Law enforcement integrity models**

WEDNESDAY, 1 OCTOBER 2008

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**JOINT STATUTORY COMMITTEE**  
**ON AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY**

**Wednesday, 1 October 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, 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 10.44 am**

**CHAIR (Ms Parke)**—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, ACLEI. Today's public hearing is 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 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 or references.

[10.45 am]

**NIXON, Ms Christine, Chief Commissioner, Victoria Police**

**TAYLOR, Mr Wayne, Acting Assistant Commissioner, Ethical Standards Department, Victoria Police**

**CHAIR**—I welcome witnesses from Victoria Police. 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.

**Chief Commissioner Nixon**—Certainly. I have been the Victoria Police Chief Commissioner now for a period of 7½ years. Prior to that, I was a member of the New South Wales Police for 28 years, so I have quite a range of experience in policing. The issue that is obviously key in the committee's minds is corruption within policing and ways and means to both oversight and prevent that corruption occurring. Wayne and I are happy to work through some of the key issues that we have had to deal with. We have had experiences in Victoria not unlike other states and not unlike the Federal Police. Some of our lessons are useful to think about. The other part of your oversight is the Australian Crime Commission. I am a member of the board of the Australian Crime Commission, so I have had some exposure to issues that they have had to deal with as well. Many of us within policing have come to the view that we can only look to creating corruption-resistant police organisations and members of police organisations. I think that is about the best you can manage, I have to say. Policing deals with a huge range of people in the community, and there are very many ways that people can attempt to corrupt police officers. So I think resistance is about the most I would expect, from my own experience.

Within Victoria Police, we have been working on very many different sorts of methodologies to create that resistance within our police officers and in the systems that our officers operate within. I think we have done well at that. We have spent a very large amount of money in pursuing people who we believe are corrupt or have committed criminal offences. We think setting that standard is an important part of a deterrence factor as well. On the other side, we have also set standards around values for people within the organisation. We have learned lessons about how people have become corrupted and we have changed systems to actually reduce that potential for corruption. For us, it is a process of continuous reform, continuous learning and continuous improvement. That is certainly the process that we have learned.

Wayne might want to talk a bit more in detail from his experience. He is a very experienced investigator and comes from a range of backgrounds within policing. Obviously, at the moment he is Acting Assistant Commissioner for our Ethical Standards Department. He might want to explain more about the methodologies we have been putting in place to prevent corruption. Thank you.

**Assistant Commissioner Taylor**—I have been a member of Victoria Police for 33 years. I have had three tours of duty with the Ethical Standards Department at different ranks. For the last four years I have been the superintendent in charge of our targeted operations division,



which is our proactive investigation area. I occasionally get to relieve Luke Cornelius in his position as Assistant Commissioner of ESD.

What Christine has said about the way we have done business in the past and what we are trying to do now and into the future is absolutely right. We are trying to focus more on pro-active measures. We are trying to push some of the responsibility for investigating misconduct back on to our regions where it begins and to make management accountable for the actions of their members so that we can use our limited resources to do what we think are the most important investigations. To some extent that has worked very well over the last three years. We have a whole new system now called 'tasking and coordination', which filters all complaints through the Ethical Standards Department. We decide whether we are going to keep the complaints and do them or send them back to the regions for them to action with our supervision and help, if required. That has enabled us to use our resources the best way we can. To put it bluntly, we get the biggest bang for our buck now with our investigators and the resources that we have at ESD.

We have our own surveillance and technical unit capacities as well as a number of analysts—strategic and tactical. We try to use those resources the best way we can as well. They are expensive items to keep going, along with surveillance. I do not know if the OPI mentioned to you how much it cost them to set up their unit, but telephone intercepts, surveillance units and technical units are extremely expensive. But they are worth every cent once we get to the prosecution stage when we find a breach of the laws or the discipline system.

We have an arrangement with OPI that is a very good one at most levels. Some of my members still struggle with the concept of an oversight body that does its own investigations. At times we come into conflict in relation to the number of investigations we do or the exact targeting of investigations when we have common ground. My members struggle with the concept that we have to tell the oversight body everything but they do not have to tell us anything if they do not want to. That is the reality of the situation but in practice we find that communication is very good. Luke Cornelius, the AC, ESD, has a very good relationship with Mr Ashton at the OPI and other members there. He meets regularly with them and tries to make sure that there is no conflict in the way we target our resources and that the investigations we do complement each other rather than conflict. 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.

We have a thing called a joint agency agreement with the OPI, whereby they can ask us for assistance and we can ask them for assistance if we have a joint operation that we need to conduct. We have had a number of those that have been very successful, and that is the way that we want to go in the future. Rather than having a memorandum of understanding for each investigation we have an overarching memorandum of understanding and when we come to an investigation that we both have an interest in we use the joint agency agreement to facilitate that. That makes for a nice quick way of getting our resources to the task.

That is all about I could tell you at the moment, unless you have some specific questions.

**CHAIR**—Can you provide an overview of your internal integrity arrangements—that is, internal corruption controls—and can you also tell us how many staff you have working in the

Ethical Standards Department? Also, how closely do you work with the OPI on those issues as well as corruption prevention and education issues? I understand you do joint investigation.

**Assistant Commissioner Taylor**—I will start with the first question. That could go for sometime!

We have a number of anticorruption strategies in place at Victoria Police. Some are driven by ESD, some are driven by local management and some are organisational. You will find a lot of them in our Victoria Police manual in relation to how we expect our members to behave, conduct themselves and how to do things. Management wise, the regions have responsibility for the actions of their members and each region has professional standards officers who we supply from ESD. One inspector works in each region with the regional personnel to make sure that the conduct of their members is up to the standard that we expect. Their acronym is EPSOs, ethics and professional standards officers. They are an important link between ESD and the regions. They are our ambassadors. They are the people who go out and work with the regions and take the message from ESD in relation to what we believe people should be doing and how they should be doing it. They also train the members in the region in doing investigations and acting properly.

Within Victoria Police, every time we have detected a risk to our integrity, we have done a review in relation to the risk. An example is with informers. We found that a number of the more serious investigations we were conducting were instigated by informers who corrupted police members. So we reviewed that process and we now have a very tight human resource management unit and some very strict guidelines on how members deal with informers and the information provided by informers. We have even set up our own unique unit for high-risk informers. It takes them away from the investigating members and has a sterile corridor between the member doing the investigation and the informer. Some very experienced investigators, called handlers, manage those informers. That has been very effective in taking away that risk and threat to our members in being involved with high-profile criminals. It leaves them to do the investigation without having to worry about talking to the informer or dealing with them on a daily basis. That is just one example of the strategies we have in place as anticorruption measures. I could go on with numerous others, but it would be virtually more of the same. As I said, as we detect a risk, we address it and put a strategy in place to try and minimise it. I have forgotten the second part of your question.

**CHAIR**—I asked how many staff you have in the Ethical Standards Department.

**Assistant Commissioner Taylor**—That is a good question. I believe we have just under 200. That includes management, surveillance and technical staff. Just as a rough guide, we have 64 sworn members in the investigations group doing the investigations, split into two divisions: reactive investigations and targeted operations. They are supported by 10 tactical intelligence officers, who do our analytical work for us. We also have intelligence areas, called the Specialist Operations and Intelligence Division, and that takes control of 30 or so surveillance operatives, approximately 10 to 12 technical surveillance operatives and some analysts, intelligence managers, telephone intercept monitors et cetera. Then we have our risk mitigation division, which does our strategic analytical work; our probity unit; and our financial investigations unit of three members, which is attached to targeted operations and does our accounting and our financial checks and investigations. We have another division called the Conduct and

Professional Standards Division, which encompasses our Police Conduct Unit, which people ring up to make a complaint against a police officer. They also manage the regional EPSOs and our discipline advisory unit, which is the unit that advises the investigators on legal points, prosecution of cases and the discipline system. That is about it.

**CHAIR**—Does the professional standards unit encompass education, code of conduct, awareness raising and that sort of thing?

**Assistant Commissioner Taylor**—We are trying to do a business case to expand the training and marketing unit, which only has two members at the moment. But we have moved away from having a dedicated educational unit within the Ethical Standards Department. We use the EPSOs now as our ambassadors to the regions and they take on that responsibility.

**Chief Commissioner Nixon**—Part of the process for us is to understand that it is not about having only the Ethical Standards Department being responsible for the ethical standards of the organisation; we have thousands of supervisors and senior managers who are also responsible. Part of it is for the Ethical Standards Department to use its skills appropriately, in the way it should, but we also have a very large Education Department who are responsible for thinking about and working on these issues. At the moment they are also reforming the processes so we continue to reinforce appropriate ethical behaviours. That is a part of it. So it is not just about ethical standards in the department itself. Part of a governance arrangement within Victoria Police is an ethical advisory board, made up of ethicists, people from within Victoria Police and, obviously, outsiders, who come together to advise us on best practice in terms of these issues. We also commission research. We have a major Australian Research Council grant at the moment for research on integrity systems for Victoria Police. That has now been operating for about two years, and they have been doing a very large amount of work that will underpin our next phases. So ESD is a part of it but it is not the only part.

**CHAIR**—So there is a separate education department?

**Chief Commissioner Nixon**—We have a very large education department, which is the academy and that area. They have a responsibility throughout the training to actually reinforce these behaviours.

**CHAIR**—Does it work closely with the corruption prevention education and the OPI?

**Chief Commissioner Nixon**—They are involved within this. We also have, obviously, an Ethical Health Forum across Australia, which is made up of representatives from the other police organisations and the Federal Police. That is a way of bringing together from across the country a lot of the lessons everybody has learned along the way. The range of royal commissions has underpinned a lot of these issues for us. So, if you look at the Kennedy royal commission in Western Australia, the Wood royal commission in New South Wales—even Fitzgerald, which was some time ago now—and a number of other inquiries around policing, they have drawn together lessons that many of us have taken forward into our own organisations. I think we have learned a lot from those along the way.

**CHAIR**—Can you expand upon some of those lessons?

**Chief Commissioner Nixon**—Some of the issues are those that we understand underpin the corruption within policing. Some of it is around data and information, so there are issues around security of data and leaking information. It has been a major issue for us. It has been mentioned in other inquiries. It is about ingratiating yourself to different people by giving them information; obviously, in some cases it is about selling it to criminals. There are lessons about how you manage data security and protection and the kind of systems organisations have in place. Management of informants is a major issue for policing. The system we put in place is actually a Canadian system. That close relationship with an informant has corrupted police officers in different organisations over time, so we went around the world looking to see how you make sure you get the information from informants while having what we call a sterile corridor; separating the informant is part of it. Drugs and alcohol are issues that certainly have been part of the lessons we have learned around people who are at risk. If they are taking drugs, obviously they are at risk because they are buying drugs illegally and then exposing themselves to corrupt opportunities. Alcohol is really another part of it, and that has certainly been an issue for policing. It is about how you put systems in place around that.

**CHAIR**—Gambling would also be one of those.

**Chief Commissioner Nixon**—Gambling is another one. Gambling is an interesting one, actually. I have to say that, in my experience, it occurs in policing to a lesser extent than drugs and alcohol. They are the main things that underpin corruption. Then you have to think about how people work in those areas. You cannot just suggest that we do not work in the drugs trade anymore, because that is the job. You then have to look at how you prevent it: things like taking independent persons on searches of houses, having exhibit officers appointed or videotaping. One of the big changes in policing that overcame many of the issues we had was audio- and videotaping statements. It was a massive and dramatic change for policing, and one that came out of royal commissions and thinking about how we needed to go about doing that sort of work. I think one of the other things that has underpinned change in policing is changes in legislation. By that, I mean that the community has actually recognised things like prostitution, which underpin much of the corruption, and gambling. The regulation of those areas over time has seen changes in the way legislation has supported policing in being less exposed to those sorts of corruption issues.

The other lessons we have learned from royal commissions relate to how you manage people, how you reward them and how you promote them. Also, it is about who you attract to become a police officer, so that it becomes a far more open process. The brotherhood notion is then often questioned by opening it up to people of different nationalities, to—obviously—more women and to older people joining policing. They are other strategies that have come out of a lot of those lessons along the way.

**CHAIR**—I would like to ask you about your relationship with OPI, how you see that working relationship, and also about the notifications of complaints to OPI. Do you notify all complaints or just the ones that are not trivial?

**Chief Commissioner Nixon**—One might pick up a notification. Wayne alluded to our relationship with the Office of Police Integrity, which I also think is a very important relationship. We have worked very hard to get that positive relationship. My view of oversight bodies is that they have to have trust within the senior management of the organisation's

oversight, and that has been something that I have tried to ensure has been the case. If they believe that those of us in senior positions are corrupt then there is really no point in having a relationship—they may as well just get about investigating us all and go from there. But in fact that is not the case, so it has been very positive.

But having an oversight agency for an organisation like Victoria Police is actually quite new. We have had an ombudsman and that was a reasonable relationship and we worked together. But the appointment of the Office of Police Integrity is a new arrangement, as is ACLEI's appointment for the Federal Police and the Australian Crime Commission. It takes a while for police organisations to come to terms with that. Alternatively, New South Wales has had an oversight agency—or several—for quite some time. You get used to having them and it becomes part of the way that things happen. The reasons they were being exposed to public hearings and those sorts of issues have been quite challenging for Victoria Police members. It is a tool that the OPI has used but it has been a challenge for Victoria Police. It is a positive relationship—and I am ready to admit the philosophy and the history of it—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.

