



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR  
LAW ENFORCEMENT INTEGRITY

**Reference: Law enforcement integrity models**

MONDAY, 17 NOVEMBER 2008

PERTH

BY AUTHORITY OF THE PARLIAMENT



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

**Monday, 17 November 2008**

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

**Members in attendance:** Senators Johnston and Parry and Ms Parke

**Terms of reference for the inquiry:**

To inquire into and report on:

- a. the responsibilities and powers of the various state law enforcement integrity agencies;
- b. the organisational structures and internal governance arrangements of the various state law enforcement integrity agencies;
- c. the governance structures that underpin the state law enforcement integrity agencies' relationships with external bodies including:
  - i. state ombudsmen
  - ii. parliamentary oversight committees
  - iii. intelligence-gathering agencies
  - iv. other relevant agencies
- d. the legal rights and obligations of the various state law enforcement integrity agencies to investigate corruption issues involving law enforcement officers formally or informally seconded to national law enforcement agencies or participating in joint operations with national and/or state law enforcement bodies;
- e. existing state corruption prevention programs;
- f. the internal anti-corruption processes of the state law enforcement bodies and the protocols and processes in place for reporting corruption matters to their respective integrity agency;
- g. the adequacy and applicability of existing state law enforcement integrity approaches to the structure and operations of ACLEI.

**WITNESSES**

<b>BOVILL, Ms Michelle, Investigating Officer, Ombudsman Western Australia.....</b>	<b>41</b>
<b>DE LA MOTTE, Acting Detective Superintendent Peter, Acting Detective Superintendent, Internal Affairs Unit, Western Australia Police.....</b>	<b>22</b>
<b>ETTER, Assistant Commissioner Barbara, Assistant Commissioner, Corruption Prevention and Investigation, Western Australia Police.....</b>	<b>22</b>
<b>FIELD, Mr Christopher James, Ombudsman, Western Australia .....</b>	<b>41</b>
<b>HEITMAN, Acting Superintendent Ann, Acting Superintendent, Risk Assessment Unit, Western Australia Police .....</b>	<b>22</b>
<b>McCUSKER, Mr Malcolm James, QC, Parliamentary Inspector of the Corruption and Crime Commission.....</b>	<b>50</b>
<b>MOON, Superintendent Graham William, Superintendent, Police Complaints Administration Centre, Western Australia Police .....</b>	<b>22</b>
<b>ROBERTS-SMITH, Hon. Len, RFD, QC, Commissioner, Corruption and Crime Commission of Western Australia .....</b>	<b>1</b>
<b>ROSS, Adjunct Associate Professor Glenn, Adjunct Associate Professor, School of Law and Justice, Edith Cowan University.....</b>	<b>60</b>
<b>SILVERSTONE, Mr Mike, Executive Director, Corruption and Crime Commission of Western Australia.....</b>	<b>1</b>
<b>TOVEY, Superintendent Andrew Albert, formerly Superintendent in charge, Ethical Standards Division, Corruption and Prevention Portfolio, Western Australia Police.....</b>	<b>22</b>
<b>TUCKER, Ms Bernadine Cathryn, Private capacity.....</b>	<b>60</b>



**Committee met at 9.07 am**

**ROBERTS-SMITH, Hon. Len, RFD, QC, Commissioner, Corruption and Crime Commission of Western Australia**

**SILVERSTONE, Mr Mike, Executive Director, Corruption and Crime Commission of Western Australia**

**CHAIR (Ms Parke)**—Good morning everyone. I call the committee to order and declare open this public meeting of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity. Today's public hearing is 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 the 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 would 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. Before we proceed to hear the evidence, we need to ascertain if the committee is happy to have these proceedings filmed.

**Senator PARRY**—I am happy to move that way, Madam Chair.

**CHAIR**—I put the motion. All in favour? All against? Declare carried. I would also like to check with the witnesses whether they are happy for the proceedings to be filmed.

**Mr Roberts-Smith**—We have no difficulty with that, Madam Chair.

**CHAIR**—Thank you. I welcome witnesses from the Corruption and Crime Commission. I now invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

**Mr Roberts-Smith**—Thank you, Madam Chair. As we are appearing this morning at the request of the committee, there is no preliminary submission which we have provided, as you would appreciate, and therefore nothing for us to speak to in that regard, but it might assist the committee if I make some brief observations about the operation of the Corruption and Crime Commission itself in the context of the committee's own terms of reference. Might I first also

refer to our last annual report, a copy of which has been provided to each member of the committee. I do not know if I need to formally table that but, if so, then I do so, subject to leave.

**CHAIR**—Thank you.

**Mr Roberts-Smith**—Can I say that the main purposes of the Corruption and Crime Commission Act of Western Australia are to be found in sections 7A and 7B of the act. The main purposes are (a) to combat and reduce the incidence of organised crime; and (b) to improve continuously the integrity of, and reduce the incidence of misconduct in, the public sector.

I should pause to say there that misconduct in our act has a particular statutory definition. It certainly includes corruption but it also includes public sector misconduct which falls short of corruption or, indeed, even criminal offences but is nonetheless reasonably serious conduct. Section 7B says that the act's purposes are to be achieved primarily by establishing the commission as a permanent commission. It is able to authorise the use of investigative powers not ordinarily available to the police to enable them to effectively investigate particular cases of organised crime and, importantly, in subsection (3) of section 7B, the commission is required to:

... help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.

The purpose behind me mentioning that is to draw a number of points out. The first is that, as I said, we deal with misconduct. Our jurisdiction extends across the whole public sector, ranging from ministers of the government to members of parliament, all public sector public officers and, indeed, members of local councils and people who are classified as public officers because they work for boards or organisations established under written laws. So that is our jurisdiction and, as I said, it concerns misconduct, not just criminal conduct, although of course it includes that.

The other theme I draw out of that is that our obligation is to seek to maintain integrity across the public sector. It is not just dealing with corruption as some other agencies have a brief to do, but our objective is to maintain integrity within and across the public sector and a main way we do that is to enable public sector agencies themselves to put processes into place to deal with misconduct and to put misconduct prevention programs into place.

I will not detail the powers and other functions which the commission has under the act. They are in the legislation and if the committee wishes to ask questions, then obviously it can do so. I will say that, so far as the structure and operation of the Corruption and Crime Commission of Western Australia is concerned, it seems to me to pretty well accommodate what I would suggest the literature generally regards as essential preconditions for the elimination of corruption and the maintenance of integrity in a public sector environment.

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



The third essential requirement for such an anticorruption agency, I would suggest, is to have appropriate powers. I consider that the WA Corruption and Crime Commission does have those powers and I can answer questions about those should the committee wish. Information is the point I would list fourth there. It is necessary to have access to information across the public sector to enable the commission to do its work. And, very importantly, the fifth consideration I would suggest is adequate resourcing. An anticorruption agency of whatever name cannot operate effectively without adequate resourcing. That is tied in with the first point I mentioned, namely political will. The last two I would say are reporting—the anticorruption agency must be able to report in a public fashion upon the conduct of its investigations and the things which it has found or the processes which it has put in place or helped agencies put in place to deal with corruption or misconduct—and, the final point, a program of corruption prevention.

I mentioned that as being one of our specific functions. Maintaining integrity in the public sector does imply with it or include within it a requirement for the commission to both put measures into place for corruption prevention and to assist departments and agencies to do likewise. Those are what I would identify as the essential requirements of any anticorruption agency. I would suggest that the WA commission does reflect each of those preconditions having been accommodated in the legislation and the way in which the commission operates. Against that background, Madam Chair, I would welcome any questions.

**CHAIR**—Thank you for that very helpful overview, Commissioner. The CCC is responsible for investigating broader public sector misconduct as well as police misconduct. Do you have a separate divisional group that looks at police misconduct and law enforcement matters and what proportion of the commission's resources are devoted to law enforcement integrity?

**Mr Roberts-Smith**—We have at least a couple of areas that work with police in relation to police misconduct. Perhaps I should say something about the reporting requirements. One of the provisions of our act, section 28, requires any public sector agency or head of any public sector agency to notify the commission of any reasonable suspicion that misconduct has or may have occurred, and it is misconduct not to notify the commission, which of course applies to the police.

In addition to that, section 21A of the act requires the police to notify the commission of what the act calls 'reviewable police action'. That has a much lower threshold than the notifications under section 21. The details of the notifications are set out in the annual report at page 22. One can see there the notifications in relation to police. They are, on the face of it, higher than the notifications from other agencies, but the reason for that is largely because of the requirement to notify reviewable action, which has a lower threshold than the other agencies. It may also be that other agencies by comparison, or at least some of them, are not fully across all of their reporting obligations yet, and the commission suspects that in some agencies there is a lower rate of notification than there ought to be, but that is one of the things that we are working on.

In terms of the specific resourcing of the commission to deal with allegations in relation to police, the commission has a number of directorates and units, as you can see from the organisation chart in the annual report. Our police investigations are reviewed or dealt with by operations, the investigations people in the investigations review and complaints assessment unit and to some extent also by our corruption prevention, education and research unit.

In the investigations review and complaints assessment unit, which is the landing point for complaints or notifications into the commission, we have three personnel who are now dedicated specifically to police. We describe them as our police audit team and we do that because we have recently changed the way in which we receive or deal with notifications or complaints concerning police.

Can I go back one step further to explain how we operate, which might put this in context. Clearly the commission cannot investigate or deal with—cannot investigate, certainly—every complaint or notification that it receives from every agency. In the last financial year, we received almost 3,000 allegations or notifications—or, rather, complaints or notifications. I make that distinction because a complaint or notification may contain a number of allegations. We received almost 3,000.

We have a staff of 154 people and a budget of around \$28 million. When we receive these complaints we have to decide, first of all, whether or not they are in jurisdiction and, if they are, what to do about them and who is to do it. Largely because of the obligation I mentioned at the outset that we are to enable other agencies to deal with misconduct themselves, most of the time we would refer the notification or allegation or complaint back to the agency, with a requirement that they investigate it. We then monitor the conduct of their investigation and they are to report to us on the conclusion of it.

If we consider that they have dealt with it in an appropriate way—had regard to all relevant evidence et cetera—and have come to a conclusion which is reasonably open, whether we agree with it or not, we would tick it off as appropriate. On the other hand, if we consider that there has been some fundamental flaw in the process that they have adopted or if the outcome is patently and clearly wrong, we would bring it back and we would conduct the investigation ourselves.

We do conduct investigations ourselves at the outset sometimes, but only in about one per cent of all notifications or complaints, and we obviously choose those on the basis of selecting either the most serious complaints that are made or, alternatively, those which require the particular powers of the commission to properly investigate. In other words, if we referred it back to some other agency or the police, for example, and were of the view that ordinary investigative techniques would likely not produce an outcome, then we would do it ourselves using our own powers.

I talked about the audits. We were originally reviewing all investigations that the police conducted into complaints against police. We decided after some time that that was not necessary. We were satisfied that systemically they were dealing with things generally appropriately and that a better course, modelled on experience elsewhere also, was to do selective audits, so we sent our police team out and I think there are only four regions they have not visited in recent times. They have been visiting the regions. The audit team will go in, talk to the superintendent, have access to all of the police investigation files, work through those and deal with them as appropriate, and that seems to have been quite a successful way of dealing with it.

I should also say, in relation to our dealings with WA Police, that we have obviously an interesting relationship in the sense that it is naturally one of some inherent tension because of

our role to investigate alleged police misconduct and to oversight their own investigations. At the same time, we also work cooperatively with them in two ways. The first is, obviously, in respect of organised crime, where they apply to the commission to seek the commission's authority to access the exceptional powers contained in part 4 of our act, and that has been happening more recently.

It fell into abeyance for some time after some initial difficulties in the early years of the commission, but that has since been revived, and the police have made applications for exceptional powers findings from the commission in recent times. So we work with them in relation to that. But, again, in relation to those powers, our role is to first of all grant the powers if that is appropriate and then to monitor their exercise of them. We also, of course, have to work with them cooperatively in terms of investigation of crime insofar as it involves public officers or relates to misconduct or alleged misconduct by public officers. So it is a reasonably complex arrangement, but certainly during the time that I have been there, which is around 18 months now, I think that we have worked very well cooperatively, notwithstanding those inherent tensions and I think it has been a constructive relationship.

**CHAIR**—Thank you. What is your view of the WA Police internal integrity arrangements and are there any issues upon which the commission and the WA Police have disagreements? When we were speaking with the Queensland Crime and Misconduct Commission last week, they said there were certain areas where there were fundamental differences between the commission and the Queensland Police.

**Mr Roberts-Smith**—I would not say that there are areas of fundamental difference between the Corruption and Crime Commission and WA Police. There are, of course, some areas of disagreement in relation to particular matters as we move through them and that, I think, is inevitable. I would be very surprised if those things did not occur from time to time. Indeed, I think it would be a matter for some concern if they did not arise from time to time. But I can say that I think the WA Police now have quite a robust internal system.

I know Deputy Commissioner Dawson has provided a submission to the committee and Assistant Commissioner Etter will be giving evidence about that. That submission sets out fairly comprehensively the measures that they have taken and, generally speaking, the commission welcomes those and is supportive of them. We did have another role which we inherited from the Kennedy royal commission into WA Police, which was to oversight the recommendations that that commission made in relation to WA Police, and we have been doing that over the first three years of the commission's life.

We have recently decided to cease that function because we thought that most of the recommendations had either been implemented and were operating reasonably satisfactorily or had been overtaken by subsequent events and were no longer relevant—bearing in mind, of course, our continuing general oversight role in respect of the police in any event. We provided the commissioner with a working paper as a result of our work in that area in September and there we acknowledged improvements in the management of internal investigations and also outlined the commission's expectations in relation to quality internal investigations and the management of them.

That working paper, which is not a public document and is only a working paper at this stage, focused on the cultural aspects which can affect internal investigations and it is probably fair to say that in some instances the commission has found pockets, or maybe even individuals, still suffering from a less informed and attuned view of how such investigations ought to be conducted. But in the commission's experience these are not systemic problems, in the sense that they are not widespread, they are not part of the actual police culture itself, and the police themselves seem to be working quite hard to overcome those incidental matters that we have come across. We will be maintaining liaison with police about them if and when we come across them.

**CHAIR**—Thank you. In asking that question, I did not mean to imply that the Queensland commission does not have a good relationship with the Queensland Police. In fact, it has a very good relationship. There are just certain areas where there are differences and, as you have commented on, that is probably a healthy sign that the system is working.

**Mr Roberts-Smith**—Yes.

**CHAIR**—Are you aware of the Australian Commission for Law Enforcement Integrity and how it has been established to date?

**Mr Roberts-Smith**—In broad terms, yes. I would not say I have studied the legislation, but I certainly am aware of it, and we have had discussions with the Integrity Commissioner on a number of occasions. He did come here to visit our commission, to discuss our structures and organisation and operations, and we have had discussions with him in Canberra. So we have a broad understanding of it.

**CHAIR**—You would be aware that ACLEI has been established with what has been referred to as a building block approach.

**Mr Roberts-Smith**—Yes.

**CHAIR**—And it basically has been established with basic capabilities, with a view to enhancing them over time as we understand the needs better. In your view, what capability building blocks are necessarily required in-house for ACLEI to be able to do its job properly? For example, at the moment it does not have a secure hearing room and it has to rely on other agencies for its intelligence-gathering operations and covert activities. Could you give us your view on that?

**Mr Roberts-Smith**—Madam Chair, obviously it will not be a considered view because I was not given notice of the question, and it is rather difficult to answer really. In principle, I think it comes back to what I identified at the outset as political will and resourcing. If any government—and I am not being specific here about the Commonwealth government—wishes to be serious about dealing with corruption, which also means preventing the circumstances in which corruption may flourish down the track or dealing with corruption which may exist already, whether systemically or individually, it will need to provide full political support to the anticorruption agency to enable it to do that because, of course, by virtue of who they deal with, quite frequently they are exposed publicly to all sorts of attacks. So political support in that sense is needed, but also, of course, support in terms of resourcing.

I would have thought it would be very difficult for an anticorruption agency exercising coercive hearing powers to operate without its own hearing room. There is a lot more to conducting a coercive hearing than simply having the equivalent of a courtroom where people can sit around and you have things like benches and bar tables or whatever else. The proper conduct of hearings of that kind requires a lot of technical and infrastructure support. If one is going to be playing surveillance device footage or telecommunication intercepts or doing things of that kind, one needs to have the technology integrated into the courtroom to enable that to be done, and done quickly and effectively, from a forensic point of view. If an anticorruption agency is reliant on going somewhere else, the next questions would be, 'Who do they have to go to to get it?' and, 'Do those resources have that sort of technological or infrastructure support?' ACLEI may well be able to do it using the Australian Crime Commission hearing rooms, for example, but that then also presents another problem if it is the ACC that they are actually conducting an investigation into. That is why I say it is actually quite a complex question.

Desirably, for all of these reasons, one would want dedicated resources, and that extends to the other things which are incidental. I think it would be very difficult to rely exclusively upon intelligence resources from other agencies—again, particularly if they happen to be the agencies that you are investigating for alleged corruption. How do you insulate your inquiry from the intelligence that you are getting? The mere fact that you are asking for intelligence of a particular type will no doubt indicate the sort of thing you are looking at and may well give all sorts of leads to people that you would rather did not know what it was you were on about. Other resources as well, I suppose, are subject to the same sorts of problems. So, ideally, dedicated resources would be in my opinion necessary. If you cannot have those, whether or not some other capability might 'make do' would depend upon what it is and where it is coming from.

**CHAIR**—Thank you.

**Senator JOHNSTON**—Commissioner, how would you perceive the relationship between your agency and the Commonwealth Crime Commission? Is there a close working relationship or is it rather more disparate—they have their functions and you have yours—given that it is a Western Australian focus for you?

**Mr Roberts-Smith**—They obviously do have their own focus, and they are a national body, so they have national priorities. That is not a problem. It just means that they do have national priorities and, if we happen to be dealing with them in something which concerns us because it is Western Australian focused, their priorities may not be the same and they may wish to go down a different track. But I have to say that our cooperation with the Australian Crime Commission, the Australian Federal Police and our counterpart bodies in Queensland and New South Wales is excellent.

We do refer matters to them from time to time. Clearly, we could both be operating within the same geographical jurisdiction. We may be looking at a WA public officer, for example, who may be involved with or dealing with somebody under federal jurisdiction. If that were the case, we would raise that with them and it could be that we would conduct a joint operation with them, or it may be just for intelligence purposes, or it may be just to keep each other informed of what is going on. That would apply not just to the ACC and the AFP but also, as I say, to other agencies.

There is a lot of potential for that in the states and I would say, again, that we have been very careful to foster cooperative relationships with all of the other law enforcement agencies and I think we have all collectively been quite good at doing that. Generally speaking, it is probably fair to say that we all do work quite well together, at least in that broad sense. If it is necessary to work in particular joint operations, then that can be done.

We do in fact have a joint management group in Western Australia which consists of the CCC, the Australian Crime Commission, the AFP, WAPOL, Customs and Tax. That meets reasonably regularly, and there are very good informal contacts between commission officers at all levels and their counterparts in these other agencies and, likewise, between the commission and the WA Police. That is a very important part of effective law enforcement, whether we are dealing with just misconduct in the public sector, which includes crime, or specifically crime, such as the AFP and so on.

I think it is really important to work together like that because crime, whether you are talking organised crime or just ordinary crime, certainly does not respect geographical boundaries. In fact, they quite frequently tend to utilise geographical boundaries to subvert or avoid the effectiveness of law enforcement agencies. So we need to work together and I think we do quite well. I have no complaints—put it that way—about our liaison with your federal agencies.

**Senator JOHNSTON**—Thank you for that. I notice that you have some 70 corruption prevention and education seminars and workshops and you have listed 2,700 persons as participating in those. I take it they are public servants.

**Mr Roberts-Smith**—Yes. These would be all public officers.

**Senator JOHNSTON**—And I note that you have had a decline in arrests or charges for 2007-08. I am interested to know how you benchmark the success of these seminars. What happens at them? I have not actually seen a commission such as yours conduct a relationship with the constituency such as this. How does this happen and is it successful?

**Mr Roberts-Smith**—I think it is successful, but benchmarking is a very difficult thing, and I should say at the outset that we certainly do not use convictions and charges as a benchmark. It is important to appreciate that, as effectively a standing royal commission, one of the main purposes of the commission is to expose conduct—to expose misconduct, specifically, or criminal conduct or corruption—within the public sector. So when we have public hearings or table reports into the parliament or make public statements about the conduct of our investigations or activities, that is what it is on about.

We will certainly lay charges, and we have done, as you can see from the report. That is in the exercise of our police powers, because our powers do include powers which police officers have, looked at in the broad. So if in the course of our investigations into misconduct we come across actual criminal conduct we will quite often lay charges. We would be almost obliged to do so rather than let it go, certainly, but that is not a benchmark of our success and I want to make that point.

Quite often it is a complaint of royal commissions. I think people said that about the Kennedy royal commission: 'It went for so many months'—or 'years'—'and spent so many millions of

dollars, but what criminal convictions came out of it at the end?’ as though they should have. Sometimes they do, sometimes they do not, but that is not the point of the exercise. The point of the exercise is the exposure of the conduct.

In terms then of the success of our corruption prevention programs, again it is difficult, because one might say that, if an education program or a misconduct resistance type program is successful, one would expect to receive fewer notifications or complaints of misconduct over time. On the face of it, that might sound like a reasonable proposition. On the other hand, if there has been chronic under-reporting because people are not aware of what misconduct is and have not been dealing with it effectively, then when we successfully enable agencies to put these processes into place within their own departments and organisations, one could reasonably anticipate that there will be an increase in notifications and reporting, but we would not necessarily want to see that as a benchmark of success either.

So one does have to be careful with the statistics and the figures as to what they actually mean over a period of time. Certainly we have had a deal of success. I would venture to suggest that the best way to measure the success of these sorts of programs is to see, over a period of time, whether departments and agencies which previously were not in a position to identify or deal with misconduct in their own organisations, when we come back later to look at them, do have appropriate processes and structures, do have the investigation unit or people responsible for dealing with misconduct and there is a change to the culture within the organisation. These things can be measured, but you have to go back to look at them down the track to find them.

Certainly that is the impression that we are having. We have been emphasising very much within the public sector that our role is to work with agencies and departments to help them identify misconduct risks and to put processes in place to enable them to deal with it when it occurs, but also to entrench and maintain a culture which is in opposition to misconduct and which sustains integrity.

We recently launched a misconduct resistance package across the public sector. We had a breakfast launch. The Governor attended and launched the product and gave quite a useful speech, I think. Our own Governor here, as you would know, Senator, is himself an ex-senior public servant and he was particularly interested in what we were doing. We had about 250 CEOs and directors-general attend that launch. Certainly the feedback which we have received from that since has been very positive. But that again is a package which we have produced in collaboration, I might say, with the CMC in Queensland and ICAC in New South Wales and other agencies, which we put into the departments and then support by providing advice, consultations with staff and so forth, to enable to departments to put their own processes into place and to run it.

We conducted conflict of interest workshops for quite some time. These were very popular, in the sense that people who went to them said that they were grateful to have the opportunity to understand what conflict of interest is all about and what to do about it. We have also put leadership integrity programs and workshops into place.