**Assistant Commissioner Taylor**—Reporting wise, OPI have open access to our complaints database. They can go in any time they like and see every incident report and everything that is recorded. They check on the monthly updates of our investigations. They also have written some search reports of their own that they require, which have now been integrated into that system. They are a stakeholder in the new system that we are about to develop to take out some of the problems we have had with trying to keep track of our jobs. That will have an early intervention system embedded into our computer network as well.

Our relationship with OPI, as I said, is very good. We had some initial problems with OPI suddenly appearing on the landscape. They had to recruit very quickly to get up and running, they had a lot of churn so it was hard to have a relationship with someone who was not there very long and was suddenly being moved. They have rearranged their structure. I am sure that Mr Strong has told you about the change of direction that they have had. We try to make the system work—

**CHAIR**—What do you mean by the 'change of direction'?

**Assistant Commissioner Taylor**—I will go back. Originally OPI reviewed every investigation that ESD and the regions did. So when every investigation came to completion stage it went to the OPI—physically the whole file went there. They had review officers who went through it and agreed or disagreed with our findings. More recently, the OPI have said: 'Look, we are happy with the way ESD do their investigations. We do not send many back; you do an excellent job. You have professional investigators and we want to focus on the ones that are not quite up to the standard that we expect.' They have now said that they are not going to review ESD investigations as a matter of course. They will select the ones that they want to look at or they will mark ones that they want to look at when we complete them. If they have an interest in a job they will mark it on our system and we know that at the end of that investigation it will go to OPI for review and they can have their say on whether they think we did a good job or not. They do all the regional ones, though, as a matter of course. So they have gone away from the review of all of our work to just reviewing the ones that they are interested in, and then

they have come on board with our investigations as well. So that is the change of direction that I was talking about.

**CHAIR**—When you say ‘regions’, do you mean all areas outside of Melbourne or is Melbourne a region itself.

**Assistant Commissioner Taylor**—Victoria Police is split up into five geographical regions run by Assistant Commissioners. They have all of the police stations and the resources under their control within those regions. They also have departments like the Crime department and other specialist areas. We have what we call Region 6, which encompasses all the ones that are not normal operational regions. We have EPS officers in each of those and they are responsible for taking control of investigations of their members for minor misconduct or things that do not fit into the ESD criteria. The OPI are very interested in seeing those investigations completed quickly and professionally. That is where they want to do the oversight of those investigations and they leave us to do ours and report to them as required or if they decide that they want to review one of our investigations.

**CHAIR**—Thank you. I will pass on to my colleagues now.

**Senator PARRY**—Thank you for the opening comments. I just want to explore the relationship between OPI and Victoria Police a bit more. You have indicated the informal structure and also the formality of what you do, and it is obviously a good working relationship. Do you feel as though it needs strengthening further in legislation? I want to get your views as to whether you feel as though there should be compulsory reporting to OPI of certain offences and not of others? My understanding of the act is that OPI can jump into anything they wish to and you at least report every incident that has occurred but there is no compulsion to refer—it is a discretionary referral if OPI wants to take over. Do you think that that should be more structured in legislation so that there is no discretion?

**Assistant Commissioner Taylor**—Personally I do not think it is necessary. We both have limited resources; we both want to get the job done. The OPI has an interest in certain areas which they flag with us and they take responsibility for those interests. The database we have notifies them of all the investigations we have, what they are about and who is involved in them. So they can monitor those and do some assessment and analytical work on them if required. If you made it a compulsory reporting regime whereby every offence was reported—and I would find it hard to know how you would define which offences you would want to report or refer to OPI—they would become overloaded. They would have to either expand enormously or start pushing stuff back and say to us: ‘Look, we can’t do it. We have lots of jobs on; they are taking too long. You will have to do this one.

**Senator PARRY**—Are you familiar with the ACLEI model where there are certain categories of offences that the Federal Commissioner must report to ACLEI? There is no arbitration. There are four categories, I think.

**Chief Commissioner Nixon**—I imagine that what we will end up talking with the OPI about are the same kinds of issues. People are concerned about serious issues and I imagine that is the categorisation of the processes and that kind of discussion around those matters takes place anyway. Given the OPI’s history, if they thought that that was a good way to do it, I am sure they

would have asked. They are actually pretty forward in the ways that they like to have legislation and they are pretty good at advocating for it—if they thought that it would make them more effective. But you also have to ask how big the state wants to have this kind of oversight agency and what would it really want to focus on. That is the piece that the last two directors have had to think through. Mostly what they were put in place for was not to figure out whether Constable Smith was rude to Mrs Jones. Of course, the vast majority of our matters are at that level. What they really want to look at is the most serious levels, particularly where you have police officers and corrupt individuals outside of policing also involved, which are the joint investigations that we have in place now.

**Senator PARRY**—Based upon what you have just said, do you feel as though it is a bit of overkill having 100 people in OPI and 200 people in your internal unit? That is 300 people dedicated to every form of corruption or every form of offence within Victoria Police. Do you feel as though there should just be a really senior unit to look at systemic corruption?

**Chief Commissioner Nixon**—I think that it is a matter of time. We went through some very difficult circumstances and so each of these things is of their time. If you took that perhaps in a few years time then there may well be a process of refinement. When OPI first started they were very separate from us and very much about being supportive in the sense of saying, ‘We are here to work on preventing corruption.’ But they would all of a sudden propose things and we would have to have a chat about it. The other piece, of course, is that you have to be careful that it is not about joint responsibility. In the end the management of Victoria Police is the responsibility of Victoria Police. I have not seen either of the directors want to take responsibility for managing Victoria Police. That is an entirely different job. So the sense for them is to use their resources most appropriately; to let us use our resources appropriately to do it. The 300 people at this stage is probably about right. Certainly if you look at some of the delay that we have in how long it takes us to investigate, we are looking for new legislative reform around making it much quicker to be able to deal with minor matters and have them dealt with more effectively. That is actually a lesson from the Wood royal commission that was put into place in New South Wales but has not yet been put in place in Victoria. We are working towards it but we will be much better placed when the legislation comes through, which is in parliament now. The point is that we are of our time. Perhaps that is for a point in the future. It is really a matter in terms of whether people have sufficient resources as to what facilitated or precipitated the oversight agency being put in place.

**Senator PARRY**—Looking at the broader picture, you have Victoria Police with your own internal investigation capability, you now have OPI, which has a SIM which is the Special Investigation Monitor, and then ultimately the parliament. Do you think there is enough? The only gap—if you could call it a gap or there may be too much—really is that there is no dedicated parliamentary oversight committee. Do you feel as though that is necessary, or not?

**Chief Commissioner Nixon**—And the Ombudsman.

**Senator PARRY**—Yes, and the Ombudsman—we had forgotten about that.

**Chief Commissioner Nixon**—I think the way that the government has determined to handle this, with a very senior person as a SIM with the responsibility of reporting to parliament, with the Office of Police Integrity as an independent reporting to parliament and with the

Ombudsman in a similar sort of way, is a good model for Victoria. I do not have any evidence that having an independent oversight committee of parliamentarians would, in fact, be any more efficient or any less efficient. I think that the current model was a reasonable one. It partly came out of the government wanting to stay one step removed, so whatever those direct reports say to parliament they say, and then parliament makes its own decisions about what it wants to do with that. I think it is actually a fairly effective model at the moment.

**Senator PARRY**—The aspect that the OPI must investigate any complaint against yourself, the deputy commissioners or assistant commissioners—are you comfortable with that?

**Chief Commissioner Nixon**—I think it has a number of positives. It is someone outside of us and certainly when it is an assistant commissioner it is mandatory now that we follow that process. I think it is a reasonable model that we have been following. The real issue for us is to have not only the perception that we are as trustworthy an organisation as we can be but the reality of it, so you need both. I think even the Ombudsman was independent previously and certainly the history in Victoria is of quite strong oversight by the Ombudsman with quite difficult issues being taken on by them. I think it is a necessary thing. Once you get to that level it is an appropriate thing that it gets reported and I have been reported, I have to say.

**Senator PARRY**—Fair enough; it is working. Internally, do you have a governance policy of reporting your personal assets or a significant change in assets and how far does that go down? And also is it more severe in your particular department?

**Chief Commissioner Nixon**—It has been a very interesting issue to work through within police organisations. It is, for us, at a level of financial delegation. All of the senior management team—which are the 23 people or 24 with myself—obviously are required to comply and then those on contract are required to complete similar sorts of asset declarations and they reside with me. Then there are others who have certain levels of delegation that are put into place. It is a vexed issue around how far you then use this power, and has been quite well argued, I have to say, by some of our investigators that these days what you can do in terms of delving into the assets of anybody is as good a technique of investigation and well tried as it could be. The point often argued was, ‘If you want to investigate us, you are just going to go and investigate us anyway. You will get access to the financial records anyway.’ That is something we do with criminals and we would do it with our own police who we believe are corrupt. The worst case would be if one of our members was to simply say, ‘Here is my background and here are my assets.’ Then you would charge them with lying to you if you found out they actually had other assets or other things. It is a process that is a bit vexed. We have tried to work our way through this in terms of who should report but at this stage it is that kind of level—the people in this location and those sorts of things on occasions as well.

**Senator PARRY**—Isn’t the main aim, though, to benchmark? You say, ‘Okay you commenced on day 1 with \$100,000 in the bank and a house. Two years later you have four houses and \$2 million.’ Isn’t it for that benchmarking aspect?

**Chief Commissioner Nixon**—If you take our investigations under the CEJA taskforce, in which was into two senior constables who were criminal investigators, what was around them was enough. They had \$50,000 matching cars, and these were senior constables. What we said afterwards was: ‘Did nobody notice? Did you not see that this was a strange thing?’ They had



farms and other assets. As soon as the team, which included a good financial analyst, started to dig into, they found it all. If you get suspicious about someone, then there are very many investigative tools these days that you would use.

**Assistant Commissioner Taylor**—As Christine said, it is only as good as the information supplied by the member in the first instance. Some of the members coming through the academy today are virtually retired. They have worked in their occupation, they have made their money, they are self-sufficient and they have come to be a police officer. They come in with a million dollars and just want to work.

**Senator PARRY**—And go out with \$900,000.

**Assistant Commissioner Taylor**—I am probably the only person in the department who does not have an investment property. They have all got into that, because that is what their tax advisers tell them that they should do. With the current tax system and the salary sacrificing provisions, people are doing that. In a lot of our investigations of corruption we find that there are no assets because the benefits that they derive from the corrupt activity are just spent on living expenses, holidays, drinking, eating or going through a lifestyle. We very rarely find assets that we can seize. Lately, we have had a couple, as Christine said, with seizures. We had one recently in which we were in the half-a-million to a million-dollar bracket and we might be seizing properties. But they are fairly rare, because we usually get onto that sort of activity before they make that much money. Hopefully, we will do that in the future.

**Senator PARRY**—Do you feel as though officers are confident enough to report either externally to OPI if they feel as though there is corruption and corrupt activity? Do you feel as though that culture is now opening up?

**Assistant Commissioner Taylor**—I can guarantee that they are very open to notifying OPI if they are not happy with the service provided by Victoria Police. OPI will tell you that they get a lot of emails and a lot of letters from people who sound very much like sworn police officers in the way that they write and report things. They are the default.

**Senator PARRY**—I would imagine that a lot of those would be vexatious or—

**Chief Commissioner Nixon**—In some cases. The whole process within policing is a continuous one of having people report bad behaviour by others and to be confident to do that. That is a process you have to continually work with. We have also been working with different community groups so that they feel that they can report matters as well. We have been doing a lot more work with the Aboriginal community as well, because we think that they underreport bad behaviour by our officers, too. We have been working with the Aboriginal justice groups to encourage them to report and find ways in which they will feel more confident to report against our officers.

The other part that we have been working on is to ensure that the legislation that we have about people leaving our organisation is far more effective than it has been in the past. That bill before parliament at the moment is looking to make that far more effective and far quicker. That means that we can give people who we have lost confidence in or people who should not return

to our organisation some sense of compensation or something else and get them out of the organisation, which is what we want to do.

**Senator CAMERON**—I must say that I think that your response to the question about parliamentary oversight was the most diplomatic response that I have heard so far. It should be a standard response. I am interested in this issue of vexatious claims being made against an officer. It worries that me that an officer, even one at a fairly junior level, could have their career destroyed by a vexatious complaint. Because we have this very sophisticated oversight, both internally in the Victorian Police force and through the OPI and through the Ombudsman, the default position is that something will click on. As soon as a complaint is made, it becomes a big issue and all these mechanisms start moving that could destroy a budding career. The other issue for me is that because of the sophistication of some of the criminal operations, not only could you have a vexatious complaint being made but you could have a criminally motivated complaint made against an officer to try and destroy that officer's career. How do you deal with all these issues when the mechanisms are very complex and require some standard operational responses distinct from a 'that is nonsense' approach?