Within the Department of Premier and Cabinet, they have been taken over directly by a unit which has been established within the department to conduct those sorts of programs for the workshops—conflict of interest, integrity training, misconduct resistance, that kind of thing—to

incoming CEOs and other senior executive service personnel within departments. We did the workshops, we did the programs and then we moved into train the trainer mode, and they are now conducting those and we have moved on to other educational and corruption prevention measures.

I should also say that we do put people into agencies to conduct agency reviews, which is also part of the same program. We will look at what structures, if any, they have in place. We will seek to help them identify their misconduct risks and we will make recommendations. Part of that too has resulted in—generally at the request of the agencies themselves—us agreeing to have joint agency meetings on a reasonably regular basis at a fairly senior level so that our people can go and talk to their senior people about these programs and how they are being progressed and implemented within their own agencies. So these are joint operations group type meetings which we have fairly frequently.

We have done reviews of WA Police, as you would know, Department of Employment and Training, Department of Local Government and Regional Development, Community Development, Child Protection, Government Employees Housing Authority and the Department of Justice in the now Department of Corrective Services. We have worked with all of those in those various ways. Again, one can in the end only judge these things by the feedback and by whether or not they seem to have effective processes in place, and that does seem to be a process which is working.

**Senator JOHNSTON**—My last question before I hand over to my colleague has a Western Australian flavour. I am not as familiar with the legislation as I should be, but the parliamentary inspector model that we have in Western Australia seems to be rather different to the federal ACLEI model, in that the parliamentary commissioner is much more, can I say, involved, much more public in his oversight of your activities. Are you happy with that model and do you have a mechanism whereby you independently talk about your resourcing and statutory amendment without fear or favour to the Attorney-General's Department or, indeed, the Attorney? Would you like to comment about that? You may not, and I will accept that if you do not, but I see that that has been an issue in Western Australia, unlike other jurisdictions.

**Mr Roberts-Smith**—Can I deal with the last part of the question first. The structural mechanism by which the commission would raise considerations of legislative amendment, staffing, resourcing, things of that kind, would primarily be through the parliamentary joint committee. I meet with that committee ordinarily about four times a year; maybe more if they or we wish to do so. There are certainly things which the committee might wish to raise with the commission and ask us about, but also it is just as good an avenue for the commission to raise matters with the committee.

**Senator JOHNSTON**—But they will make recommendations to the government, to the executive?

**Mr Roberts-Smith**—It is a bipartisan, bicameral committee, and it can produce reports which contain recommendations. Yes, they would table their reports into the parliament, making recommendations and expressing their views. So far as dealing with the government of the day is concerned, certainly I have been very careful to make the point from the outset of my tenure that the commission is independent of the executive government and that we are an instrument of the



parliament, albeit an independent instrument. The Attorney-General previously, and now the Premier under the current government, has portfolio responsibility for the commission.

Certainly the practice in the past—and it has continued thus far under the new government—has been not to interfere in any way with the commission, even to the extent of budgetary allocations. The Attorney left it to the commission to cast its own budget, dealing directly with the Department of Treasury and Finance, and the Premier so far has taken the same course.

**Senator JOHNSTON**—Is there something formal and enduring in the nature of that power to you to deal with your own appropriation?

**Mr Roberts-Smith**—I suppose it has become a matter of parliamentary convention.

**Senator JOHNSTON**—Convention, yes.

**Mr Roberts-Smith**—There is nothing formal in it, but I can say unequivocally that there has been no difficulty in any government to date dealing with the commission on that basis and recognising its independence. In fact, I think it is fair to say that the governments to date have been very scrupulous and the ministers have been scrupulous in their desire to, if you like, distance themselves from any situation which could give rise to any perception that they were seeking to interfere with the conduct of the commission. Certainly nothing has ever happened operationally in relation to that.

I was making the point that if I were to have a meeting with the Attorney, or with the Premier now under the current arrangements, to discuss things like staffing or resourcing arrangements, I could certainly do that. But if I did—and I make the point to them each time—I would have the same conversation with the Leader of the Opposition or the shadow Attorney.

**Senator JOHNSTON**—And the committee.

**Mr Roberts-Smith**—Yes, and the committee. But I was just dealing with ministers.

**Senator JOHNSTON**—So everything is on the table.

**Mr Roberts-Smith**—Yes.

**Senator JOHNSTON**—You cast your own budget.

**Mr Roberts-Smith**—In consultation with DTF.

**Senator JOHNSTON**—With the benefit of hindsight of what it cost you last year and what issues you have had.

**Mr Roberts-Smith**—Yes.

**Senator JOHNSTON**—So you are confident that there is no suggestion that there is any constraint upon you as to your operational effectiveness from a money point of view.

**Mr Roberts-Smith**—Yes.

**Senator JOHNSTON**—And you are the author of your own operation, pretty well.

**Mr Roberts-Smith**—We certainly are the authors of our own operations. We do not report to the parliamentary committee in relation to operations, other than in the most general terms, and certainly not in relation to specific operations. The parliamentary inspector does have power to audit our conduct of whatever we do, including operations, but there are reporting restrictions on him then which apply in terms of what he can say about that. So there have been no pressures on the commission. Certainly there are ordinary budgetary pressures, as one would expect, from the Department of Treasury and Finance, but no specific political pressures of any kind, so that model has worked quite well.

**Senator JOHNSTON**—There is a point about the parliamentary commissioner that I am a little concerned about, and I do not know whether you want to comment. You are a former Supreme Court justice.

**Mr Roberts-Smith**—Yes.

**Senator JOHNSTON**—And he is a practising senior counsel. I find that problematic, if I may say so, in terms of the authority disposition of the legislation.

**Mr Roberts-Smith**—Yes.

**Senator JOHNSTON**—Do you find it at all difficult?

**Mr Roberts-Smith**—Let me begin this way: the legislation itself provides a very good model for oversight of the Corruption and Crime Commission. Perhaps I should quote something that I have said on other occasions, because sometimes it seems to be ignored—that is, the commission emphasises that it considers the role of the parliamentary inspector, as it is framed in the legislation, to be absolutely necessary and critical to the operation of the legislative scheme.

The external and independent monitoring afforded through the mechanism of the parliamentary inspector to ensure that the commission's operations are conducted in accordance with its own act and other laws of the state and that its procedures are effective and appropriate gives to the parliament, the community and the commission itself the confidence that the exercise of the commission's extensive powers is appropriately subject to parliamentary scrutiny and ultimate legislative control. That is the commission's formal position and it is a position which I personally wholeheartedly endorse.

Coming back to your specific question, there are obvious potential difficulties in the appointments of individual commissioners or parliamentary inspectors, depending on backgrounds and circumstances, which is why I emphasise the legislation itself. You asked the question, obviously, because you appreciate that there has been media attention given to some disagreement between the current parliamentary inspector and the commission as to the precise scope and ambit of his role, but those are differences of opinion about the operation of the legislation. Hopefully, they can be worked through. We seem to have reached some accommodation in relation to this point and that has reflected goodwill on both parts.

To come specifically to your question: structurally, given that the act specifically recognises that the commissioner may be a former Supreme Court judge, I would have thought—just in principle and all personalities aside—that were that the case, it would be an easier mechanism to work if the parliamentary inspector were also a retired Supreme Court judge or somebody of that stature. There are inherent difficulties, in any event, with having a practising lawyer as the parliamentary inspector, particularly of a small jurisdiction such as Western Australia. In saying that, I make no reflection at all on the current parliamentary inspector. I am simply talking about structure and mechanism.

**Senator JOHNSTON**—That is right. Thank you for that answer.

**Senator PARRY**—Could I pick up where Senator Johnston has left off. The parliamentary inspector's role is obviously of great interest to ACLEI, because we do not have one, and it would be ideal for any commission to have someone who is going to do the work of the commission on behalf of the commission. I want to clarify some very quick points. Does the parliamentary inspector only have statutory right of audit of your commission?

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—Can the parliamentary inspector in WA act unilaterally and undertake his own investigation without committee approval or direction?

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—Do you find that good or bad?

**Mr Roberts-Smith**—The functions and powers of the parliamentary inspector are set out in sections 195 and 196 of the Corruption and Crime Commission Act. Given what is contained in those provisions, the parliamentary inspector model is a very sound one. But, as has already been adverted to, there are differences of opinion, unfortunately—or have been—between the commission and the parliamentary inspector as to precisely what the scope and ambit of those powers are. On my understanding of what they are, it is an excellent model.

**Senator PARRY**—You are familiar with Queensland. In Queensland the parliamentary commissioner or inspector—and I am going to ask you about title in a moment—cannot act without explicit direction, apart from statutory provision for audit and other such reviews.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—The Queensland witnesses were quite comfortable with that arrangement, thinking that was a good arrangement.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—I am interested in your broader comment on whether you feel the principle to have an inspector who can act unilaterally is good, or should an inspector be responding to direction from the committee?

**Mr Roberts-Smith**—I would have to say that I would prefer the Queensland model in that respect. I say that because the commissioner of the Corruption and Crime Commission is a parliamentary officer responsible directly to the parliamentary joint committee. It is the commission which conducts investigations and inquiries. Under our structure the parliamentary inspector has statutory powers of audit, which are set out in section 195, and can operate either on reference from the committee or on his or her own motion. They can also then table reports directly into the parliament or to the parliamentary joint committee. To that extent he is not constrained by what the committee may consider appropriate. That probably is potentially problematical.

**Senator PARRY**—Can I examine the role of the parliamentary inspector without looking at any particular jurisdiction.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—You have a parliamentary oversight committee.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—The parliamentary oversight committee, by the nature of its composition, cannot run around and conduct investigations.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—So the parliamentary oversight committees in WA and Queensland jurisdictions then provide for a person or an office to undertake—I suppose ‘legwork’ is oversimplifying it—the legwork that the committee physically cannot do or is restrained from doing by virtue of office.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—In that regard, the model for having an inspector purely at the direction of the committee tends to make sense to me, but obviously the inspector being able to do things by self-reference has some good elements that work. Can you give any examples of what some of the unique or better outcomes are of having an inspector that can self-determine?

**Mr Roberts-Smith**—I might suggest a compromise model. It is useful for the parliamentary inspector to conduct audits of the commission’s operations or activities as the parliamentary inspector sees fit because that is a good check, if you like, and over time the parliamentary inspector and the parliamentary inspector’s office will develop an understanding of and expertise in how the commission itself operates, which will suggest where it would be useful for the parliamentary inspector to focus his or her audit activities.

The difficulty, though, is where one goes from there. The committee ought to be able to give directions or make requirements of the parliamentary inspector because, again, the parliamentary inspector is a parliamentary officer responsible to the committee. It seems to me that a much more functional approach is to have the committee able to say, ‘We want you to look at this,’ or, ‘We want you to report on that.’

But I also am of the view, based on personal experience more recently, that the parliamentary inspector ought to report to the committee, not table reports directly into the parliament. It is one thing if the committee decides that a report from the parliamentary inspector should be tabled into the parliament and become a public document. That is how political accountability of the commission and the parliamentary inspector can be achieved. But there are potential difficulties with the parliamentary inspector being able to, first of all, decide what they want to do themselves, and then to table a report, ignoring the committee. I have difficulty with that.

**Senator PARRY**—Thank you. I want to move on to some other issues. Thank you for providing your annual report; I have just glanced through it this morning. At page 29 of your report it says that disciplinary action was taken and it lists, at the bottom of that page, some of the agencies.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—There is Landgate. When you see ‘gate’ after something you cannot help but wonder what it is. I am curious about Landgate. Also, I want to ask for some breakdown statistics about these in a moment. But what is Landgate?