**Chief Commissioner Nixon**—We recognise that that can happen. The history of those sorts of complaints is that there have been many over time. They were seen by many lawyers as a way to delay cases, undermine the credibility of police officers and so on. That has been a process that we have watched in policing for quite some time. You are taking it to another level, which is for it to cause even more significant harm to them. But a lot of the mechanisms that are in place now will help prevent that—for instance, the video-audio taping of statements. Police officers, such as our traffic management people, who are dealing with people on the street will have a tape recorder and record the conversations when they pull cars up for speeding. That gives you some sort of protection that might deal with some of those false complaints that people used to make. Wayne will pick up the investigative part of it.

The other part is to have good quality people in your internal affairs investigations area who have experience in dealing with criminals. That is something that we are doing much better than we did before. We get people who have been operational detectives to come through this process of coming into internal affairs. We see that as very much a part of the future for us: to bring people who are in the Crime department and in regional criminal investigation areas into the Ethical Standards Department and then send them out again. That means that we refreshing the investigators and bringing in really good quality investigators. Certainly in the last three years or so we have seen a much better standard and much better conviction rates from our officers. That is part of what protects that officer.

You will still get some who will argue this. I have sacked some people who will have argued that this is all a set up from the 47 complainants who have suggested that they have been assaulted by these people over the last 20 years, for instance. There has been overwhelming evidence. The 47 of them could not have got together. So you get pictures of people. We are much better at that profiling. A very substantial number of people in Ethical Standards are analysts who are very good at pulling all of the pieces together.

**Assistant Commissioner Taylor**—Historically, it has always been a tactic by some people to make a complaint against police members to muddy the waters at court et cetera or as part of payback: 'You've upset my life; I'm going to upset yours.' We were victims of that, because we

just had a sausage factory mentality. Complaints would come into Ethical Standards and we would process them and investigate them. We would drag people in for interview. It would go on and on. Over the last five years, we have stopped that. We have said that now we are intelligence led. Unless we have some evidence, we are not going to that. We are not going to put resources into something that we know is going to go nowhere. The tasking and coordination that I mentioned before is a system whereby we filter all the complaints through an assessment period. Some things that we receive, as you say, are vexatious, and we can prove that because people forget about CCTV and other things by which we can prove that things did not happen. They get 'cliff-faced', as Luke would say, straight away. 'It can't have happened; it's not going anywhere; put it away.' We concentrate on ones that are more robust.

The other thing that we have is an intelligence assessment system. We might receive some information about Wayne Taylor allegedly doing something. We will not inform anyone of that complaint—other than OPI, of course. We will do our cover investigation in the background. We may find that it is totally unfounded. We do not notify the member that they have been complained against. There is no need to. Why destroy his confidence or his career or her ambitions by saying, 'You've been complained against and we have investigated you for the last three months.' We put it away. We do investigation and then it is finished. No-one needs to know about it. It is not brought up at any career development phase; it is not brought up in selection panels. No-one gets to see it expect ESD.

We also have the integrity testing program within ESD whereby, if there is that sort of intelligence coming in that a certain member is conducting themselves in a certain way, we may deem it fit to conduct integrity tests. That can be either passed, failed or inconclusive. In the last couple of years, most of them have been failed, unfortunately for us. Between 60 per cent and 70 per cent have failed.

**Senator PARRY**—Could you briefly describe what an integrity test is.

**Assistant Commissioner Taylor**—An integrity test is where we develop a scenario to test the integrity of a member who has been complained against or where there is intelligence to suggest that they conduct themselves in a way that is not acceptable. We do not do random ones; we do not just go out to a police station and drop a wallet on the front desk and see what happens to it. There is no benefit in doing that. It has to be intelligence based. Once we have determined that the complaint is one that is suitable for integrity testing, it goes through a whole lot of checks, balances and assessments. It has to be approved by a number of senior members of ESD. Then the test is conducted. That may involve the use of cover operatives or cooperation from a workplace to test a member or a group of members who are allegedly doing the wrong thing. That can be very expensive and very time consuming. Balanced against long-term investigations, they are an extremely effective way of either proving or disproving an allegation against a certain member. That is what we have been doing.

We have done a number of them over the last 12 months of different types. In one case, we detected a cleaner stealing things from a police station that instantly exonerated 45 members who were looking at each other saying, 'You're stealing my stuff.' A complaint came to us as self report from the management saying: 'What do I do with this? No-one trusts anyone at the police station. Stuff is disappearing all the time.' We did the test. The cleaner was found to be the perpetrator. He was sacked. Instantly, those 43 members said, 'Thank God for that.' It stopped,

and they could get on with their work. That short, sharp little integrity test stopped a 12-month investigation by my investigations—thousands of dollars of time, effort, vehicles et cetera. That became a benchmark for how we do business from now on.

**CHAIR**—Does that mean that you did the test on the cleaner as well? How did you do a test in that instance?

**Assistant Commissioner Taylor**—We could not target them. We targeted the workplace in that instance. Someone in that workplace was stealing things. There were 10 or 12 complaints about items going missing. So we put bait items into the police station.

**CHAIR**—Did you have cameras?

**Assistant Commissioner Taylor**—They were covered by cameras. We had the cooperation of the local management. We monitored that. It took us three days, I think. It was short and sharp—bang, we were gone. We have also had the same thing detecting police members stealing things from other members, which stops the finger pointing against the whole group. It gets the person doing it. That person resigns and gets charged.

**Senator CAMERON**—One of the issues that has come up is the issue of having the OPI drawn from outside the Victorian police force as some kind of inoculation against any internal corruption. To be honest, I am not sure about that, because there are some other issues—and I would like your view on this—about balancing up having your officers have the confidence in this organisation. I do not know why I am not sure about it. I can understand the theory, but I am not sure about it in practice. It does a couple of things for me. It says, ‘Nobody can be trusted within the Victorian police force,’ which I do not think is a good message. I am thinking about ACLEI and whether they should adopt this approach. Secondly, it basically brings people in who do not understand some of the operational issues and do not have that corporate knowledge of the Victorian police force. Do you have any views on that? What should be the model for ACLEI?

**Assistant Commissioner Taylor**—My view is that it is invaluable to have home force members at those oversight bodies. You need someone who knows the culture, who has been through it, can understand why people do things and why they do not do things and has contacts within the organisation. At what level you take those people in is arguable. Do you want them in senior management positions or just as operatives? Mr Wood in his royal commission said that it was invaluable to have the knowledge of New South Wales members brought into his royal commission so that he knew how to target his resources.

OPI to some extent did that as well. They brought a couple of ex-members of Victoria Police in to teach the other people. They brought in people from Corrections, interstate and so on—you probably know all this. A lot of varied people came into one body and were suddenly investigating Victoria Police. They had no idea of how Victoria Police operated and no knowledge of the organisation. They did not know what a region was when they first started. They were then expected to make judgment calls on how we do our business. Without that advice from Victoria Police members with years of experience saying, ‘This is why this is done,’ and ‘This is how it is done,’ they would have been way back in the race to get where they are now.

**Chief Commissioner Nixon**—It is an interesting model, because the Police Integrity Commission in New South Wales does not hire people from within the New South Wales Police Force—actually, that was part of the recommendations—but certainly the OPI has hired Victoria Police officers, and I think that that is quite a reasonable process to do. One of the things that have been suggested is that sometimes in hiring from the home force you might get people who are paranoid or who have fixed views around that police organisation. It is a different issue from the one you were raising, but it is one that you would have to balance. But that is really about the hiring processes you put people through when you bring them into the organisation. I think that, on balance, it is having a mixed model.

If you are saying that to Victoria Police—that there is no-one in it whom you can trust—that is a very sad statement. It is a bit like the statement I had. It is an interesting model because of what would happen if you took it to its next stage. The Police Association has a view, on occasions, that we should not be investigating our own and that the entire investigation process for Victoria Police should be conducted by people other than Victoria Police officers. It is a pure model, but it is one that says that you would then not have any conflict and that you would not have people like Wayne having to investigate a whole range of people. I have a very strong alternative view, which is that we are responsible for the behaviour of our people and that we need to be the ones investigating the behaviour of our people. That is why I think that is a far better model. The OPI or the oversight agency, I think, has to have good quality people attracted to it who can then share that knowledge about the organisation. It is just a matter of what processes you put them through to ensure that you get good quality people. Anybody has to follow that model.

If you were to take the ACLEI and say that nobody who has ever worked in the Australian Crime Commission or the AFP, for instance, can work there, I think that is an indictment of both of those organisations, and there is really no evidence that would underpin that statement. Yes, there are corrupt people in organisations, but not a lot, luckily. I think it adds to the credibility of the investigating agency to have a mixed staff who bring a range of skills.

**CHAIR**—I will just follow up on that. ACLEI has suggested in its submission that the committee might consider whether it would be feasible and appropriate to require state and territory law enforcement agencies to provide information to the Integrity Commissioner about corruption issues concerning staff who are working with, or may have recently worked with, the Australian Crime Commission or the AFP. Can you comment on the feasibility of that from a Victoria Police perspective?

**Chief Commissioner Nixon**—I think it would be an appropriate thing to do if they were looking to hire a member of Victoria Police to become part of their investigation. It is part of a reasonable background check for us to be involved in providing that information. When the ACC takes our people to work for them now, they are obviously looking to get advice from us about the background. You do integrity checking processes. Is that right, Wayne?

**Assistant Commissioner Taylor**—I spent two years with the NCA. I know that when I applied for that position my probity was checked officially and unofficially. I think that is the system that has to be done. You can get the official word from Victoria Police, but a couple of phone calls to people you know would help as well. I know my friends might have got a phone call saying, ‘What’s the situation with this person?’

**Chief Commissioner Nixon**—That is just about integrity.

**Senator PARRY**—And you still got the job?

**Assistant Commissioner Taylor**—I still got the job. I said ‘friends’!

**Senator CAMERON**—I am conscious of the time. I think you may have mentioned this, Chief Commissioner, but the office of Chief Examiner stands out over here somewhere.

**Chief Commissioner Nixon**—Yes, it does. No, I did not mention that.

**Senator CAMERON**—I was looking for Acting Assistant Commissioner Wayne Taylor somewhere, and I cannot find you here, Acting Assistant Commissioner, so I am a bit confused about how this works. More importantly, what is this office of Chief Examiner?

**Chief Commissioner Nixon**—We have quite an interesting model of governance within Victoria Police. The 23 people involved, including the normal incumbent in Wayne’s position, work directly to me. We then have sets of governance arrangements about how we operate under that model. It is a model that works well for Victoria Police. The office of Chief Examiner is a statutory appointment, but its power is derived from legislation that, in effect, gives Victoria Police the power to conduct coercive questioning. It was part of a response to the underworld gangland murders. We asked the government to consider giving us coercive questioning powers. It was at the same time that the Office of Police Integrity was being put into place and getting coercive questioning powers to be able to interrogate police officers that we strongly and successfully argued that we should have similar sorts of powers to investigate criminals—quite rightly. But people have been very cautious about this idea of giving a police organisation coercive questioning powers, as you can imagine.

So the model was set up as, in a sense, an independent body, but the examiner is a statutory appointment, a lawyer, and has certain requirements and obligations. In effect they work for Victoria Police. He does not exactly report to me, because his is a similar model to mine, but we pay all the bills and his staff are Victoria Police members. So it is a part of us, but we give separateness to it in that sense because of the power that that role has. But it works well; it is a good model. The Australian Crime Commission, through their coercive questioning powers, very much have this kind of power. We have watched it being used by them and we believe it is very effective in terms of dealing with organised crime.

**Senator CAMERON**—Thank you.

**CHAIR**—In fact, one of our questions is about the Victoria Police Code of Conduct. One of the areas of risk of or vulnerability to corruption for police officers would be acceptance of gifts or benefits. So I was interested to see that, in the code, acceptance of gifts is allowed and it is up to the officer to determine whether it is appropriate in the circumstances, whereas in many other organisations the acceptance of gifts is prohibited unless you get the permission of a senior officer. Is that something that you think is working or is it perhaps under review? Have there been any instances where that has been abused, in your experience?

**Assistant Commissioner Taylor**—I am racking my brains to think of a complaint we have had in the last four years involving gifts and I cannot.

**Chief Commissioner Nixon**—We have a gift register process where we would declare whatever the gift might be. But I think it comes a bit more under conflict-of-interest issues, and we are certainly working through those more these days to understand the conflicts of interest people have in their lives and how they might deal with them. We have just released a new policy on conflict of interest and inappropriate associations.

**CHAIR**—Is there a requirement to declare? Because I cannot see that in the code.

**Chief Commissioner Nixon**—We have gift registers, so, yes, there is.

**Assistant Commissioner Taylor**—It is over a certain value.

**Chief Commissioner Nixon**—Yes.

**Assistant Commissioner Taylor**—We have people who go and do lectures as subject matter experts, and if, at the end of the presentation, they get a bottle of wine or something we do not ask them to declare that. That is just being social. If you declined it, you would be embarrassing your host, and we understand that. But anything of value—yes, we need to know that that has been handed over. The only thing that comes close in the last four years is where two members accepted an overseas trip from a civilian. We have got that under investigation at the moment and we will be taking some action against that. That is the only one I can think of.

**CHAIR**—Okay. Thank you. How do you define ‘corruption and serious misconduct’? I note that officers are obliged to report incidents of corruption and serious misconduct. How is that defined?

**Assistant Commissioner Taylor**—It is about to be redefined in the new Police Regulation Act. We had some very confusing definitions of ‘misconduct’ and ‘serious misconduct’. It caused us all sorts of angst and all sorts of misunderstandings—and I take your point. Our members did not know what the rules of engagement were. That will now be sorted out under the new act. We would rather have members report everything than say, ‘No, that’s not serious misconduct; I don’t have to do it.’ We are finding that people are saying, ‘I’m not sure but I’m telling you this anyway,’ and it goes up the chain of command and we decide at ESD or another location whether that is a situation where we will take action against them. But the amended act should solve the problem.

**CHAIR**—How will it be defined, then, in the new act?

**Assistant Commissioner Taylor**—I wish Luke was here, because he could just reel it off, but I cannot.

**Chief Commissioner Nixon**—We are certainly happy to supply you with that, because it does clarify what it means and makes it more reasonable. But I have to say that, fundamentally, most police officers understand what inappropriate behaviour would be and what corruption looks like. Most of us understand that. It is just about having clarity in terms of what we might do with

it in many cases and at what level—how we might go about investigating it. The principle of the new legislation is that if you made a mistake then it gets treated as a mistake, it is dealt with and that is part of the process. Obviously, other issues are then investigated.

One of the points to understand with an oversight body is that this is an area that costs a lot of money to investigate and to work in, in terms of high-level corruption. I think we would have spent \$6 million to \$7 million, if not more, on the CEJA Task Force. It is an area where you do have to invest. You have to have good quality technical tools. You need to have as good a quality of tools as you would use in normal investigations available in investigations of members of your own organisation. So it is a matter of ensuring that you have got the best quality investigators and that it is seen as an attractive thing to do, to go there, and that they have got the tools to be able to do the job. And then you have to have management that supports that team of people as well.

I think that has been an important part for us, because—you talked about undermining—the people they will try to undermine are the investigators who are working on them. They will think of everything they can think of, as well as intimidation and a range of other tools—bullets in the post to our investigators and those sorts of threatening measures—to try to stop people investigating them. So good protections need to be in place for people who are part of ACLEI, or part of our own investigative resources, the OPI or the Ombudsman's office, so they cannot be harmed either.

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



[11.48 am]

**TAYLOR, Mr John, Acting Ombudsman, Ombudsman Victoria**

**MISCHKULNIG, Mr Dallas Mark, Director, Legislative Compliance, Ombudsman Victoria**

**CHAIR**—I welcome witnesses from Ombudsman Victoria. I invite you to make a short opening statement at the conclusion of which I will invite members of the committee to ask questions.

**Mr Taylor**—Firstly, I apologise on behalf of George Brouwer, who is the Ombudsman and who was the first Director, Police Integrity. He has a strong interest in your committee's inquiry. Unfortunately he had committed himself to leave overseas well before the date was established. I will endeavour to answer your questions to the best of my ability.

When I was appointed Deputy Ombudsman in September 2004, the Ombudsman at that time had a traditional oversighting role in relation to police complaints. Two months later, the government created the Office of Police Integrity and the world changed from our perspective. I was very much involved in the establishment of the Office of Police Integrity and then, two years ago, we physically removed ourselves from that co-location and we are now entirely separate. One of the complexities of all of this is that the Office of Police Integrity is within the jurisdiction of the Ombudsman. Fortunately, Mr Michael Strong was appointed Director, Police Integrity on 1 May this year, so the Ombudsman was able to step away from that dual function that he performed.

The Ombudsman's police role prior to November 2004 was a traditional one that you would encounter in any state or territory in Australia, except perhaps for New South Wales, which has a number of oversighting agencies, which you would be aware of, including the Police Integrity Commission. The Ombudsman traditionally investigated some complaints—but only a few—and oversighted the Victoria Police Ethnical Standards Department's handling of the majority of complaints. That was a difficult model for a small agency—at that time, 45 staff—because it simply could not put resources into the more complex matters. But there were some exceptions. If you look at our website you will see Operation BART, which occurred in the late 1990s. This investigation by the Ombudsman led to 600 police being charged with minor and major corruption.

We still have a residual jurisdiction over the Victoria Police in a number of ways. You will see from our brief submission that we have jurisdiction in relation to freedom of information complaints. We have a very clear role in relation to the Whistleblowers Protection Act, where we must investigate or delegate our investigation of whistleblower matters in relation to Victoria Police—and I will come back to that. Because of an anomaly in the legislation, we also have jurisdiction over civilian employees employed within Victoria Police, and there are several thousand. We are currently conducting several complex investigations into Victoria Police because of those residual roles. We also have a limited jurisdiction over employment related matters, which we rarely exercise because there are other avenues for police to pursue. Finally,

we have one small audit function in relation to Victoria Police's use of CityLink data—that is, the tolling data on the freeways in Victoria. That is a hangover from the Ombudsman's traditional audit role when he also had responsibility for telecommunications interceptions.

**CHAIR**—Thank you. You said that you had a residual role concerning civilians in Victoria Police. Which body do you think would be most appropriate to deal with those people? Do you think it should be OPI?

**Mr Taylor**—I think it should be the Office of Police Integrity, yes. It is because of an anomaly in the legislation, which I believe will be addressed in draft legislation that is currently being developed.

**CHAIR**—I note from the submission that it is expected that significant changes will be made to improve the operation of the Whistleblowers Protection Act. Can you tell us what kind of improvements will be made?

**Mr Taylor**—I might just invite Mr Mischkulnig to respond, as he is the officer dealing with that.

**Mr Mischkulnig**—We approached the Attorney last year to seek a review of the legislation, which he has agreed to do. There has been an establishment of an interdepartmental committee overseeing that review, including officers from our office, the Department of Justice and the Premier's department. We are trying to deal with some of the technical anomalies that are currently in the legislation—part of which relate to the duplication of investigative powers that are currently in the Whistleblowers Protection Act that also come from and replicate what is in the Police Regulation Act. With the establishment of OPI and the review of the legislation that is currently on foot, we believe that there are more appropriate mechanisms for dealing with police corruption than under the Whistleblower legislation as it currently stands.

There are also some structural changes to the legislation relating to some anomalies because there is differentiation between public interest disclosures and protected disclosures under the act. And, as you may be aware, there is a national research project currently underway looking at management of whistleblower matters across the country which we are involved with and we are hoping that the revised legislation may pick up some of the best practice themes that are coming out of that review.

**CHAIR**—There is currently a House of Representatives standing committee inquiry into whistleblower protection as well which will take that report into account.

**Mr Mischkulnig**—Yes.

**Senator CAMERON**—I am interested in the situation where you say civilian issues should be handled by OPI. This would obviously have budgetary implications for both your organisation and OPI. Given that money is one of the key areas that provide operational efficiency, how are you going to handle that diminution of resources for the Ombudsman in that area?

**Mr Taylor**—Firstly, if I could give a little bit of history, before I took up my current position I was a senior assistant Commonwealth Ombudsman and on and off over a 10-year period I managed complaints in relation to the Australian Federal Police. That model is a good model where civilian employees are, for all intents and purposes, employees of the department with the same standing, not necessarily the same powers, as their uniformed or plain clothes counterparts. It is an anomaly, as far as I am concerned.

In terms of resources: well, there are never enough resources to investigate complaints. In the past four years our complaints have increased exponentially, by 15 per cent per annum except for last year when it was by 13 per cent. We are always arguing for increased resources. We would cut the cloth to suit our needs. In terms of the additional work that we are currently doing, and it is known publicly that we are doing two significant reviews into areas of policing that are managed or staffed by civilian employees, I would argue that is an impost on us and that we are doing it because of the situation that is forced upon us: if we do not, no-one will. However, OPI are much better resourced than we are; their budget is three times our budget. I think they would have the capacity. I do not see it is anything other than a legislative problem that will be addressed.

**Senator CAMERON**—Are there any inherent issues that you think we should look at in terms of ACLEI? ACLEI is basically in its infancy, and resources are the issue. Have you got any views on what we should look at in terms of resources for ACLEI, or are there any lessons to be learnt from your experience in all the positions you have been in?

**Mr Taylor**—Yes, there are some very clear suggestions I would make. Firstly, listening to the Chief Commissioner commenting on staffing ACLEI, 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 would be ridiculous to suggest that the 12,000 members of Victoria Police are all dishonest or in some way tainted. That is a nonsense. In fact, 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, and we do that within our organisation when we recruit. I think it is the most important decision an organisation will make, particularly one that does not make things or sell things, where you are working in relation to your expertise. I think that is critical.

I think oversighting agencies should have the power to conduct investigations on their own motion, not just based on an individual complaint. We have had some significant successes in investigations that we have initiated either as a result of our own data analysis, observing trends over time, or from as simple a thing as seeing something in a newspaper that raised significant concerns. If an organisation does not have the ability to initiate something on its own motion there are often missed opportunities.

I think also it is important for an oversighting agency to have the capacity to monitor and, if necessary, supervise minor complaints. In my experience, the great majority of complaints about law enforcement are minor and in some senses trivial, but they may well indicate a pattern. I can give you several examples from the AFP where minor complaints indicated a pattern of behaviour and where, if they had not been observed and taken into account, action would not

have been taken to deal with the underlying root cause, which may have simply been excessive use of force on regular occasions in arrests, or booking a person at a particular intersection, and no-one checking to see why that was occurring and the complaints were continuing to come in.

I think, at times, law enforcement agencies would say, 'We are the only ones who understand law enforcement. Therefore no-one really can tell us how to do our job.' I do not agree with that. I think they should have the responsibility for dealing with the majority of complaints but the oversighting agency should be monitoring those and, if necessary, dipping in from time to time.

**Senator CAMERON**—I am not sure whether you were here when I asked the question of the Chief Commissioner about vexatious complaints.

**Mr Taylor**—No, I was not.

**Senator CAMERON**—Obviously a vexatious complaint can destroy a career. The second level that I raised was the sophistication of criminal activity to build a complaint against an officer to try and destroy an officer's credibility. Do you have any views on how you would deal with vexatious complaints and whether the processes in place give enough protection to the individual officer because these are issues that ACLEI will have to deal with?

**Mr Taylor**—Persistent complainants or vexatious complainants are a source of great concern for all ombudsmen in Australia, so much so that we contributed funding to a project last year. If you are looking for a particular reference you will find one on our website dealing with persistent complainants. The ombudsmen of all states and territories contributed funding to develop a methodology for dealing with 'difficult complainants' for want of a better word. That includes vexatious, litigious or simply obstructive individuals. When you get into law enforcement there can be longer term consequences for people of that ilk. In most states and territories you can go to the Supreme Court and have someone declared a vexatious litigant. That is fraught with problems and does not stop the person necessarily being a nuisance. I think all agencies should have strategies for dealing with people who are vexatious or potentially vexatious. That should include people who are dangerous. Law enforcement agencies and oversighting agencies would be well aware of the consequences of not having in place methodologies for dealing with dangerous individuals who may also be vexatious. There has been plenty of precedent for bombings: the Australian Crime Commission or the NCA as it was bombed in Adelaide some years ago; and the Family Court bombed. In fact the Commonwealth Ombudsman had a similar threat some years ago during my experience and if we did not have a strategy in place we might have been vulnerable.

**Senator CAMERON**—This paper that has been prepared could give some guidance to ACLEI—

**Mr Taylor**—Definitely.

**Senator CAMERON**—about how to provide some fairness to officers in their dealings with ACLEI.

**Mr Taylor**—I think it actually goes to the root cause and it deals with strategies for managing vexatious or difficult complainants. In terms of the substance of their complaint I think that is a

separate issue. A person can be vexatious and difficult and still have a valid complaint underneath all that drama. The complaint should be dealt with in a proper process, which the agency should manage the same way as they do with any other complaint; the same as we do if we get complaints in relation to our staff. There should be processes in place.

**CHAIR**—How well do you think the current arrangements are working in Victoria with your role as the Ombudsman and the OPI? Are there significant areas of overlap or significant gaps?

**Mr Taylor**—I think it generally works well because you have people like the Chief Commissioner, who recognise the importance of oversight, and you have people like the Ombudsman who have been intimately involved in developing the oversighting agency. There are teething problems but they are more to do with the gaps in the legislation than the actual conduct of investigations and complaint handling.

As I mentioned earlier we also oversight the OPI. That in itself creates some potential tension, but in reality it does not. The law requires that they are accountable in the same way as any other government agency. So if push comes to shove we have, on some limited occasions, used our coercive powers to obtain whatever we needed to obtain. That was one occasion that it was necessary. That received a lot of publicity but it exonerated the OPI officers. So I think that demonstrates that the system is fair even though it was fraught with problems and tensions and there were lawyers involved. The reality was that we got to the truth.

**Senator PARRY**—You said that the probity model should be the integral part of any recruitment of people into positions that are investigating complaints of law officers. What additional aspects of probity do you see, apart from your normal background checks?

**Mr Taylor**—I think it depends on the nature of the job and the access to material that that job would require. With recruits to our organisation, if they are a temporary employee—for example, a summer vacation university student who would have limited access to information but who answers the phones for work experience—we would just do a name check through Victoria Police. If it is a permanent position we would do a fingerprint check and the individual would go through a number of searching interviews and, if necessary, background checks. Our senior staff, including Mr Mischkulnig, are cleared to top secret level, which involves a lengthy assessment of the individual with inquiries into their background and relationships and so on.