**Mr Roberts-Smith**—Landgate is essentially the land titles registration office.

**Senator PARRY**—Right. Going through your table on page 24, then, to me this would be a pleasing note: that ‘serious criminal conduct’ is just one per cent. It represents 28 cases out of 2,899 reports.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—The 2,899 are reports of allegations, or allegations of misconduct, I gather. That is the total figure.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—Of those, 28 are serious criminal conduct. Out of those 28, do you have any idea of how many were proven or how many resulted in actions? It does not matter if you do not have that.

**Mr Roberts-Smith**—I cannot give the answer to that offhand. These take time to progress through the system and some are still before the courts.

**Senator PARRY**—Would you be satisfied that, out of the total allegations of serious criminal conduct, that represents a relatively small number? Twenty-eight cases seems to me to be a good figure.

**Mr Roberts-Smith**—It is a good figure in that sense. Again, it is like everything else. I know it has recently been said—and it may have been said to this committee—that in some jurisdictions there is an argument that there is no need for an anticorruption agency because there is no corruption; one does not see it. But the reality is, of course, that there will be offences being committed. There will be some corrupt people doing corrupt things.

Certainly we do not have a view that it is a major problem within the WA public sector, but we do not know the extent to which individuals may be engaging in conduct of that kind until we find it. That is why it is difficult to answer that kind of question. It would be a mistake simply to assume there is not any going on, but certainly we have no understanding that there is any systemic corruption—widespread corruption—of the sort that we have seen in other jurisdictions in Western Australia.

**Senator PARRY**—That was going to be my supplementary question. Are any of those 28 linked or are they 28 stand-alone cases?

**Mr Roberts-Smith**—Some of them were linked.

**Senator PARRY**—They are allegations.

**Mr Roberts-Smith**—Yes. Some of them were linked. I am also a bit diffident about dealing with questions like this because, obviously, operationally there are things that we are doing as well.

**Senator PARRY**—I am very happy and understand that completely. I am struggling a little bit with the table on page 21. 2,899 were received and I assume that 2,308 notified, so obviously some 500 were just dismissed or knocked out.

**Mr Roberts-Smith**—No. I made the point earlier that a notification or a complaint may contain a number of discrete allegations.

**Senator PARRY**—So it is a breakdown from the total package?

**Mr Roberts-Smith**—Yes. You see that we get 2,300 notifications, say, but involving almost 3,000 allegations.

**Senator PARRY**—I have just picked that up. Thank you. Have you found that there are vexatious complaints from officers? If I use an example in the police jurisdiction, would you find that you get a vexatious complaint that might involve an officer going for a promotion and, because of the timing of that complaint, it comes to you, even though it might be misproven later? Is there any record of that, or is there any comment you wish to make about that?

**Mr Roberts-Smith**—I cannot think offhand of any vexatious complaints based on that kind of consideration. I certainly can recall one offhand which was a false complaint and was subsequently prosecuted. It is an offence to make a false complaint to the commission.

**Senator PARRY**—You did mention earlier that about 45-odd per cent, from memory, are complaints or allegations against police, the reason being that police have—and I think these were your words—a higher standard or a lower threshold.

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—That probably gives rise to the high number of complaints. Would it also be a factor that members of the public or others would be less likely to come forward with a

complaint in other sectors because that is a newer area, whereas complaining against police has been a time-honoured practice?

**Mr Roberts-Smith**—Yes.

**Senator PARRY**—But not for local government agencies and other departmental agencies. That question involves a few things: what percentage of members of the public are complaining? What about inside-the-agency complaints? That is required reporting. What about whistleblower complaints? Do you have a breakdown of those in your commentary?

**Mr Roberts-Smith**—We do not have a breakdown in those terms.

**Senator PARRY**—I would be happy with anecdotal comment.

**Mr Roberts-Smith**—There is an increasing awareness on the part of the community at large about, certainly, the operations of the Corruption and Crime Commission. I think we have quite a high profile, which does tend to generate complaints from members of the community, which is of course also part of what we are on about. That is one of the reasons, for example, that we conduct public hearings when we do.

But part of the purpose of a lot of the publications or media releases that we issue is to keep the community informed that we are there, that we deal with public sector misconduct and that they can notify us directly of any allegations or complaints. I do not have a breakdown, but certainly I know that we do get a lot of complaints from outside the Public Service, as well as notifications from within it. I would not have thought there was a lack of awareness on the part of the community that they could complain about public sector misconduct to the commission. I do not have any sense of that at all.

**Senator PARRY**—Thank you. I now want to turn to police training and I will ask the police witnesses in the next segment. You have mentioned on page 17 under the paragraph entitled ‘Western Australia police reform’, in the second paragraph, that you are providing programs and presentations for senior police. Do you have any involvement (a) in an advice capacity or (b) in a direct educational role at the Police Academy in training of recruits from day one?

**Mr Roberts-Smith**—No. Again, that is potentially a problematical area, but we do have very close relationships with the police, as I have said, and a lot of input—through Assistant Commissioner Etter in particular—into their training programs. We can give you an illustration of the liaison we have. We have regular formal meetings with WAPOL. We have a quarterly joint agency steering group meeting. That is a meeting at commissioner level, so we have the commissioner of the CCC and the Commissioner of Police, together with our senior executives.

On the police side, we have the deputy commissioner and the assistant commissioner, corruption prevention and investigation. That is Assistant Commissioner Etter. We have on the commission side Mr Silverstone, who is the executive director, and our director of corruption prevention and education, who is Dr Irene Froyland. That is a quarterly joint agency steering group meeting which we have. We have monthly meetings between the commission’s investigations review and complaints assessment branch and, previously, the major fraud squad, who took over police responsibility for criminal allegations in the public sector, but from 1

November the role moved to the crime incident management unit, so the meetings will be with them.

Those are the two formal meetings we have regularly. We have regular informal meetings. I meet, for example, with the Commissioner of Police at the end of every month. We have no agenda. It is a completely informal meeting. We take it in turns—he comes to my place, I go to his place, as it were—and we simply talk to each other about what is happening operationally or whatever issues we think we need to discuss. Certainly I have found that very helpful, very flexible and a very good way of keeping up with information that you might not otherwise get from within your own stream.

We have monthly informal meetings between the director of corruption prevention, education and research and Assistant Commissioner Etter. We have meetings every three weeks between our director of operations and the deputy commissioner of the WA Police. We have regular meetings between our director of operations and Assistant Commissioner Etter, and we have regular meetings between our director of operations and the assistant commissioner, crime, from WAPOL.

If you put all of those together and then factor into that things like our police audit teams, who have established personal contacts with police superintendents and even more junior officers through the regions, we do actually have some very good formal and informal networks and communications between the two organisations.

**Senator PARRY**—Could I play devil’s advocate there. Do you think it is too close?

**Mr Roberts-Smith**—No, I do not, because we are very careful about how we deal with issues. For example, if we are conducting operations jointly with WAPOL we do not mix our teams. They do their thing and we do our thing, but we will share intelligence, and we will work together in most cases to achieve a particular outcome which will meet the objectives of each organisation. I certainly take the point that you make and one does have to be careful about that. I am, personally, certainly very alive to getting too close or even giving rise to a perception that we are too close to an organisation that we have a responsibility to oversight. But I think we have struck the right balance. The relationships are good, but they are not—

**Senator PARRY**—Not cosy.

**Mr Roberts-Smith**—They are certainly not cosy. I mentioned that inherent tension before. We certainly do get issues where some of that inherent tension comes to the fore. As I said earlier, though, that is a healthy sign and we are able to manage our way through those instances when they occur.

**Senator PARRY**—You mentioned earlier that you undertake selective audits of police stations and of local superintendents. Are they random and unannounced?

**Mr Roberts-Smith**—They are random but they are not unannounced. We do tell them shortly before we are going to go in there, but we require production of all their complaint files and we will select which ones we wish to pursue. If there are things that we think need to be progressed further, we make that decision.



**CHAIR**—What do you mean by ‘shortly before’? Do you mean a day before or a couple of hours before?

**Mr Roberts-Smith**—It would be a few days before at least, not just hours. Were we to have reason to think we need to just walk in cold, we can do that, but it also has to be remembered that we do have a very comprehensive overview of what is in their system at any time.

**Senator PARRY**—Do you have real-time access to their database?

**Mr Roberts-Smith**—I do not wish to comment on that.

**Senator PARRY**—That is fine. Finally, coming back to a more macro level, do you have a view—and if you do not want to make a comment, I will respect that—on the composition of the parliamentary oversight committee? Do you think parliamentarians themselves should have at least some criteria, maybe some length of tenure within the parliament, before they are selected? I know it is the jurisdiction of the parliament to appoint, as it does with our committee, but I would be interested in your views on whether you think there needs to be any degree of competence in law enforcement and whether there need to be some other forms of criteria that you would see fit for a parliamentarian to hold.

**Mr Roberts-Smith**—That would be a question I could answer if I were asked by the joint parliamentary committee responsible for the commission, but I do not think it is appropriate that I express a view about it here.

**Senator PARRY**—That is fine. And no view about the Commonwealth at all?

**Mr Roberts-Smith**—No, not specifically, but one might say as a matter of general principle that it would be self-evident that people who have some knowledge and experience in the area with which they are dealing would presumably do better than people who do not.

**Senator PARRY**—Thank you very much, Commissioner.

**CHAIR**—I note that in Queensland the chair of the parliamentary committee is required to be a lawyer. I think that is a rather good thing.

**Senator PARRY**—We could argue about that all day.

**Mr Roberts-Smith**—Madam Chair, I wonder if Mr Silverstone could be excused at this stage. He has an urgent commitment elsewhere.

**CHAIR**—Of course. Thank you very much.

**Mr Silverstone**—Thank you.

**CHAIR**—We will shortly be winding this up, but I do have a couple of quick questions. I note that the parliament committee has a formal role in promoting integrity in the public sector. What does it actually do?

**Mr Roberts-Smith**—The parliamentary committee or the commission?

**CHAIR**—No, the parliamentary committee, according to our information we have been given.

**Mr Roberts-Smith**—I suppose they might say that they would fulfil that role by tabling reports from time to time. Again, that is a matter you might have to direct to them.

**CHAIR**—Yes. Unfortunately, we are not speaking with them today, so I thought I would ask you. Okay, we will take it up elsewhere. In relation to your staff, do you have any current or former police working at the commission?

**Mr Roberts-Smith**—Yes, we do. We consider it appropriate, and indeed necessary, but I will qualify that. We do not have current police officers working for the commission; not like the CMC model, which does for historical reasons. We certainly do have former police officers from a range of jurisdictions because, obviously, if you are looking for trained and experienced investigators that is usually where you are going to find them. We are conscious of the potential difficulty of having, in particular, WA police officers working with the commission, but we have stringent vetting requirements within the commission. Everybody who is employed by the commission is subject to strict vetting. Our people are cleared to highly protected level. They get background checks done on them and it is a very stringent process.

In addition to that, of course, we have quite strict statutory requirements. Section 184, I think it is, of the act requires all officers of the commission to be sworn in before the commissioner before they commence duties. The oath or affirmation that they are required to take requires them not to disclose any information that comes into their possession under the Corruption and Crime Commission Act or in the performance of their duties, and it is a serious offence for them to disclose that. That applies forever, so there will be no books written by former members of the Corruption and Crime Commission, for example, down the track. Having taken the oath, that will be an offence no matter how long afterwards they might disclose or seek to disclose information.

**Senator PARRY**—We should apply that to politicians, I think.

**Mr Roberts-Smith**—Again, we are careful to strike a balance. We will have some WA police officers within the commission, but they are mixed in with people who are not former police officers and people who are former police officers from other jurisdictions. We are conscious of the need to avoid any question of importing any particular police culture into the commission, so our staffing, our recruiting, is predicated also on getting an appropriate blend of people to maintain the commission's own culture and not to import some law enforcement culture from elsewhere.