**Senator PARRY**—Who performs the more senior checks?

**Mr Taylor**—We have that outsourced to a private provider who provides that to the Commonwealth. Victoria does not, as far as I am aware, have a classification for security clearances. We use the Commonwealth model.

**Senator PARRY**—Okay, thank you.

**Senator CAMERON**—What is your relationship with the special investigations monitor?

**Mr Taylor**—None, Senator. He has got his job to do, which really does not touch on our work at all. His job, as far as I understand it, is to monitor the coercive powers exercised by the Director, Police Integrity. We had some limited involvement with Mr Jones when he was setting

up his unit because he took over the responsibility for the telecommunications intercept audit and now also controlled deliveries and assumed identities. We were able to assist and—you were talking about resources earlier—he took our staff. But it was a good thing because it provided them with a career path and some opportunities and that worked quite well; but we have very limited contact.

**Senator CAMERON**—Ombudsmen around the country have various capabilities to deal with issues depending on the size of the state and the budget that they have. Because ACLEI does not have the number of police officers that the Victorian Police force has, we are trying to come to grips with whether there is a role for a national body that could provide the same sophistication that we have in Victoria or New South Wales to apply to some of these smaller operations and state branches?

**Mr Taylor**—I entirely understand what you are saying and I think it is something that the Commonwealth is going to have to come to grips with when it looks at adopting the international charter on the prevention of torture and trauma, because if the Commonwealth adopts that—and I believe there has been some support for adopting that—it will need to have a monitoring body in line with international standards that will look at oversighting and investigations of corruption and mistreatment of prisoners. In my experience the level of commitment from Ombudsmen and oversighting agencies is linked to resources, but I also think it can be linked to simply the will to do your job.

We, at the moment, are an organisation of 55. If you look at our website you will see that we have published, in the last four years, a large number of what I believe to be significant reports of public interest that have changed much of the way the public sector is run. So a small organisation, if it has teeth and the will to do its job, can be very effective. It is just a matter of targeting whatever you need to deal with.

**CHAIR**—I have one further question. In your view do the OPI and Victoria Police place a sufficient emphasis on corruption prevention and education?

**Mr Taylor**—I cannot speak for OPI—I am not sure whether they are appearing before you—except that I can say that I am aware that they have outreach activity in relation to crime prevention, because there are occasions when our outreach staff interact with theirs. But I do not know the detail; I am sorry.

**CHAIR**—Is that something that your office does, as well?

**Mr Taylor**—Yes, it is. At the moment we have a proposal being considered, to amend the Ombudsman Act to bring it in line with modern practice. One of the key features of that is to develop and present integrity training within the public sector. In March this year we released two public reports. One was on conflict of interest in the public sector and the other was on conflict of interest in local government. There are large areas within the public sector that warrant closer attention in terms of training and development and a better understanding of conflict of interest.

**CHAIR**—Yes.

**Mr Taylor**—There would not be a major review that we have done where we have not identified, often as a peripheral issue, conflict of interest. It might be accepting gifts—the last witness talked about gifts—inappropriate associations, favouritism or whatever. There is a large need for that understanding, I believe.

**CHAIR**—Thank you. Do you have any further observations you would like to make that might assist the committee in looking at structures for ACLEI?

**Mr Mischkulnig**—Yes, just one, in response to the senator's earlier comments about the selection of staff. I think that it is important to have staff with knowledge from within the organisations that you are looking at, but equally it is important to have staff that are not part of that culture. Outside of the police, a lot of the work that my team does, under the whistleblower legislation, involves looking at a number of areas where we do not have expertise. I think that by coming in with fresh eyes you can explore an environment in a different manner. When you need cultural and background understanding you get it in the process of investigating rather than having it up front. I think that is an important balance you need to think about.

**Mr Taylor**—I will just add to that. I agree with Dallas. We will buy in expertise if we need it. We allocate a small proportion of our budget each year to bring in external expertise. For example, we are currently investigating a complaint that was referred to us by the acting Premier in relation to a large development that has been built adjacent to a former tip. Planning is not our area of expertise but we have brought in someone who is a very experienced planner. Equally, if we wish to find out what transpired in an organisation the first thing we will do is seize a backup of their computer system. Again, we are not IT experts but we will bring in experts to tell us what has happened. That is often a wonderful area of information, I should add.

**CHAIR**—There are no further questions. I thank you very much for giving of your time today to give evidence.

**Proceedings suspended from 12.14 pm to 1.07 pm**

**McMILLAN, Professor John, Commonwealth Ombudsman**

**CHAIR**—Welcome. Could you please state the capacity in which you appear here today.

**Prof. McMillan**—I am the Commonwealth Ombudsman. In relation to the Australian Federal Police, I also have the designation of Law Enforcement Ombudsman.

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

**Prof. McMillan**—Thank you to the committee for the opportunity to appear to supplement my submission on the matter under inquiry by the committee. As the committee members will be aware, I have a dual interest in the topic under inquiry. Firstly, in my current role as Commonwealth Ombudsman, my office shares, with the Australian Commission for Law Enforcement Integrity—and with the committee’s indulgence I will refer to it as ACLEI, for shorthand purposes, hereafter—the oversight of the two federal policing agencies—the Australian Federal Police and the Australian Crime Commission. My office also has an oversight role in relation to ACLEI itself. We can receive complaints against ACLEI. We have not received any such complaints. We also monitor records of ACLEI in relation to any exercise it may undertake of its statutory powers—for example, to engage in telephone interception. Those powers have not been used yet. That is the first interest that I have in this topic. The second area of interest, clearly, is that I was the Acting Integrity Commissioner for the first six months of ACLEI’s operation and, in that role, I established ACLEI.

The submission that I have made in the role as Commonwealth Ombudsman draws on my general interest in the topic. It is a submission that touches only some of the terms of reference for this inquiry. It is probably simpler if I just highlight the main points of that submission quickly and then answer any points that members of the committee may wish to raise.

The first point that I would emphasise is that, in my view, the statutory framework for ACLEI is a worthwhile model that does not need any major rethink or renovation at this stage. The jurisdiction and functions of ACLEI is clearly defined to focus on corruption but also to broaden into integrity. ACLEI has an extensive range of powers for investigating corruption. Importantly, too, it has a number of options open to it to conduct its own investigations, to direct a police investigation, to manage an investigation or to require an investigation by others. There is a very good integrity framework in place that requires notification of corruption issues by the heads of law enforcement agencies and a very clear procedure is defined as to how those matters are to be dealt with and as to the relationship between ACLEI and other agencies. In my view, the oversight arrangements, and particularly the role of this committee, are strong. I am not in favour of having any additional bodies, such as a parliamentary inspector of the kind that exists in some of the states. My view too is that the division of functions between ACLEI and the Commonwealth Ombudsman is suitable as well. I have no proposals to make for major change to the statutory framework.

I think the main issue confronting ACLEI is firstly its jurisdiction, which is confined only to the law enforcement functions of two federal agencies. As my submission outlines, there are



strong arguments for extending its jurisdiction to encompass corruption in other federal law enforcement activities by agencies such as Customs, Immigration, Centrelink and the Taxation Office. That would enable a more seamless investigation of corruption issues by ACLEI, particularly where there are joint investigations. It would provide a better resource base for ACLEI so that it can develop the critical mass necessary to exercise many of the coercive and investigation powers it has, and importantly too it would provide it with the opportunity to discharge more of a role in relation to prevention and education activities in corruption. So that is the main area that, in my submission, needs to be addressed in coming years, and I appreciate that it is an issue that has already been identified by this committee, for example, in oversighting ACLEI's annual report.

Finally, there are a couple of other issues that I have addressed in my submission and also in my foreword to the first ACLEI annual report concerning development and enhancement of the current activities of ACLEI and oversight of corruption and police in general. I have flagged in the submission my support for extending the terms of reference of one of the existing parliamentary committees, or perhaps by conferring a function on a new parliamentary committee of oversighting the activities of the Australian Federal Police in the same way that there are parliamentary committees looking at the intelligence agencies and the Australian Crime Commission.

I think there is work to be done on embedding the policies and practices of ACLEI. In particular I have flagged the need to define a policy on corruption that supplements the statutory provisions that will be of guidance to the agencies involved, and to the public and parliament generally. I have also identified, more so in the annual report, the importance over the coming years of ACLEI building its profile as an integrity agency more than anything. Its function as a body that can investigate corruption matters is becoming well known, but it is important that the term 'integrity' appears in the title of both the commission and the commissioner. That confirms a strong trend in writing in this area, that it is those preventative and educational activities that build integrity and that build resistance to corruption within agencies that is an important challenge, and I see that as one of the challenges facing ACLEI. Those are the remarks that I wish to make just in opening.

**CHAIR**—Thank you, Professor McMillan. I would like to thank you for your submission, which I think the committee has found extremely useful, and the Integrity Commissioner has also expressed his appreciation for your submission. As an initial question, I note in your submission your comment that ACLEI does not have the resources to establish machinery to exercise its special investigation powers to really undertake oversight of law enforcement activities properly at the national level throughout its jurisdiction, and also to be able to exercise an adequate prevention education role. What, in your view, would be the resources needed for ACLEI to carry out its current role? I am not talking about an expanded jurisdiction, but simply to do what it is empowered to do now. I note that apparently you were reported in 2007 in the *Australian* saying that 50 staff would be needed. I do not know if that is an accurate report.

**Prof. McMillan**—Yes, it was variously misreported, suggesting that I said that there was a need for 50 investigation staff. I was not so much proposing that its staff be increased to 50, but to discharge all the functions it was given, and if it could exercise all the powers, 50 would probably be about the number. Now that was not just a stab in the dark. One of the things that I did as Acting Integrity Commissioner was to commission a consultant to prepare a report on the

staffing and other resources that would be required to exercise those functions. It seemed to me that 50 is probably a realistic number that would include probably up to about 15 or 20 investigation staff, perhaps a covert or special operations unit of five to 10 people, and then other people involved in the development of educational activities, particularly the development of public awareness pamphlets and brochures and engagement in training exercises with policing agencies. And then, of course, there is corporate support.

The current commissioner has subscribed his support to a building-block approach, and I see the wisdom of that. ACLEI's budget will be doubled over the next couple of years and then it can gradually move into other areas of activity and decide what staffing is needed for other functions. So time will tell what the proper staffing is. But I can make a few general remarks on the difficulties and speculation in this area. Corruption is not an issue in the federal policing agencies to the extent that it has been in some state agencies, so it may well be that there is simply not the occasion to engage in telephone interception or covert operations to the same extent as arises in some state agencies and some state activities. On the other hand, ACLEI has a national jurisdiction and it is far more time consuming and resource intensive for it to undertake even simple investigations. This is one of the things that struck me when I was Acting Integrity Commissioner: if we had an allegation of corruption and there was a need to interview one person for an hour—for example, in a state prison—it would take nearly two days of work for two people to arrange travel, to make arrangements with state correction authorities, to meet somebody, to be in contact with lawyers if they want to be present and then to travel from Canberra to a correctional facility that would be some distance from the airport. It was a very time-consuming activity to do the simplest of investigations. By and large, the state anticorruption agencies do not have that issue, even if they are doing an investigation in rural Victoria or rural New South Wales. They can leave in a car in the morning and be back in the afternoon. That is the other side of it; I think the resource demand on ACLEI will be much greater. I have certainly seen that in my role as Commonwealth Ombudsman. One of the roles that we discharge is to monitor activities in, for example, immigration detention centres. That can be very time-consuming, as it was particularly at the time when people were located in areas like Baxter, Port Hedland and Woomera. A lot of the time was spent travelling.

**CHAIR**—The Victorian Ombudsman raised the issue earlier that, when Australia ratifies the Optional Protocol to the Convention Against Torture, there will be a monitoring mechanism for people in detention.

**Prof. McMillan**—That is an example of one that may drive the need for a different national arrangement or structure. One other thing that arises out of that, which I think is an issue that will increasingly confront government over the next couple of years, is how best to arrange telephone interception and other covert surveillance capacity by the anticorruption and integrity agencies. At the moment they each develop their own telephone interception capacity and it has to be a capacity that is, by and large, separate from policing capacity. As I understand it, and I am not an expert, the technology with the use of phones changes so dramatically and so quickly. One estimate is that about every three or four years you have to essentially replenish the interception equipment you are using, so I think one of the issues that may arise, or one option that will need consideration is whether there should be, for example, a single national body or agency, either established by the Commonwealth or established jointly by the Commonwealth and the states, that does telephone interception for all of the oversight agencies on request and is subject to the oversight of a single national integrity agency, such as the Commonwealth

Ombudsman. That would be a much more streamlined arrangement. If a development of that kind occurred, it would obviously simplify the challenge for a body like ACLEI in being able to access that on a fee-for-service basis without having to go down the difficult path of establishing a unit with sophisticated equipment that may not be used.

**CHAIR**—With regard to your own resources in the Ombudsman role, do you have adequate resources to carry out your oversight functions?