**CHAIR**—Thank you. Did you have any further statements you wish to make?

**Mr Roberts-Smith**—No, I do not think so, Madam Chair.

**CHAIR**—I thank you very much for giving your time to give evidence today.

**Proceedings suspended from 10.23 am to 10.36 am**

**DE LA MOTTE, Acting Detective Superintendent Peter, Acting Detective Superintendent, Internal Affairs Unit, Western Australia Police**

**ETTER, Assistant Commissioner Barbara, Assistant Commissioner, Corruption Prevention and Investigation, Western Australia Police**

**HEITMAN, Acting Superintendent Ann, Acting Superintendent, Risk Assessment Unit, Western Australia Police**

**MOON, Superintendent Graham William, Superintendent, Police Complaints Administration Centre, Western Australia Police**

**TOVEY, Superintendent Andrew Albert, formerly Superintendent in charge, Ethical Standards Division, Corruption and Prevention Portfolio, Western Australia Police**

**CHAIR**—I welcome witnesses from the Western Australia Police. Is there anything that any of you would like to say regarding the capacity in which you appear today?

**Supt Tovey**—Up to a week ago I was in charge of the WA Police ethical standards unit.

**CHAIR**—Now I just need to ask you if you are happy for these proceedings to be filmed. Okay. The committee has accepted your submission as submission No. 11. Are there any changes you would like to make to it before we proceed?

**Assistant Commissioner Etter**—No, no changes.

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

**Assistant Commissioner Etter**—Thank you, Madam Chair. I am currently the assistant commissioner of corruption prevention and investigation for the WA Police. I have held this position since February 2006. I have been with the WA Police for just over four years. I have previously served with the New South Wales Police Force and the Northern Territory Police and held the position of the director of the Australasian Centre for Policing Research in Adelaide for five years. I am accompanied by four of my five portfolio superintendents. The only superintendent not in attendance today heads up deaths in custody.

Superintendent Graham Moon heads up the Police Complaints Administration Centre, which deals with all complaints against police. His area is also responsible for overseeing the implementation of the Managerial Intervention Model, the MIM. Superintendent Andy Tovey, to my right, as he indicated, up until a week ago headed up the ethical standards division, which looks after loss of confidence proceedings, disciplinary matters, identification of learning outcomes and policy issues such as our organisational values, the code of conduct and the gift policy and a number of other important documents.

Acting Superintendent Pete De La Motte, also to my right, is in charge of the internal affairs division, including the internal affairs unit which detects and investigates more serious allegations and alleged corruption. He also looks after a covert arm of surveillance officers, intelligence analysts and technicians, the integrity testing unit and the personnel vetting unit. Acting Superintendent Ann Heitman, to my left, currently heads up the risk assessment unit, which is responsible for internal integrity checking, the administration of our IAPro system and our early intervention scheme where we profile at-risk officers.

The risk assessment unit also monitors, for example, our 'use of force' incidents. The superintendents are here today to answer any specific questions about their particular areas of operation. Unfortunately, the commissioner is away interstate and was unable to attend.

As a general introduction, my portfolio currently has 100 staff: 73 sworn members and 27 police staff. We have an operational budget of \$1.351 million. Salaries are covered centrally. As at 30 June 2008 WA Police had 5,363 sworn staff and 1,653 unsworn or police staff. My area deals primarily with managerial disciplinary matters concerning sworn staff. Unlike most assistant commissioner positions, my position reports directly to the Commissioner of Police rather than to a deputy commissioner. I am appointed liaison officer with the CCC on police integrity issues, pursuant to an MOU signed by WAPOL and the CCC in June 2005.

We have made a submission to the committee which addresses what we saw as the relevant points of the terms of reference, those being sections e. and f., which relate to existing state corruption prevention programs and our own internal anticorruption processes. Our submission comments on a range of initiatives in the corruption prevention area within WAPOL and on reporting practice in relation to the CCC.

WAPOL has been very active in the area of corruption prevention and investigation, particularly since the finalisation of the Kennedy royal commission in 2004. We are certainly trying to introduce relevant cultural reform and ensure appropriate supervision, management and leadership. We are about developing a corruption-resilient organisation, as we realise it is unrealistic to believe that we can eliminate misconduct and corruption entirely. It is all about continuous learning and improvement. We do not support the 'bad apples' theory and work hard to ensure that unethical behaviour and corruption are not institutionalised.

We aim to work closely and cooperatively with the CCC in ensuring appropriate complaint investigation and management and the investigation of more serious complaints of misconduct or corruption. We also liaise closely on issues of prevention and education. We also provide a broader leadership role in relation to the government sector and the community at large, given that we are such prominent role models in the area of integrity.

In this regard, other government agencies often liaise with us and seek our policies and approaches on various issues. We are called upon to give many talks on integrity and ethics to professional associations and organisations. I also lecture to the senior police leadership programs on leadership, power and integrity—for instance, at PELP, the Police Executive Leadership Program, at the Australian Institute of Police Management in Sydney.

On the established framework with the CCC, as the commissioner of the CCC mentioned we have an operational liaison group and we have a joint agency steering group. The joint agency

steering group brings together Commissioner Karl O'Callaghan and Commissioner Len Roberts-Smith. The operational liaison group is more the director of operations, the director of corruption prevention, education and research, which is myself and the assistant commissioner, crime. So we have the two levels of groups that meet regularly.

In addition, we have regular informal meetings. I have monthly meetings scheduled with Irene Froyland, who is the director of corruption prevention, education and research, and I met ad hoc with the director of operations probably once a month or once every two months, but we make regular phone calls on various issues. The MOU of June 2005 states that both organisations will work collaboratively towards improving the culture of policing, enhancing leadership, supervision and management and implementing and applying appropriate corruption prevention strategies.

In regard to the nature of the relationship with the CCC, on the corruption prevention integrity side we have a very good relationship; we work cooperatively and constructively on many issues. The CCC have already pointed out that they are happy with the way we have been investigating and overseeing complaints, and they have adopted a new audit approach, which is a positive sign. They also mentioned that they have monitored very closely the implementation of the recommendations of the Kennedy royal commission, to the point where they have now stopped that process because they believe that either we have implemented the recommendations or time has overtaken some of those recommendations and they are no longer relevant. Those are two very positive signs that WAPOL have been doing a good job in this area.

I will mention some of our major initiatives in recent times. Development of the Managerial Intervention Model was a recommendation from the Kennedy royal commission. It recommended that we look at the Fisher review, which was undertaken for the Australian Federal Police. The MIM is about moving away from a punitive model—the disciplinary system—to a more managerial-remedial approach and making supervisors more accountable for the actions and performance of their subordinates. We have adopted that. That has been in for a couple of years now. We have evaluated it, and there are still some teething problems, but we are quite pleased with the way it is going, and a number of other jurisdictions around Australia are moving towards a managerial model as well.

We have also implemented an early intervention system using our new database, which is IAPro. We won a national award just a couple of months ago—the Corruption Prevention Network award—for that particular system, which is reliant on the IAPro database that we use. Personnel vetting was another recommendation of the Kennedy royal commission and we now have personnel vetting in place. That is a much needed tool with counterterrorism being such a prominent aspect of policing these days. The Commonwealth particularly is very stringent on personnel security. For our people to deal with the Commonwealth, they have to be cleared, usually to secret or top secret level. We have staff in high-risk areas that are cleared to highly protected levels as well. That has worked out very well. There is still more to do, but we are progressing well on that front.

We are trying to develop more of a professional reporting culture so that people feel more at ease in reporting unethical behaviour or misconduct. We are currently looking at reviewing or evaluating our Blueline, which is the system in place where people can ring up and anonymously

report police misconduct. We have not had too many calls on that line, so we want to enhance that or provide other opportunities for people to report misconduct or corruption.

We are working on a new police administration bill, which will also include drug and alcohol testing, both random testing and targeted testing, and mandatory testing after a critical incident. We have been using integrity testing for a while, but we are seeking some additional legislative backup for a number of the strategies involved. To give you a flavour of some of the things that we confront, I will run through some of the big issues for WAPOL. Inappropriate use of emails is still an issue, even though we have had some fairly major cases. There are still issues with unauthorised access to computers, but we have certainly tried to do a lot of prevention and education in that area.

**CHAIR**—When you say ‘unauthorised access to computers’, do you mean to information that might be—

**Assistant Commissioner Etter**—Going onto confidential police databases to look up relatives or ex-partners or that sort of thing.

**CHAIR**—Thank you.

**Assistant Commissioner Etter**—It is still an issue for us. We monitor very carefully the use of force and the IAPro database. All the ‘use of force’ forms are going into our risk assessment unit so that we can monitor, amongst other things, if a particular officer is using his or her force options seemingly a little bit too frequently. We have recently had a run of domestic violence with police officers involved. Unauthorised release of information, including to the media, is still an issue for us.

Conflict of interest is a concept that we need to push home again and again. General professionalism. I like to keep noble cause corruption on the radar, particularly after Mallard. We had a big case here where the Corruption and Crime Commission looked at a case that was many years old, but we have now included a specific mention of noble cause corruption in our code of conduct, saying it will not be tolerated, and it certainly will not be condoned in any shape or form.

I will just highlight some of the things we do in our corruption prevention strategy area. We have a values document. We have had those values in place for a number of years and I think most people are aware of the key values, our organisational values. We have a code of conduct which was recently revised. That is a useful document and it is also the touchstone for our MIM, our Managerial Intervention Model.

The MIM is a part of the corruption prevention strategy too because it is important to change the culture, to get away from that punitive model to that managerial-remedial approach, otherwise people can become cynical and jaded about the whole disciplinary system, although I should mention that we decided not to go with the pure managerial model. The Fisher review and the AFP have got rid of the middle ground, the disciplinary provisions. We certainly considered that idea but decided to retain it. Otherwise, we were finding that people were getting pushed to one extreme or the other: it was either managerial action, or you were out, you were

dismissed. We thought it was good to have that safety net of the middle ground, so we still do have disciplinary action that is reserved certainly for more serious matters.

Another initiative is education and identification of learning outcomes. Specifically, when we have disciplinary matters we will sanitise the information, take away the identifying particulars and give a brief overview of what occurred and the results or outcomes for the individuals in our *From the Line*, which is a publication, so that people can see what is happening and go, 'That's inappropriate behaviour. I didn't realise.' They will be more aware of current issues.

Personnel vetting is important from a corruption prevention perspective. In relation to recruitment strategies, it is absolutely essential that we get the right people and that we do not allow that slide into corruption to take place that the research has indicated.

**CHAIR**—When you say 'the right people', do you have specific strategies to recruit more women and people from diverse cultures or people with a higher education?

**Assistant Commissioner Etter**—All of those.

**CHAIR**—All of those things?

**Assistant Commissioner Etter**—Yes. At the moment we have a big campaign to attract and retain women. That was a major recommendation of the Kennedy royal commission as well: increase diversity to break up the male solidarity and the blokey culture. Anecdotally, we have had a number of policewomen come forward in cases where people otherwise have not seen what has happened or have said that nothing happened. Two brave policewomen have come forward in two separate cases and given us different facts—at some personal cost to themselves, I might add. So I think there are some advantages in breaking up that culture, and certainly in getting more Aboriginal people and people from ethnic CALD backgrounds as well.

Strong supervision, management and leadership is another clear corruption prevention strategy. We need awareness of the issue of double standards. The National Police Research Unit undertook some major research—three very good studies—into ethics and policing about 12 years ago. They talk about double standards. More-junior people can become cynical when they see more-senior people being treated differently, or preaching something and doing something quite different, so we need to be wary of double standards and make sure that they do not exist in the organisation.

The early intervention system I have mentioned. Diversity was on my list as well, which I have just covered. Then there is deterrence, so swift and effective action. One power that we have here in WA which I find very effective is our ability to remove people where the commissioner has lost confidence in that person. That is an important power to have. We did go down in numbers but we currently have 20, 25 members on the books for loss of confidence consideration.

**CHAIR**—What is the loss of confidence process?

**Assistant Commissioner Etter**—It depends on the conduct that initiates the action. It could be a serious criminal charge. It is generally a criminal charge. It can be based on performance as



well, but we do not have too many performance matters. It depends on the criminal charge, too. If the evidence needs to be tested in court, we will wait till the outcome of the court case.

**CHAIR**—Is there a provision for the officer concerned to be suspended in the meantime?

**Assistant Commissioner Etter**—Yes. If there are any serious concerns about their honesty, integrity, performance or conduct, the commissioner can stand them down or stand them aside. Generally, we will consider each case, but if it is serious we will stand them down. Then there will be an investigation. Someone will look at the file and a review officer will be appointed. Then the commissioner will have the opportunity to consider all the information available and determine whether there is material there to indicate that we should remove that person from the police force.

The person has the opportunity to put in a response. Then the commissioner considers the response, the review officer analyses the response, and the commissioner considers his position, whether he retains confidence in the person or not. If he considers that the person should be removed, with the approval of the minister that person is removed from the WA Police.

**CHAIR**—Is there a provision for appeal?

**Assistant Commissioner Etter**—On the loss of confidence? To the Industrial Relations Commission.

**CHAIR**—Right. Thank you.

**Assistant Commissioner Etter**—We have not had one of those appeals during my time. Have we ever had an appeal?

**Det. Supt De La Motte**—I think probably many years ago when the system was first introduced there would have been some, but not in recent times.

**Senator PARRY**—You would end up in a round robin. If someone had loss of confidence, was then removed and then reinstated, the loss of confidence is still there, so the loss of confidence provision is not waterproof, is it? I think in other jurisdictions it is. In the AFP if you have loss of confidence, that confidence cannot be automatically reinstated. Yours is subject to appeal?

**Assistant Commissioner Etter**—To the Industrial Relations Commission, but we have not had one for many years. I think that LOC power is critical. It is important to have that power and we are fortunate in WA to have that ability. We have governance officers in each of the districts or divisions that oversight internal investigations and make sure that the files are quality assured before they go to the superintendent and are signed off by him or her and then referred back to PCAC for the final QA.

We have enhanced QA processes. PCAC has improved dramatically, I think, the quality assurance processes and the checking of the files before they go to the CCC. We have tenure policies, where people can only stay in high-risk areas for a certain amount of time, with some flexibility to extend. We have attracted good-quality staff to the portfolio. One of the key areas

identified by the Kennedy royal commission was the internal affairs unit. They now get a 10 per cent loading on their salary as an incentive, I suppose, so that we can attract people.

Protection of whistleblowers is important. We do some research but we need to do more and we need to do more evaluation. We have the project on the Blueline coming up. Another key point in our corruption prevention approach is that the portfolio is involved in the broader corporate risk management processes through membership of the audit and risk management committee, which is a subcommittee of our corporate executive team, which is the commissioner, the deputy and the executive director. We regularly prepare a trends and issues paper to go to the audit and risk management committee so that it can be considered in the corporate risk management process.

The model for an integrity oversight agency—these are just some of my thoughts about the sorts of things that need to be considered—depends on funding and resources and, having read some of the submissions, that seems to be a critical factor for ACLEI. I have seen estimates of 50 for personnel compared to the 12 that they have at the moment. When it comes to leadership, you need a person of unquestionable integrity. You need the legislative base and the powers to do the job properly. On the question of the right staff, I have seen the discussion and debate on whether you include seconded police or not.

**CHAIR**—What do you think about that?

**Assistant Commissioner Etter**—I do not know what the WA Police view is. I have heard the CCC's view. Vetting is very important. From my personal experience, I was seconded to the New South Wales Ombudsman's office to investigate police when I was a member of the New South Wales Police and I think it worked well and they were happy with that arrangement. It is very important to have police skills and the understanding of the culture. If you need to get to the bottom of a matter, it really does help to have that police experience, because you know the games that can be played and the tricks and the way things can be covered up or the sorts of omissions there might be. It is very important to have someone with that insider knowledge and understanding of the culture.

**Senator PARRY**—Did they have a strict tenure and rotation policy for going through the Ombudsman's office in New South Wales?

**Assistant Commissioner Etter**—This was in the 1980s.

**Senator PARRY**—Right.

**CHAIR**—But do you think they should have a strict rotation policy?

**Assistant Commissioner Etter**—Yes. I do not think you should stay in those sorts of places too long. There are some advantages, but you certainly need to take care to make sure that you get the right people. I do not know if ACLEI has got a media management capability, but that is really important. I think the CCC would say here that it is really important to have great media management, because probably every day they are in the paper for one thing or another.

They need to have a capability to ensure fairness to subject officers. We have had some discussions with the CCC about their strict confidentiality arrangements or operations that they are doing without us. We often need to make sure that there is health and welfare considerations taken into account. The CCC might be launching something or taking an action, and we are very concerned to make sure that there is health and welfare in place for that person, because the last thing we would want to do is see someone self-harm in any way. It is really important that anything that an integrity oversight agency does also considers the health and welfare of the subject officers, or maybe has linkages into the relevant police agency to ensure that we can back those people up.

Witness protection is very important, and an anonymous reporting capability, a covert capacity. And, of course, you have already had some discussion about oversight mechanisms of the oversight agency itself. They are some thoughts about capabilities and issues for an oversight agency.

**CHAIR**—Did you have specific thoughts about how those things would apply to ACLEI?

**Assistant Commissioner Etter**—You already mentioned that they need a private secure hearing room and they need intelligence. To me, they seem like obvious gaps at the present time in their capability.

**CHAIR**—Okay.

**Assistant Commissioner Etter**—So that was a bit of an overview for you.

**CHAIR**—Thank you. That was very helpful. Do you have a system in place to assess and measure the impact of your internal integrity arrangements?

**Assistant Commissioner Etter**—As you already would have picked up, it is a very broad strategy with many prongs, so it is very hard to evaluate. We have evaluated certain aspects, like the Managerial Intervention Model, by outside consultants, and we are constantly monitoring statistically the number of complaints, although that is not an indicator of our achievements. Because we are encouraging people to come forward, we would hope our complaint numbers, particularly any internally generated ones, would go up. If people have more confidence in us—and we are doing a lot of work with the Aboriginal communities and the Aboriginal Legal Service—that hopefully will generate more complaints too. So some of those statistical measures are not a good indication of our achievements.

We monitor how many disciplinary issues we have, how many managerial interventions, the number of criminal charges. Those are indicators of what is happening. We do not have an evaluation strategy generally to have a look at our whole prevention strategy, but we do it wherever possible. There is the qualitative stuff too: monitoring the LOC files; identifying trends and issues so that we can put in countermeasures. So there is no overall strategy, but we are certainly concerned to try and measure the impact and to see whether there are positive changes.

**CHAIR**—Thank you. What does your gift policy entail? And is there also a policy of financial disclosure for officers?

**Assistant Commissioner Etter**—On financial disclosure, not generally, but if you are part of the personnel vetting scheme, yes, there is quite detailed analysis of your finances, and any joint accounts, for instance, may pick up a partner's financial—

**Senator PARRY**—Why that area? Why the personnel vetting area and not others?

**Assistant Commissioner Etter**—Personnel vetting is the area that does the personal vetting of all the relevant areas in WA Police.

**Senator PARRY**—So why do they have reporting of financial assets?

**Assistant Commissioner Etter**—No, they are the ones that collect the reporting.

**Senator PARRY**—Sorry. Just to clarify this, I thought you said that there is no financial reporting.

**Assistant Commissioner Etter**—Yes, there is.

**Senator PARRY**—For all officers or just some officers?

**Assistant Commissioner Etter**—Only those that are picked up at the moment by the personnel vetting scheme, which is high-risk areas and members of senior executive.

**Senator PARRY**—We were missing that piece of information. It is the high-risk areas.

**Assistant Commissioner Etter**—Yes.

**Senator PARRY**—What are those areas?

**Assistant Commissioner Etter**—Corporate executive.

**Det. Supt De La Motte**—ACs and directors. Everyone within our portfolio. This is the first phase of it. The state intelligence division, counterterrorism, witness security and the organised crime division.

**Senator PARRY**—What do you report? Is it cash at bank, personal assets and adjustments or movements in those?

**Assistant Commissioner Etter**—It is a while since I did mine, but they are quite detailed and we have had a number of people challenged and asked for additional information and quizzed about things, so it is quite a comprehensive process. You did have to put down your spending patterns and how much you were paying on school fees and other commitments and all loans.

**Senator PARRY**—Fairly exhausting.

**Assistant Commissioner Etter**—Yes. It takes quite a bit of time to put the package together.

**Supt Moon**—It also takes into consideration your family interests as well—your wife and relatives—as well as background.

**Senator PARRY**—That is obviously kept in a very strict and confidential manner.

**Assistant Commissioner Etter**—It is, yes.

**Senator PARRY**—Do you have to then amend that if you have a substantial change?

**Assistant Commissioner Etter**—Yes.

**CHAIR**—Who reviews those financial disclosures? Do you have auditors that do that?

**Assistant Commissioner Etter**—We have the personnel vetting unit, but they also utilise approved external consultants to do the referee checks. It depends on the level of security clearance that is required. There may be additional interviews. We work in with experts in the area and that is coordinated by our personnel vetting unit.

**CHAIR**—Thank you. The other aspect was the gift policy.

**Assistant Commissioner Etter**—The gift policy is a little bit topical at the moment in Australia. We do have a gift policy, which is under review. We have got a new draft ready to go. It says that any gifts that are authorised to be accepted remain the property of the WA Police until authorised for personal retention and must be reported and recorded in accordance with these guidelines. Certain records have to be kept, whether it is a notebook or an occurrence book or a station journal. There is notification to supervisors. Even token gifts such as a pen and plaque should be recorded at least in a notebook. If the gift is acceptable and it is over a certain amount, it needs to be recorded centrally in our gift register, which is maintained at the ethical standards division. And it does not include the value, but if you attend a corporate box, that needs to be recorded as well in the corporate gift register.

**CHAIR**—What kinds of gifts are acceptable?

**Assistant Commissioner Etter**—At the moment we are trying to revise down the dollar amount. At the present time the amount that is used as a benchmark is \$250. In the new policy we want to bring that down to \$100.

**CHAIR**—So someone can receive a gift of up to \$100 and they do not have to disclose it?

**Assistant Commissioner Etter**—No, they still have to disclose it. They have to have a record and they need to bring it to the attention of the supervisor. If they think there is anything sensitive about it, it should be centrally recorded as well. If they refuse a gift for some reason, we encourage people to record that as well so that it is on the record.

**Senator PARRY**—Gosh! That is a lot of work.

**CHAIR**—Is there a maximum number of gifts that can be accepted in that period of time?

**Assistant Commissioner Etter**—No.

**CHAIR**—So you could receive 100 gifts of \$100.

**Assistant Commissioner Etter**—Smurfing, like in the money-laundering world? No, we do not see that. We are not aware of it.

**CHAIR**—Okay.

**Senator PARRY**—What about a cup of coffee? Do you go to that detail or not?

**Assistant Commissioner Etter**—I suppose it is a token gift, but that is just developing relationships. I suppose it depends. Do you mean if you go into a shop, ask for a cup of coffee and do not pay?

**Senator PARRY**—That is what I mean, yes.

**Assistant Commissioner Etter**—No, that is not acceptable, but if you go and visit someone and they offer you a cup of coffee, that is definitely acceptable.

**Senator PARRY**—So you would have to record a free meal? If you were given a free lunch somewhere, you would have to record that?

**Assistant Commissioner Etter**—That is not just a gift policy issue, that is a conflict of interest issue, and potentially an abuse of your office. It is more than a gift.