**Prof. McMillan**—We are at the early stages of putting a submission to government saying that the resources to undertake oversight of policing activities are meagre and should be extended. At the moment we undertake oversight of police complaint handling, we undertake some own-motion investigations and recently we published a report on the practices of the Australian Crime Commission and reasons for decisions. We published another report on the use of a consultant in the Australian Federal Police and we are about to publish a report on the administration of the intoxicated persons legislation by the Australian Federal Police in the ACT. The other large function we have is the inspection of the records relating to the intrusive law enforcement powers. But that covers the administration of federal policing in a patchwork way.

This is looking ahead, but it is possible that the report of the Clarke inquiry into the Haneef matter will have the significance for policing that the Palmer report and the Comrie report into the detention of Cornelia Rau and Vivian Alvarez had for immigration—that is, it triggered anxious consideration about the adequacy of existing oversight arrangements. The realisation that developed from that episode is that complaint handling alone and occasional own-motion investigations are not enough to reassure parliament and the public that there is proper use of coercive powers that, if wrongly exercised, can cause great injury and damage. So the government and parliament enhance the capacity of my office in relation to immigration so that we perform a more active monitoring role, including such things as unannounced visits to detention centres. That model is widely or strongly supported by the department and by other commentators as being a much more effective model for identifying errors in immigration administration and detention, and reassuring people that there is effective oversight. So one of the proposals that I am developing is that I think there is a need for similarly well-resourced capacity to oversight policing and, as I say, it is premature but it may be that the Clarke report will identify a need for more active oversight of that kind.

**CHAIR**—In relation to the point in your submission about extending ACLEI's jurisdiction to other agencies with law enforcement functions, the Attorney-General's Department has raised an issue that, whereas the AFP and the ACCC are law enforcement agencies, and that is their only function, that is not true of some other agencies to which ACLEI's jurisdiction could be extended, for example, Customs.

**Prof. McMillan**—Yes.

**CHAIR**—So they think that there would be a great amount of difficulty, or at least careful consideration would have to be given as to how you could distinguish the law enforcement functions of those agencies from their other functions. Do you have any comment on that?

**Prof. McMillan**—Unless one has a single agency that covers all forms of oversight, distinctions and lines in the sand always have to be drawn. That already happens in the lines that

are drawn between my office, the Auditor-General's office, ACLEI, the Inspector General of Intelligence and Security, the Privacy Commissioner and the Australian Human Rights Commission. That process of dividing jurisdiction, arranging cooperation and having joint investigations is already there. But I see at the moment that there is something of a gap in the system in that, while the Commonwealth Ombudsman, in terms of jurisdiction powers, can oversee corruption in any federal agency, we are not established as a corruption agency and consequently we have a system in which there is a dedicated facility for investigation of corruption in law enforcement in one area but no dedicated arrangements for investigation of corruption in law enforcement activities occurring in other agencies, and yet those other agencies frequently do joint investigations. So I think that there is a gap in the system at the moment and it needs to be filled. Now whether you fill it with the Ombudsman, with a new agency, by extending ACLEI's jurisdiction or whatever answer you come up with, there is going to be a division of responsibilities between it and some other agency. So it is not a concern that troubles me.

**Senator PARRY**—Thanks again, Professor. It is always good to hear you again and you have lost no enthusiasm for ACLEI, which is good.

**Prof. McMillan**—Thank you.

**Senator PARRY**—I just want to pick up on the first point that you mentioned, that you do not see any need to change the jurisdictional aspects of the Law Enforcement Integrity Commissioner Act. I will put a scenario to you and I would be interested in your comments. If ACLEI wanted to hire out its services, as fee for service, to any state jurisdiction, it cannot currently do so; the act prohibits that. Would you see that as being probably a good thing to have or the ability to do? I will give you a further example, and I will use my home state of Tasmania. Currently there is no anticorruption or oversight body. The police force commissioner has voluntarily stood down whilst he is investigated over an allegation that was drawn to his attention. That is fine but it would be nice if that state, or other states in similar positions, could hire the services of a body such as ACLEI.

**Prof. McMillan**—I have not thought through that issue and so my response is an immediate reaction. It is not a proposal that attracts me initially. My view is that it is better that, if the agencies have a clear statutory focus on activities occurring within their own government jurisdiction and that, if activities occur in an area where there are inadequate existing arrangements, then it is best addressed either by a joint investigation or by contracting somebody individually. I often do that in my Ombudsman role. If I see something that is at the periphery of our jurisdiction, I will say to an agency, 'Look, this needs to be investigated and we are not necessarily the right ones to do it, so you can come up with proposals, but I will keep a watchful eye on what you do, and I want to see the final report.' That tends to work well. I understand that that would not work as well in the hypothetical that you mentioned because, if there is a need for exercising coercive statutory powers in telephone interception, electronic surveillance, assumed identities, surveillance or whatever, then you could not do that on a contracting, consultancy or joint investigation arrangement. My preference and initial reaction is to say that it is still better addressed back in the state that lacks the facility.

**Senator PARRY**—I will further tease this out because it goes to your comments in response to the chair about having one single telephone interception aspect, which I will get to in a

moment. I stress that it would not have required all the resources of a fully-armed integrity unit for what is currently happening but, in the case of Tasmania, there would be no need to have a full-time unit sitting there, twiddling thumbs. Does that unit then start to seek out issues and become a watch dog trying to justify its existence? So it would be good to have a body that is set up and ready, and that could also aid to the resourcing and funding of ACLEI.

**Prof. McMillan**—I agree. I think it is a particular problem when you get to smaller jurisdictions. We can develop models that are ideal for larger jurisdictions but they are simply inappropriate for smaller jurisdictions. The same issue that arises for my office, because of all the work we do with Ombudsman agencies in the Pacific region, is whether it is better to have a single agency doing Ombudsman work, leadership code work, anticorruption work or human rights work. There are arguments for and against, but often the answer has to be a pragmatic one about what works best given the size of the jurisdiction.

**Senator PARRY**—I alluded to telephone interception and having a high-tech investigative unit separate from police jurisdictions, but only having one nationally. We discussed this with the ACC; it was just thrown in the mix as a solution, so it was interesting to hear it coming from you—of having one centralised agency. You obviously believe that could work.

**Prof. McMillan**—I do. I have no blueprint for it. I think it could work, but it would be better if it were an agency that was used only by the watch dog or integrity or oversight agencies, and so was separate from the telephone interception capacity that the police forces have. If there is an argument for a national body there, then I think it is an argument for two national agencies rather than one. It was one of the issues that troubled me in my days with ACLEI in that, if we had to engage telephone interception, we would have to approach an existing integrity agency, which would be a state based agency—hence, there can be confusing federal issues—or it would be one of the police forces. Instinctively I thought that there were risks involved in using the telephone interception of the police to investigate themselves but at the direction of a body that is independent. So I am in favour of still keeping some separate lines.

**Senator PARRY**—I suppose if you examine the models in Australia—and we have yet to determine all of them, but we have a reasonable handle—every state has its integrity commission or crime commission or whatever the jurisdiction is that looks at policing the police. They have their own surveillance and high-tech units, as do each of the jurisdictions, so you have two in every state. So we would have one federal model from the policing of the police aspect and each state would still have their individual one. That is basically what you are proffering.

**Prof. McMillan**—Yes; that is the proposition. Whether you extend it beyond telephone interception to include other covert operations is another issue. 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. On the other hand, one of the real difficulties for ACLEI having its own covert unit is this: by nature a covert unit has to be covert, not only from the public but to a larger extent from government itself and even from the oversight agency. Many of the covert units in Australia are located physically separately from the agency of which they are a part and the officers are not known to all the other officers. If ACLEI had a covert unit, would it locate it in Fyshwick in Canberra? It would not take long before its existence became known because it would be an odd agency there, and every time they hopped on a plane to go anywhere, it would be like the

Federal Police and people would say, 'Oh, there goes the ACLEI covert unit hopping on a plane.' If you were to locate it in some other city such as Sydney or Melbourne, then I would see a real problem with control and integrity. Covert units operate close to the margin and an oversight agency has to be very careful about the operations of its own covert unit. I would have been very uncomfortable as an Integrity Commissioner located in Canberra if I had a covert unit that was operating in Sydney or Melbourne. So there is an argument for having a national capacity with proper oversight as well.

**Senator PARRY**—We are probably delving into the management of the agency.

**Prof. McMillan**—Yes.

**Senator PARRY**—On that broad concept, I could readily see the computer arm or the high-tech arm thrown into the mix. From a previous ACC inquiry at another time—I am also on that committee—we picked up that each police agency was struggling to keep up and pay the salaries of these computer experts. So to have them all centralised and have higher paid but fewer officers cover the whole state and the whole country would probably be a good idea.

**Prof. McMillan**—Yes.

**Senator PARRY**—Thank you. I am pleased to hear that you support that notion. How it is managed or if it ever comes to fruition is another matter.

**Prof. McMillan**—Yes. It will be complex to implement, but it is an issue that will not go away.

**Senator PARRY**—I will not tie up too much more time but I have another question. What is your view on ACLEI performing random inspections or integrity checks?

**Prof. McMillan**—My view is that it is unable to perform them at the moment. Random checks and integrity testing are a necessary function in ensuring integrity in law enforcement agencies. In a sense, law enforcement agencies have already agreed with that because they themselves have random drug testing and integrity profiling and testing. If they see the need for them and there is equally a need for an independent oversight agency, then it seems to me that it naturally follows that the oversight agency itself should be doing some of that integrity testing. However, once again, integrity testing is a specialist role that raises a whole range of civil liberties and other managerial issues.

**Senator PARRY**—Agent provocateur.

**Prof. McMillan**—Yes; that is right, and it is probably best done by a special unit or a covert unit. So it again feeds into the issue about what is the best structure for doing it, but in principle I am in favour of ACLEI having the capacity to do integrity testing.

**Senator PARRY**—We touched on, and the chair raised the issue and gave the Attorney-General's response to other agencies coming under the broad umbrella of integrity supervision from ACLEI. Can you think of any other case for why ACLEI would not or should not assume responsibility for law enforcement integrity in each of the agencies named? I think you have

covered the critical aspect of joint operations, but I have a fairly firm view and I think ACLEI should move that way. Can you see any other case, apart from the fact that it is not strictly totally law enforcement orientated in these other agencies—which I think was not a very strong argument from the AGs? Is there any other reason why it should not take place, in your view?

**Prof. McMillan**—No; I cannot see any other reason. There is no doubt that corruption allegations in other agencies relate not just to law enforcement but to other activities, such as tendering and contracting. Exactly the same happens in relation to the Australian Federal Police. If there is an allegation at the moment about corruption in contracting or tendering then it is an Ombudsman responsibility, and my office has already undertaken a couple of own-motion investigations into that issue.

**Senator PARRY**—And you do not refer those back to ACLEI? You still assume responsibility?

**Prof. McMillan**—No. We would only refer it to ACLEI if it related to the exercise of law enforcement functions. It is always important to remember that law enforcement agencies are large corporate agencies and they have to buy buildings, hire staff and acquire premises. Indeed, the corruption threats are often larger in those corporate activities than they are in the law enforcement activities. So a division of responsibility already exists in relation to law enforcement and it will be no different in relation to law enforcement and other activities in other agencies.

**Senator CAMERON**—I am really interested in this building-block approach to the funding of ACLEI. I have just tried to do some figures and it seems to me that the original funding was about \$2.46 million to establish what was described as a basic operation, with this building-block approach. There is another \$7 million over four years which, if you equalise that, would bring the recurrent expenditure to about \$3.7 million per year. OPI in Victoria have funding of \$21.3 million and New South Wales have funding of \$16.8 million. It is very difficult to do but, if you do some really rough figures, the number of officers and known sworn officers for the AFP is about 3,172; OPI look after 13,445 in Victoria, and New South Wales have 18½ thousand. Sorry I have to take you to all of that. I do not expect you to remember it all, but it is this issue of critical mass that I think is so fundamental. If you look at these ratios, Victoria is about four times the size of the Federal Police and New South Wales is about six times the size. How are we ever going to expect ACLEI to operate, even with that extended budget, to any reasonable standards of both accountability and operational integrity and delivering on outcomes? I cannot, for the life of me, see how that can be achieved at the moment. Do you have a different view to that?

**Prof. McMillan**—Yes. I am usually cautious about engaging directly in larger policy discussions. Comments I once made appeared on the front page of the *Australian* on this topic. My view is that ACLEI can discharge a role on its current budget, but it is a role that is limited in scope, relies very heavily on cooperation with law enforcement agencies and deals with individual incidents or investigations. On the current budget, and even on the projected budget, it will not be able to discharge the same more comprehensive role that state oversight agencies are performing. In particular it cannot focus on developing its preventive educational activities to the same extent and it cannot establish its own units. It is ultimately the decision for others as to whether that capacity is needed, but I see real constraints. The figures that you give for the other

agencies indicate how resource intensive corruption investigation is. Exactly the same pattern arises if you give the figures for the Independent Commission Against Corruption, the Police Integrity Commission, the Crime and Corruption Commission in Western Australia and the Crime and Misconduct Commission in Queensland. Performing that more rounded role is a resource intensive activity. If ACLEI is to grow into that larger role then it would need additional resourcing.

**Senator CAMERON**—To be fair to ACLEI at the moment, should we then be clear that ACLEI cannot meet the legislated parameters it has in order to reach the outcome that it is supposed to reach in the annual report? That outcome is the assurance that Australian government law enforcement agencies and their staff act with integrity. From what you have described that ACLEI can do, there is no way it can achieve that; absolutely no way.

**Prof. McMillan**—I would have to agree that it cannot give that assurance to the public and to the parliament. I believe it can do some effective work with its current resources and, by the fact of its own creation, it focuses attention on corruption as a potential threat to any agency, and particularly any law enforcement agency, and it imposes a new rigour on policing agencies themselves to refer issues to an independent body that then decides how it is investigated. So there are significant advances but it is unable to fulfil the objective of providing that general assurance.

**Senator CAMERON**—One of the issues that I was also interested in was the capacity for ACLEI to provide fairness to individual officers. I raised this with a number of witnesses. Once you become the subject of an investigation, there are far reaching personal implications. Even if you are cleared eventually then it could destroy your confidence and your capacity to operate effectively with other agents within the Federal Police force. I notice that one of the things that ACLEI has to do is investigate anything that comes to it. There could be some untoward activity. Isn't that such a low bar that it could create problems?

**Prof. McMillan**—There is this difficult trade-off. If one wants an effective independent oversight capacity, and if one wants to reassure the public that integrity is being preserved, then it is simply necessary to have independent bodies that conduct investigations and that can exercise functions like issuing subpoenas. The mere fact of an investigation is threatening to officers. But it is exactly the same balance, in a sense, that is struck in having police agencies themselves. So many of the complaints that are made to them are the subject of investigations that go nowhere and members of the public often feel outraged that a warrant has been issued, their houses have been inspected, they have been subjected to compulsory questioning and nothing ever comes of it. The response one has to give is that that is the price of living in a civilised society that believes in law and order and preservation of integrity.

The two best ways of trying to strike the balance in favour of adequate protection of those against whom untested allegations are made are: firstly, to allow the investigation to be undertaken in private and then, in one way or another, for the results of those investigations to be published. I am a firm believer in the model of 'investigate in private and report in public'. Secondly, it is very important that the investigations are undertaken as swiftly as possible so that people are not left in any doubt. Occasionally there is a need for public inquiries. The allegations concerning the arrest of Mr Haneef are an example of where public interest demanded some kind of more public inquiry. But generally I am a believer of 'investigate in private and report in



public'. Certainly that was my experience as Integrity Commissioner: in one inquiry I undertook, I issued summonses to five people, and there was a delay of some weeks between issuing the summons and interviewing the people. In each instance there was a condition imposed on the summons—that the person was not to discuss that summons with anybody other than the head of their agency for the purpose of getting legal advice. It was a great concern to me that the people were left in complete uncertainty as to why they had been summoned, who else had and what the issue was. But there was no other practical alternative if the allegations that had been made were going to be properly investigated.

**Senator CAMERON**—I will turn to the issue of the chicken and the egg, and the argument that there has been no overtly discovered corruption to the extent that corruption has been publicly seen in the Victorian and New South Wales police forces. That means that you can actually use this building-block approach. Wouldn't the lack of funding and the lack of oversight mean that there has been no systematic analysis of the corruption or potential corruption within this police force? It is not a small operation; it is 3,000 people. If there is corruption in these bodies of 13,000 and 18,000 people, logic would say that you would have the same demographics in terms of behaviour in the Australian Federal Police, so there would be some there. The chicken and egg thing that I am talking about is: do you wait until you find something and dig about with limited resources or do you do what was done in Victoria and say, 'We need to make sure there is a deterrent, an educational process and all of these mechanisms in place that kill that culture'?

**Prof. McMillan**—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. Secondly, even though Australia generally ranks very high on corruption indexes, the reality is that over the last two decades we have seen allegations, prosecution and, in some cases, incarceration of a premier, a chief magistrate, a judge, ministers, senior police officers and senior public servants. Corruption is a threat to every organisation—civil, policing, defence or non-government—so it is important to have in place an adequate capacity to investigate allegations of corruption and, importantly too, a framework which sends a very clear message to everybody that corruption is always being investigated—as I think the Office of Police Integrity have said—and thus to build a corruption-resistant culture. But corruption is a perennial problem for every organisation, and one should proceed from that basis.

**CHAIR**—In the final paragraph of your submission you stated:

The responsibility for dealing with corrupt conduct or even ordinary misconduct by secondees to national law enforcement agencies warrants scrutiny.

Could you expand upon that, please?

**Prof. McMillan**—Yes. This was an issue that I had seen arising more in my Ombudsman role, and it ties in with the last question from Senator Cameron in that there is an increasing degree of cross-fertilisation between state and federal policing agencies, firstly in terms of recruitment—the dramatic growth of the federal policing agencies has been possible only because of their recruitment from state agencies—and secondly, as a result of joint operations and secondments.

There is, thus, a need to identify that cross-jurisdictional issue in the oversight arrangements. I think it has been well done in the ACLEI Act although, what I have seen more in my Ombudsman role—and I have raised this with the joint committee overseeing the Australian Crime Commission a couple of times—is that, if we are to investigate an issue, for example in relation to the Australian Crime Commission that touches some of the secondees, and if the report then goes from the federal agency back to the state agency—particularly if the secondee has gone back to that agency—the normal lines of reporting and accountability start to become a little shaky. It can take a lot longer to get a proper answer as to whether effective counselling or whatever has been undertaken. I think it is a challenge that probably has to be met more at an administrative level by strengthening the reporting and consultation arrangements wherever there is a secondment. At the moment I do not see the need for any legislative amendment to pick that up.

I raised a similar issue with the other joint committee in relation to controlled operations. There is an elaborate framework in the Crimes Act for allowing the Ombudsman inspection of controlled operations by the Australian Crime Commission and we found that it was only doing a very small number of its controlled operations under federal legislation. It was doing most of them under state legislation, and there was then a gap in the accountability range. We did an own-motion inquiry to find that there was no risk but it was an indication of how a well thought out oversight and accountability arrangement simply did not work in the way that was anticipated. I think this will be a more continuing challenge in overseeing police operations and corruption.

**CHAIR**—Are there any other comments you would like to make in relation to this inquiry?

**Prof. McMillan**—The only other comment I will make picks up one of the final points in the submission. I mentioned in that submission that I thought that it was important to develop a policy on corruption to supplement the federal arrangements. Interestingly, it is very hard in the federal arena to find a definition of ‘corruption’ and what happens. My office has developed a draft policy on corruption that I will be sharing with ACLEI, the Australian Federal Police and the Australian Crime Commission. I am happy to share it with the committee. I hope that there will soon be an agreed document which defines what we mean by ‘corruption’ for the purposes of these different acts, and identifies the different procedures that should be followed.

**CHAIR**—I note that both the Integrity Commissioner and the Attorney-General’s Department were very positive about that suggestion in your submission.

**Prof. McMillan**—Unfortunately it is almost there.

**Senator CAMERON**—The Victoria Police are also looking at the definition. Has there been any discussion with the Victoria Police?

**Prof. McMillan**—Not with them because the definition that we are looking at is very focused on the definition used in the ACLEI Act, which uses three categories: abuse of power, perverting the course of justice and then, in circular fashion, corruption of any other kind. Yet, other state acts use a different definition of corruption. For example, there is a definition of corruption in the ICAC Act which picks up probably many activities that we would not normally regard as corruption, and they certainly do not come within the federal definition. The different definitions

elsewhere are instructive and helpful but I think each jurisdiction will need its own policy that is geared to its own legislative arrangements.

**CHAIR**—Professor, thank you very much for travelling to Melbourne today to give evidence.

[2.04 pm]

**LEWIS, Associate Professor Colleen, Private capacity**

**CHAIR**—Welcome. Would you like to make a short opening statement.

**Prof. Lewis**—I have a few notes here so I will read from them as I really want to concentrate on one particular aspect in the short time available. The key point that I want to make is that the Australian Commission for Law Enforcement Integrity, the organisation that was established not quite two years ago to respond to and to prevent serious and systemic corruption in two particularly powerful federal agencies—the Australian Federal Police and the Australian Crime Commission—is significantly underfunded. Without a sizeable increase in resources it will be unable to undertake its reactive and preventative responsibilities effectively.

I am going to support this perspective by giving a snapshot of the size of the Australian Federal Police and the Australian Crime Commission, which were taken from their last annual reports, and contrast them with the resources ACLEI has to perform its oversight role. I also want to highlight a very crucial distinction between ACLEI and other Australian anticorruption bodies. I will conclude by raising a perhaps unintended consequence for the federal government of the current underfunding.

The AFP employs 5,435 staff—sworn and unsworn and protective service officers, and ACLEI's role extends to all of those categories. The AFP's income for 2006-07 was \$1.1 billion. The Australian Crime Commission employs 619 staff and its income for 2006-07 was \$91.820 million. This means that ACLEI is responsible for investigating matters relating to serious and systemic corruption or supervising monitoring investigations carried out by the Australian Federal Police or the Australian Crime Commission officers, and—and I emphasise the word 'and'—implementing policies to prevent serious and systemic corruption in relation to both these organisations, which, combined, employ a little over 6,000 persons. ACLEI currently undertakes its reactive and proactive roles with a budget of a little over \$3.5 million, which allows it to employ nine permanent staff, including the Integrity Commissioner. Five of those staff are dedicated to ACLEI's investigative, supervising and monitoring roles. Due to an increase in this year's budget ACLEI is in the process of finalising the employment of three additional staff, and it anticipates that in 2009-10 it will be able to employ a total of 17 permanent staff.

I appreciate that ACLEI does not have to investigate every member of the Australian Federal Police and the Australian Crime Commission. Indeed, like every other oversight anticorruption agency in Australia and beyond, it would only investigate a very small percentage of them. But undertaking thorough investigations and supervising and monitoring corruption investigations carried out by the AFP and the ACC officers in relation to alleged and suspected serious and systemic corruption by fellow officers is a time consuming and costly exercise, and ACLEI should not be restricted in its role or have its effectiveness undermined by a serious lack of funding.

As I mentioned, ACLEI's brief extends to preventing serious and systemic corruption but if it does not have the resources needed to undertake its reactive investigative role it is going to be unable to fulfil its proactive preventative functions. This means that it will only be addressing the symptoms and not the causes of corruption. I am not alone in being concerned about ACLEI's inadequate funding. Last year the Commonwealth Ombudsman, who for the first six months of ACLEI's existence was seconded to the role of inaugural Integrity Commissioner, took the very unusual step of speaking publicly about the organisation's lack of resources. He said:

ACLEI has significant investigation powers, including the power to conduct telephone interception and covert surveillance. But the reality is that ACLEI does not have the budget to exercise those powers.

He went on to say:

... ACLEI probably needs a staff of around 50 in order to exercise all the functions it has been given.

As I alluded to earlier, there is a crucial distinction between the jurisdiction of ACLEI and state based police oversight institutions. For example, the Corruption and Crime Commission's role is confined to Western Australia. The Crime and Misconduct Commission is confined to Queensland. The Police Integrity Commission is confined to New South Wales. ACLEI as to cover all Australian states and territories and beyond. The Australian Crime Commission has offices located in all Australian states and territories and the AFP the same. In addition, the AFP have liaison officers posted to 27 countries around the world and are undertaking peacekeeping roles in countries such as Cyprus and Sudan. As well, they have officers deployed to Cambodia, Nauru, Vanuatu, East Timor and Tonga. ACLEI's responsibilities extend to the conduct of AFP officers in all of these places. It is expected to cover all of Australia and many overseas countries just referred to with a budget at the moment of \$3.5 million and a staff of 12 once the three new appointments are in place.

I will close by saying that perhaps one of the unintended consequences of this level of underfunding for a federal government of any political persuasion is the perception that ACLEI is more representative of symbolic politics than a serious commitment to effective police accountability. However, this perception can be easily rectified by ensuring that this important federal government agency is adequately funded. Thank you for the opportunity.

**CHAIR**—On page 3 of your submission you state that the history of civilian oversight in Australia is littered with examples of oversight bodies being poorly resourced and therefore being constrained in exercising their powers. Can you give us some of those examples?

**Prof. Lewis**—Yes. It goes back more into history to the 1970s and 1980s when these kinds of bodies were being introduced in Australia. The Commonwealth Ombudsman in her annual report claimed that she had the powers but not the capacity to exercise them. The Police Complaints Authority in South Australia for a period of time was severely underfunded. An examination of an annual report by the Police Complaints Authority will show that he was very strong in saying that there was not point in having the organisation if it did not have the funding necessary. There was the Police Complaints Tribunal in Queensland, which had many problems. One of those problems was a lack of serious commitment in terms of funding. The same thing has gone on in overseas countries. This is not unusual. If you look at the literature, you see things like even

some judges saying that if you are really serious about police oversight then you must fund these bodies. In reality, powers without resources equals no powers.

**CHAIR**—Today we have been hearing from some of the Victorian law enforcement integrity bodies, such as the Office of Police Integrity and the Victorian Ombudsman, and the Victoria Police. Are there any observations that you can make on the Victorian integrity system that might be useful for us in the ACLEI context?

**Prof. Lewis**—The major problem of the Victorian model for four years was that the person who was the Ombudsman was also the head of the Office of Police Integrity. But I am sure that that is not something that is being contemplated at the federal level. It did set up a situation which even allowed for the possibility of ridicule because both organisations were supposed to be independent of each other and yet they each had the same person as head. They would be writing to themselves.