**Senator PARRY**—Good.

**CHAIR**—Finally, before I hand over to my colleagues, what view do you have of your relationship with the CCC?

**Assistant Commissioner Etter**—As I said, it is very good. We work cooperatively and constructively, and I do not think it is too cosy, as was asked about in the previous session. It is all about building relationships and developing trust and, at my level, I certainly have succeeded in developing the trust that is required to get the job done, whilst also maintaining the requisite social distance and complying with my obligations. We have a very good relationship where I can get on the phone and give them a heads-up about an emerging issue or a matter that they need to be aware of. Similarly, where appropriate, they will advise me about something that is coming up. It works very well.

**CHAIR**—Thank you.

**Senator JOHNSTON**—Thank you, Assistant Commissioner, for coming along and bringing all of your hardworking entourage. I am interested to know which technical definition of ‘corrupt conduct’ the WA Police force applies. By way of assistance, there are three potential answers: the Kennedy version, the definition contained in the CCC Act and the Criminal Code definition. I am interested to know which one you guys stand and fall by.

**Det. Supt De La Motte**—Without wanting to skirt the question, I would say you would have to take into consideration all three.

**Senator JOHNSTON**—Yes.

**Det. Supt De La Motte**—I do not think, as an agency, we would stand up and say we go down the line of the Criminal Code. It is certainly my view, from our office, that when investigating corrupt issues we certainly look at the CCC legislation and those other two that we have spoken about.

**Senator JOHNSTON**—So it is fair to say that you would have a very broad definition and, if push came to shove, the broader the better?

**Det. Supt De La Motte**—Yes.

**Senator JOHNSTON**—The reason I ask that is because in Western Australia in the last 10 years we have had a number of very serious issues. I think you will agree that they involve not specifically corrupt conduct but conduct that is questionable in terms of performance and in terms of a whole host of operational matters. I will give you an example. First of all we had Mickelberg, which went on for a long time and was a terrible shock to a lot of people in relation to the integrity of our judicial process, not just law enforcement, and on top of that we have had Mallard, which has similarly knocked us for six.

May I say that Dante Arthurs was a major concern, where inadmissible confessional statements were ruled out. I thought that was a blow to law enforcement and justice. Currently the Rayney matter appears to be a problem, if I may be so bold. Silvestri has just gone through. Of course, then we had Joe McDonald's charges withdrawn on the day of the hearing. Then there is the hot shot in Queensland and the protected witness, and we dealt with that in the Kennedy inquiry.

There are senior, respected and, may I say, quite decorated officers involved in a lot of these inquiries. How do we deal internally with this sort of shortfall in performance? What do we do? Is it a matter beyond your expertise in terms of corruption? Is it beyond corruption in terms of an internal investigation? How is it that we best raise the standard inside the Western Australian police force from a performance perspective and is it something that is simply the responsibility of government and the commissioner?

**Assistant Commissioner Etter**—That is a loaded question.

**Senator JOHNSTON**—I have to ask.

**Assistant Commissioner Etter**—I acknowledge that there have been a number of significant issues in the history of WA Police. Some of those are quite dated. But it is a huge issue. An essential part of that is cultural reform, which we have recognised in our raft of corruption prevention strategies. I would consider cultural reform to be a critical element. There is the noble cause corruption aspect, which has been seen internationally in policing over many years.

**Senator JOHNSTON**—Why do we call it 'noble cause'?

**Assistant Commissioner Etter**—Because people think that they are doing the right thing. They think that the person is perhaps the guilty one and—

**Senator JOHNSTON**—But we only really find out they have done the wrong thing when it all comes apart, as in Mallard and in Mickelberg. The cause was not so noble at the end of the year. It is not like perverting the course of justice. It is always an attempt, because we found out about it.

**Assistant Commissioner Etter**—But at least, given that we are aware of it, we can put strategies in place to ensure that it does not occur again. I am not saying that we will be able to eliminate it, because we will not. It is about building corruption-resistant organisations and cultures that will not support that type of activity. If it happens, you will get the honest police officer coming forward and reporting, saying, ‘I’m sorry, I’m not going to tolerate that. I am going to internal affairs,’ or at least, ‘I’m making an anonymous phone call to say this isn’t correct.’

**Senator JOHNSTON**—I accept all that. A lot of the things you have said here are very good and I am very pleased to read about them and hear the earnest way in which you are approaching this. I just do not like the name ‘noble cause’.

**Assistant Commissioner Etter**—You can call it the Dirty Harry phenomenon!

**Senator JOHNSTON**—I actually like Dirty Harry, so I am not sure if I would want to go down that path either! Can I come back to this graph you have got here of the operational structure. There is, for instance, counterterrorism state protection, the regional assistant commissioners and the deputy commissioners. Why is it we have senior to them the Office of Crime Prevention, which is Neighbourhood Watch et cetera, as I understand? Why would we have the director of media and public affairs senior to our operational and professional development person? I have a question with the priorities of this structure. It does not look good to me. Argue with me, if you will.

**Assistant Commissioner Etter**—There are some political reasons why the structure is like that. It is also up to the commissioner to determine who he considers should be direct reports to his position. The fact that he regards corruption and misconduct so seriously is why I have direct access to the commissioner and report directly to him.

**Senator JOHNSTON**—That is why I have not questioned your position right below him. That is fantastic. But the one next to you, director of the Office of Crime Prevention and the director of media and public affairs, I find most confusing. Your position is way more important than theirs in this structure and yet the analysis of the structural set-up seems to be poorly focused, if I may say so.

**Assistant Commissioner Etter**—The Office of Crime Prevention used to belong to the Premier and Cabinet portfolio and we have a very senior director, Wendy Murray, in that. That is why it is reporting to the commissioner. It is the commissioner’s prerogative to choose which portfolios he wants to have direct contact with. Strategy and performance are very important, particularly after the Kennedy royal commission, as well as my portfolio, to make sure we are on track.



**Senator JOHNSTON**—I have not crossed out strategy and performance. That is important. I agree with you.

**Assistant Commissioner Etter**—And media is very important because a lot of it is about perception. You have to deal with perception and sometimes—

**Senator JOHNSTON**—A lot of it is about perception. You are quite right. Perception is something that can be misused as much as it can be well used. The public needs to have a very clear perception of what has gone on. That is why I do not want to see media spin be given such a credible position, certainly in counterposition to counterterrorism and state protection, which is absolutely crucial, and also the three regional administrative assistant commissioners. They are very important roles. It worries me that we think media is much more important than operational outcomes, if you follow me.

**Assistant Commissioner Etter**—Management or strategic communications—

**Senator JOHNSTON**—That is very important.

**Assistant Commissioner Etter**—is a very important aspect of modern-day policing.

**Senator JOHNSTON**—But that is not media.

**Assistant Commissioner Etter**—No, but perhaps it should be called ‘strategic communications’.

**Senator JOHNSTON**—That is another area. Media is all about explaining things away.

**Senator PARRY**—That was an interesting analysis of the hierarchy of the department. I want to come back to training. You probably heard, Assistant Commissioner, during the previous witness I mentioned training of recruits. Is there any anticorruption ethical standards training at the academy from day one? If so, could you give a very brief outline of what it entails and how much emphasis there is.

**Assistant Commissioner Etter**—Yes, there is. It is obviously quite difficult in recruit training because they need to be trained up on a whole range of different things. There is dedicated ethics training during their recruit training.

**Senator PARRY**—Conducted by your office?

**Assistant Commissioner Etter**—No. We used to have a woman who specialised in ethics training, but unfortunately she just left and went to Edith Cowan University. We have recruited to replace her. We provide lectures to the management accountabilities course about the Managerial Intervention Model. We often address various forums that the commissioner conducts—for instance, the inspectors’ forum.

**Senator PARRY**—Yes, I understand that. I am more interested in the very base level—as a brand-new recruit.

**Assistant Commissioner Etter**—I do not know the number of hours. I do not know whether Andy will be able to help.

**Supt Tovey**—The ethical standards division does focus on recruits—to a lesser degree than the others because their curriculum is so full, but we are always trying to get some more room into the raw recruits. In relation to the direct accelerated officers from overseas joining WA Police, we focus on them as a continual target for our lectures and the other ongoing managerial courses. They can be people who have only been out of the academy for six, 12, 18 months. They come back in and we discuss our case studies.

As Mrs Etter has indicated, one of the first things we do out there is identify the underlying issues through our complaint files and our loss of confidence files. They can be managerial issues; they can be cultural issues; they can be shortcuts. We package those up and, through case studies and other means, drive those through the academy on an ongoing basis. That seems to be quite a successful strategy and is well received at the other end, because we are learning sometimes from the mistakes of others and sometimes from the poor judgement of others, and people seem to appreciate it because they are real things that they can relate to.

**Senator PARRY**—Thank you. Has there been any consideration of, or does there exist, a specific course just for ethical standards? You were talking about the MIM. I know in other jurisdictions that if you had an accident in a police vehicle you had to go back to another driving training course, for instance. Has there been any consideration of that model?

**Supt Tovey**—Yes. Under the managerial approach that we use for complaints against police, part of the consideration of the superintendents who make that call at the end of the day are the circumstances of the complaint, the environment the officer works in and any shortcomings or skill shortages that have contributed to the issue. Those options, from a managerial perspective, are open to the superintendent. It could be a course back at the academy—an anger course or a whole raft of courses—from a remedial perspective.

**Senator PARRY**—Moving on to the relationship with the CCC and reporting, I want to look at three categories: (a) if there is a complaint from the public made to police about misconduct, (b) if there is a complaint from a police officer about another police officer in relation to misconduct, and (c) if you as a unit, through a covert or other operation, detect misconduct. In all three cases, do you have to report those matters to the CCC irrespective of severity?

**Supt Moon**—Yes.

**Senator PARRY**—Is there a register kept of every single complaint received?

**Supt Moon**—We submit a complaint advice note. That notifies the CCC of every instance of a complaint being made.

**Senator PARRY**—What about external from police? If a member of the public goes to the CCC, do they have to let you know?

**Supt Moon**—In due course they would, yes. They would assess the complaint that has been given to them, either by phone or in writing, and they would identify the issues and send it to us.

**Senator PARRY**—Is there any discretion whatsoever from your side—for instance, if it is very minor you do not have to report—or do you have to report or record every single case?

**Supt Moon**—We report all matters to them. In PCAC, where I am based, we do complaint assessments at the same time. They could be minor complaints. We classify them as information reports and they are logged and recorded. That can also occur at a local level, if they are very minor complaints, and they are dealt with locally.

**Senator PARRY**—What happens when there is an arbitrary determination? Who should investigate the complaint? The CCC seems to hand most back. Even if they are generated from within, you are given the go-ahead to continue investigation. Who has the final say? Is that purely the CCC?

**Supt Moon**—The CCC will direct us if they want to take over an investigation themselves, or they will allocate it to us, or we will do a joint investigation.

**Senator PARRY**—I gather that the vast majority of cases are handled internally by your section?

**Supt Moon**—That would be correct, yes.

**Senator PARRY**—If you had a complaint against the CCC—and I am not suggesting you do—is there a technical mechanism to go beyond the CCC, the parliamentary oversight committee or the inspector?

**Assistant Commissioner Etter**—I do not know. We would have to get some advice on that.

**Senator PARRY**—I am looking at another checking mechanism. If there were any suspicion of corrupt behaviour within the CCC, you have no direction at this stage as to where you would go?

**Supt Moon**—I would suggest that we would undertake a normal criminal investigation.

**Senator PARRY**—But then who would you advise? Would you advise the CCC? You couldn't really, could you?

**Supt Moon**—No.

**Senator PARRY**—Would you go to the parliamentary inspector? The commission would probably make that decision.

**Assistant Commissioner Etter**—Yes, and before we did anything we would probably get some legal advice on what the appropriate action would be.