**CHAIR**—We did have the Ombudsman acting as the Integrity Commissioner for the first six months of its operation.

**Prof. Lewis**—He was seconded. There could be issues that could arise, such as those that have arisen recently here in Victoria. There was a complaint about the conduct of a member of the Office of Police Integrity and the Ombudsman has responsibility to oversight that. But this was within a period when the Ombudsman was the head of the Office of Police Integrity. It is a conflict of interest situation. I want to stress that this is not in any way a criticism of the individuals. I want to stress that. It is a case of setting up processes that allow these kinds of things to arise such that you get the idea that there could be a conflict of interest situation. That does not help the standing of the oversight body in the community.

**CHAIR**—What about the relationship between OPI and the Victoria Police? Is that working well in your view?

**Prof. Lewis**—From my limited insider knowledge on any of this—I only really know from what I hear in the news and through some research—there is a constructive working relationship, which is what you have to have. You do not want a situation where the oversight body is seen as the enemy, because that is not in any way productive. But it has to be very much arms length as well. It is a very delicate balance, but it has to be a constructive relationship because all oversight bodies rely to some extent on the police to do investigations.

**Senator PARRY**—Thank you very much for your very frank remarks. It is always refreshing to get a direct approach so that we know exactly what you feel. What is your view of ACLEI taking more? Forget resourcing for a minute; you have made that point very well. What about ACLEI, if it was resourced, taking on other agencies, such as the ATO, that have investigative and coercive powers? Have you turned your mind to that at all?

**Prof. Lewis**—Yes, I have. It should extend to all law enforcement agencies. At the moment, it looks like the problems are only with the Australian Crime Commission and the AFP, and yet there are so many joint operations. To exclude them or to have another oversight body looking at that is fragmenting the process. It also allows for gaps to be opened up. When there are gaps, things fall in them. I can see no reason why it should not undertake that role.

**Senator CAMERON**—I put a question to Professor McMillan. I quoted some figures. You have made me go back and have a look at those figures again, because I missed out the protected services offices. I have a figure somewhere around 5,600 for the Australian Federal Police.

**Prof. Lewis**—I have 2,510 sworn, 1,341 protective services and 2,194 unsworn.

**Senator CAMERON**—I do not really want to chase this down, but ACLEI say that there are 1,742 sworn, 1,430 unsworn and 1,467 protective services officers. But we were in about the same ballpark in terms of the numbers.

**Prof. Lewis**—It could be a different annual report.

**Senator CAMERON**—If you look at that, the budget for the AFP is about \$3.7 million annually for close to 6,000 officers if we want to look at them in global terms. The budget for the OPI is \$21.3 million for 13,445 officers. The New South Wales budget is \$16.8 million for 18,570 officers. I cannot understand how ACLEI can operate with any capacity to fulfil its obligations under the act. You have made some comments about that.

**Prof. Lewis**—It cannot, is the answer.

**Senator CAMERON**—Would it be effective doing some, because we have heard the argument that it should focus on certain aspects of its obligations?

**Prof. Lewis**—If it is going to cover the Australian Federal Police and the ACC, it has to cover the whole of Australia and beyond. It is confined in some way to serious and systemic corruption but any of these oversight agencies or anticorruption agencies—whatever you want to call them—must have a proactive role. If you do not have a proactive role there are a lot of consequences. One I mentioned earlier was about always dealing with symptoms and not causes. But you do not want to establish organisations like they did back in the seventies and eighties, which were seen literally as big sticks only, because that does not endear them to the people that they are overlooking. There has to be a way in which they work with the organisations they are overlooking, to look at what the problems are, to use the data from the complaints and to have a look at how they can have proactive policies to prevent that. Research is important as well. The Crime and Misconduct Commission and the Office of Police Integrity here do some excellent reports as well, which go into the broader community and help with the body of knowledge about policing and corruption. Policing and corruption have been around since there has been policing.

**Senator CAMERON**—One of the other propositions that has been put is that the cost of surveillance for telephone tapping is hugely expensive and the technology changes consistently. There might be an option for a national telephone monitoring organisation that can do that work for all of the integrity commissions. Have you given any thought to that or has that been discussed in academic circles?

**Prof. Lewis**—No. But I just came from the federal Attorney-General's forum in Canberra, which was looking at federal criminal justice issues, and there was a lot of discussion about the need to rationalise. Your problem, I guess, is going to be to get the states to agree to that. It makes sense in economic terms because accountability is expensive. It just happens to be a

necessity in a democratic society but it is not cheap. You can see some logic in adopting that approach.

**Senator CAMERON**—What do you say to the argument that the building-block approach of funding was put in place because there was no reported corruption within the Australian Federal Police and that the funding in the state jurisdictions was as a result of demonstrated corruption within those law enforcement agencies?

**Prof. Lewis**—Most police organisations maintain that there is not any systemic corruption and that it is just the rotten apple in a clean barrel. That only gets exposed as being a myth when there is a royal commission or commission of inquiry. There was certainly no admission by anybody in the Queensland Police that there were any systemic problems there until we had the watershed Fitzgerald inquiry. I think the Commissioner for the New South Wales Police at the time, Tony Lauer, said that the idea of corruption in the New South Wales Police was a figment of the political imagination. I can recall no-one saying to the police commissioner, ‘I really think we have a systemic problem here and please could we have a royal commission?’ Once you get the royal commission, which really acts like a bolt of lightning and opens up the police service for a period of time, you actually find that there are issues. Then from that, the royal commissions that we have had in Australia have been able to take their time to recommend a particular form of oversight that they need in their state. Those oversight agencies started with good resources and adequate staff from the minute they open their doors. That is not to say that there were not problems but they were still operational and full strength at that time. This building-block approach, to me, just seems to be delaying the need to have an effective body to look at systemic and serious corruption. It would be delightful if they find that there is none, but history would indicate that that is not the case in policing organisations and law enforcement organisations. One very good reason is that they are subjected to temptation that I, as an academic, simply do not experience. It is the nature of the work that they do. With drugs now, the extent of the rewards has changed things. It is easy for an academic to steer clear of corruption, if you like, because the temptation is not there.

**Senator PARRY**—Or the motives.

**Prof. Lewis**—Yes, and you are not mixing with the kinds of people who see crime as a normal part of what they do—it is what they do for a living; they are criminals. You do not have those temptations or those experiences.

**Senator CAMERON**—This inquiry is looking at the various models. Are you saying to us that it is no use looking at the models unless you are prepared to fund an effective operation at ACLEI? We could fund a model, but the model could be a very narrowly based model that looks at very limited aspects of corruption within the AFP and the ACC.

**Prof. Lewis**—There are lots of ways that you can go with various models. One is the ‘one-stop shop’ approach, which they have in Western Australia and Queensland, where they look at the police and all of the public sector. Then you have the New South Wales model, which is multitiered; you have the Ombudsman doing part of the role and the Policy Integrity Commission doing another part of the role. There are strengths and weaknesses in all of those models. I have sometimes argued very much in favour of the ‘one-stop shop’ approach, but you can get countervailing arguments as well, so it really depends on what suits best. But the most



important thing is that, regardless of what model you go for, you fund it appropriately. That does not mean lavishly, but it is not enough to, as I said, have nine permanent staff, not all of them doing the investigating. Even if, with the increase in the budget, this increases to a whopping 17—and not all of those will be involved in the investigation side of things—there are major problems there. It is not fair on the organisation itself either, because it is never going to be given the opportunity to be effective, because it is operating with at least one hand tied behind its back.

**CHAIR**—You emphasise the importance of education and prevention for external integrity agencies. Could you explain to us what a strong corruption prevention program would look like.

**Prof. Lewis**—The Crime and Misconduct Commission has been doing this for many years. There is not any one approach, and a lot of underfunded bodies are confined to simply giving lectures to recruits and senior management and giving conference papers. That is not in any way against them, but that is all that they can do. The Crime and Misconduct Commission actually gathered the data from its complaints and then looked at where the issues were, and then from that it was able to come up with a manual that it has for all the public sector. It is quite a well-thought-of manual, and it is used by other organisations. It has red flags for corruption, ways in which to approach it and what to look for. That goes out to all the government agencies. They also address all the government agencies and highlight these problems that could arise. They also work with the police. I am going back in memory now because it is a few years since I have been in Queensland, but they had one of their officers work with the Queensland Police Service for a couple of years in an area which had problems in terms of policing—a high crime rate and a low socioeconomic group—and try to find ways in which they could police better and not get the complaints about police officers' conduct.

They also did a very good report into the watch-house in Queensland. If you looked at the watch-house, you thought, 'There's a problem here,' but it was different once you looked at the conditions under which police officers were expected to work. There was no natural sunlight in the watch-house at all. Some people had been there in pretty bad conditions for many, many years. They were isolated. It was horrible; I have been there and inspected it. Those conditions and some of their procedures all led to the problems.

So really, in all fairness to the police, it was the environment and the processes that had become entrenched that were causing the problems. Once the Crime and Misconduct Commission or, as I think it was at that stage, the Criminal Justice Commission identified those things there then seemed to be an improvement in the conduct. So I do not think you can always just look at individual police officers; you have to look at the broader issues as well in terms of how they operate. Some of the staff there are highly respected researchers and work with academics as well in helping to understand the problems and write about them. So there was quite a broad range of issues in what they did.

**CHAIR**—I think we will be heading to Queensland during the course of this inquiry, so that will be very interesting.

**Prof. Lewis**—Queensland has been doing it now since 1989-90, and the Criminal Justice Commission model that Fitzgerald brought down was certainly one of the most advanced and led the way for oversight bodies in other countries as well. In this regard, Australia led the way. Australia internationally is known to have some of the best oversight bodies in the world. Other

countries come to us to have a look. When I go to international conferences I hear, time and time again: 'Oh, but you've got really great models there.'

**CHAIR**—Which ones are you referring to?

**Prof. Lewis**—The Criminal Justice Commission, from the Fitzgerald report, was the one that started to blaze the path and change the whole concept of what oversight bodies should do. It took it from the reactive-only approach to one of reactive plus proactive, organised crime and extended to the public sector. The Criminal Justice Commission also had oversight of serious misconduct of politicians, and still has that.

**CHAIR**—Are there other oversight bodies in Australia which are also highly regarded elsewhere?

**Prof. Lewis**—Yes. The Crime and Corruption Commission, which has very much adopted, with tinkering at the edges, the model of the Criminal Justice Commission. The Police Integrity Commission in New South Wales is a good model, if you want to look at the multipronged approach. Ombudsmen in some states have done an excellent job, but ombudsmen are ombudsmen—

**Senator CAMERON**—There is no answer to that!

**Prof. Lewis**—Can I go back and start again! Ombudsmen have a role to do with administration. They are not there to investigate organised crime and corruption. I think one of the problems down here when we had the OPI and the Ombudsman in the same model and at one stage they were not separate—when it was the Police Ombudsman and the Ombudsman they were not separate—was that it is not the role of an ombudsman to investigate organised crime and systemic corruption. That is not why we have ombudsmen. That is the distinction I was trying to make.

**Senator CAMERON**—One of the critiques we have had of the CCC was that it gets involved in the allegations of corruption at the political level, then the resources are dragged from the police area to the political level and that means it is underresourced in dealing with some of the police corruption issues. Because a political issue is high profile and creates a great story in the press, there is then an internal push to put more and more resources into that. Do you have a view on that?

**Prof. Lewis**—That allegation was made too about the Criminal Justice Commission. In fact my PhD was done on that, on the politics of police complaints, and one of the strong issues I found was that it was having that role of overseeing politicians as well that caused them problems. But they also managed to quarantine off their police oversight role, although there was a period of time in Queensland when one could say that the Criminal Justice Commission spent all of its time and energies focused on trying to avoid being closed down—and that you could relate back to its political oversight role. There was the Carruthers inquiry and then there was a matter that went to the Supreme Court because the government had set up an inquiry to look at the role and function of the Criminal Justice Commission. But it was closed down, and it was the first time ever, that I know of, that a commission had been closed down for ostensible bias.

So there is literature there that you can have a look at that does look at the Criminal Justice Commission and the way it can get embroiled in politics. I think there are two arguments. There is one argument that says you should not allow it to be embroiled in the political process because these bodies actually end up oversighting their masters; and there is another argument that says, if it is public sector corruption, it includes all of the public sector, including elected officials. So there are competing arguments. The point that you are making is very valid, in that at one level they can be embroiled in politics.

**CHAIR**—But it does not mean you cannot have a specific section within a broad-based anticorruption commission that looks just at police matters—specialises in them.

**Prof. Lewis**—No, it does not. But anticorruption bodies are in a very difficult situation, because governments establish them, for a variety of reasons, to actually oversight the administrative arm of government and, in some instances, the parliamentarians. So there is always a tension there. It is another one of those delicate relationships that you have got to try and get just right.

**CHAIR**—Is there anything else you would like to say to the committee?

**Prof. Lewis**—No, I do not think so.

**CHAIR**—Thank you very much for coming and for your time in giving evidence today. I would like to thank all witnesses who have given evidence to the committee today. I now declare this meeting of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity adjourned.

**Committee adjourned at 2.37 pm**