**Senator PARRY**—Is the commissioner informed of every single complaint as well, if he so required? He obviously would not.

**Assistant Commissioner Etter**—No, he does not. I can say that.

**Senator PARRY**—But is he entitled to know about every single complaint if he so wished?

**Supt Moon**—He has a duty to report under section 31 of the act.

**Senator PARRY**—So you make that report on behalf of the commissioner?

**Supt Moon**—We make that report on his behalf, yes, and we let him know when there are serious matters.

**Senator PARRY**—Again, would you have it within your capability to bypass the commissioner if you thought that he or any of the deputies or assistants were corrupt in any way, shape or form?

**Assistant Commissioner Etter**—That is an interesting question. It has not arisen. We would certainly have to get some advice on how to deal with that one.

**Senator PARRY**—I thought that you might have developed some protocol.

**Supt Moon**—The only protocol we have in place that I am aware of is that if there is a complaint about a commissioned officer the complaint has to be investigated by someone of equal or senior rank. The only problem we might have in investigating the commissioner is that there is no-one senior to him. We have not had cause to investigate the commissioner to this point in time.

**Senator PARRY**—You mentioned during your opening statement the loss of confidence provisions. You had 20 cases on the books, I think you said. By ‘on the books’ do you mean currently under investigation or for recommendation?

**Assistant Commissioner Etter**—Currently going through the formal process and at various stages of the process.

**Senator PARRY**—For potential recommendation for loss of confidence?

**Assistant Commissioner Etter**—Yes.

**Senator PARRY**—What is the tenure policy for your unit? How long can you stay?

**Assistant Commissioner Etter**—Internal affairs?

**Senator PARRY**—Yes.

**Det. Supt De La Motte**—It is three years.

**Assistant Commissioner Etter**—There is very rarely any extension to that.

**Senator PARRY**—But there is provision for extension?

**Assistant Commissioner Etter**—In certain circumstances. If it is in the best interests of the unit, it will be considered. But in my time there, no.

**Senator PARRY**—There was some difficulty, I gather, with attracting staff for internal investigations and hence the 10 per cent loading. Has that rectified the problem?

**Assistant Commissioner Etter**—Not entirely, no.

**Senator PARRY**—So there is still some reticence about joining the internal investigations side of policing?

**Assistant Commissioner Etter**—Yes. The loading has helped.

**Senator PARRY**—Should we make it 15 per cent, 20 per cent? It keeps going up.

**Det. Supt De La Motte**—There is still an element within the agency that do not like detectives/investigators because they work in internal affairs. That is just a small percentage, but it does happen.

**Senator PARRY**—I imagine that would be a diminishing percentage as time moves on.

**Det. Supt De La Motte**—Yes, for sure.

**Senator PARRY**—Earlier we touched upon having officers seconded and rotating through the CCC. Has there been any strong suggestion from your side that that should take place?

**Assistant Commissioner Etter**—No.

**Senator PARRY**—You indicated that you have value in New South Wales with undertaking that process.

**Assistant Commissioner Etter**—Yes.

**Senator PARRY**—And it seems to be the feeling of other jurisdictions that, when you rotate through, that then creates a better culture and understanding, which then permeates through the force when those officers return to mainstream policing. There is no firm policy at this stage?

**Assistant Commissioner Etter**—The CCC has a firm policy.

**Senator PARRY**—Of ‘no’?

**Assistant Commissioner Etter**—That is right.

**Senator PARRY**—That decision would be made at the ministerial level, I would imagine, or by the parliamentary oversight committee.

**Assistant Commissioner Etter**—I am not sure at which level the decision was made. I had a conversation before coming in here and they reiterated that they had a strong view that they were not interested in seconded current police officers.

**Senator PARRY**—So you were not left with any doubt?

**Assistant Commissioner Etter**—No.

**Senator PARRY**—Thank you for much.

**CHAIR**—I thank you very much for taking the time to give evidence today.

[11.31 am]

**BOVILL, Ms Michelle, Investigating Officer, Ombudsman Western Australia**

**FIELD, Mr Christopher James, Ombudsman, Western Australia**

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

**Mr Field**—Thank you, Chair. I am delighted to be appearing before you today and I appreciate the kind offer you made to me to have me come and present to the committee. Obviously it is important work. I will keep my opening probably mercifully short, given the fact that you have lots of people to see. As I stated, I am the Western Australian Ombudsman—the state Ombudsman—with jurisdiction over state government agencies, local government and public universities. We have two principal functions, similar to the other ombudsmen in each state and territory and at Commonwealth level. First, we resolve complaints from the Western Australian public—there were about 5,000 calls to my office last year—and we also, as a second matter, undertake improvements to public administration over a period of time through a range of mechanisms on most investigations, working collaboratively with agencies and, as I say, a variety of other sorts of mechanisms.

We have a number of specific jurisdictions granted to us through legislation, such as public interest disclosure legislation or, as it is generally better known, whistleblowers legislation, certain functions under terrorism prevention laws, and also jurisdiction through a cooperative arrangement with the Commonwealth in relation to the Indian Ocean territories and the function of auditing telecommunication intercept functions undertaken by both the Western Australia Police and also the Corruption and Crime Commission. Having read the comments of both my colleagues, Commonwealth Ombudsman John McMillan and the Deputy Ombudsman in Victoria John Taylor, we have slightly less to say because of our more limited functionality in relation to our jurisdiction and, more particularly, we have limited jurisdiction over the CCC and the police; but I am absolutely delighted to answer any questions you might have.

**CHAIR**—Thank you. In your view, how well are the arrangements currently working to enable the Ombudsman and the CCC to play complementary oversight roles? Do you see any areas of significant overlap or any gaps in the system?

**Mr Field**—That is a good question. Generally speaking, the arrangements are working well. Let me start by saying there is no question that the accountability agencies do play an absolutely critical role in relation to the work that they do. That is the view I have. Certainly with government having the powers that government does, first of all obviously to utilise taxpayers' money to invest and do various things and then of course the power to restrict liberty, to license activities and to prevent certain activities in society, all those sorts of important powers need proper accountability mechanisms, and agencies like mine and the Corruption and Crime Commission are part of that critical accountability framework. The framework in Western Australia has been established in a slightly different way, not entirely dissimilar to many other

jurisdictions. We have what is called an Integrity Coordinating Group. You may have already heard something of that today.

That group consists of my office, the Corruption and Crime Commission, the Office of Public Sector Standards Commissioner, and the Auditor-General. We work collaboratively to ensure that messages of integrity and frameworks for integrity are utilised as efficiently and effectively as possible in the state. That is a key mechanism that we use at our four agencies to ensure that there is as much efficiency as possible in our work. I have now been a member of that group for around 18 months and I come from a background of having worked in economic regulation and, having some general belief in markets and efficiency of operation, I believe that that group is working well to ensure reasonable efficiency of the operation of those agencies.

I also say that we ourselves can impose a regulatory cost, a compliance cost, an opportunity cost on agencies to do other things they might be doing. Is it true that our agencies are perfect? Are they costless? Of course they are not. I would be desperately concerned about anyone who ever stood before a parliamentary committee suggesting that they were either perfect or anything they do is costless. Having said that, within the imperfections that we have and the costs that we impose, do I think it is of net benefit to the Western Australian public? Do I think broadly speaking that we are doing a good job? The answer to both those questions is, 'Yes.'

**CHAIR**—Can you comment on the effectiveness of the oversight framework of the CCC itself—that is, the parliamentary joint committee and the parliamentary inspector?

**Mr Field**—That is largely a matter that is not within my jurisdiction to comment upon. It is largely a matter, ultimately, of the policy of the government of the day as to how they establish such a framework. What I would say generally is this: a crime and corruption commission, like an ombudsman and like other accountability agencies, needs its own accountability. There is no question about that. My office, for example, has a range of accountabilities: to standing select committees of parliament, to the parliament of the day, to the Auditor-General, to state procurement; and of course we ought to have. We are spending taxpayers' money; we ought to be accountable for it.

The CCC similarly has a range of powers. They are spending public moneys and they ought to be accountable for them. There is an accountability framework in place. The parliamentary inspector is one of those. They have a range of other accountabilities, including directly to parliament and public accountability through the media and various other mechanisms. Do I think it is working reasonably well? Yes, from my outsider's perspective it seems to be. But having said that, I am not on a day-to-day basis involved with that.

**CHAIR**—Is there any mandatory reporting of corruption issues to the CCC from your office when you receive those complaints?

**Mr Field**—Yes. We have two ways of reporting to the CCC. One is when we think they are the more appropriate agency. As for every ombudsman around the country, we receive a range of inquiries, concerns and complaints. Some of those are properly dealt with by us, some of them not. Where they are not, we refer them to the most appropriate agency. On some occasions the most appropriate agency will be the CCC. It could easily be the Auditor-General; it could be the Office of Health Review; it could be others.



We also have an obligation under section 28 of the Corruption and Crime Commission legislation. We must refer—indeed, it is an offence not to—matters where we think there is a reasonable suspicion of misconduct, so if we form that reasonable suspicion based on some evidence, then we will refer it through. And we take very seriously allegations of crime, corruption, misconduct and serious misconduct where we think they ought to be looked at. They have a corrosive, cancerous effect on confidence in government and public integrity and they must be looked at, so we would refer those through as a matter of course.

**Senator JOHNSTON**—Thank you, Mr Field. What I am interested in is the oversighting of the CCC's telephone intercept powers. As I understand it, there is yourself, and there is the Commonwealth Ombudsman that you have already mentioned. We know the Commonwealth Ombudsman fairly well.

**Mr Field**—Yes.

**Senator JOHNSTON**—Each of you have some responsibilities with this. Would you like to outline what you perceive are your responsibilities with respect to telecommunications legislation as used and utilised by the CCC in its recent history. Do you actually look at what intercepts are undertaken and the veracity of the motivation of those intercepts?

**Mr Field**—It is a good question. It is a complex area as well. There is both Commonwealth legislation and Western Australian legislation. Our role is reasonably defined. We look at telecommunications intercepts in relation to two agencies: the Corruption and Crime Commission and the Western Australia Police. On those matters we report to the relevant state ministers and we also send corresponding reports to the federal Attorney-General. So we are reporting to the Minister for Police, obviously, for the police and to the Western Australian Attorney-General in relation to the Corruption and Crime Commission. In relation to what we audit, we do not go behind the reasons for warrants being issued, but ultimately, of course, that is the role for those agencies seeking the warrants and also those approving the warrants—federal magistrates, administrative tribunals, judges; whoever might be issuing those warrants. We are really looking for compliance. It is what I would call an audit function in its more classical sense.

**Senator JOHNSTON**—So you must have the warrant on one hand and look at the report of activity undertaken on the other.

**Mr Field**—Yes. We are looking basically to make sure that the i's are dotted and the t's are crossed. It is still an important function.

**Senator JOHNSTON**—Absolutely.

**Mr Field**—We will potentially find things from time to time, as any auditor will. In this case we are playing an audit function—'requires improved compliance', 'requires different operationalising of systems', perhaps. But, as I say, it is a slightly more confined function in the sense that we are not going in behind the warrant. That is a function for others.

**Senator JOHNSTON**—I think you said that you report to the ministers.

**Mr Field**—Correct.

**Senator JOHNSTON**—Is that not something that has been a problem in our recent history? It would have been better if there had been a public report, which I think we have with respect to the Commonwealth legislation, that looks at control operations and the telephone intercepts and all of that sort of thing and people can see that there have been X number. The auditor—in each instance the Ombudsman—has said, ‘There have been three problems.’

**Mr Field**—Yes.

**Senator JOHNSTON**—‘No problems over the course of the preceding year.’ I think the fact that it is a report to the ministers has led to some of the media disputation, if I can put that, between the parliamentary inspector and the CCC, wherein you are doing the job and reporting to the ministers and they do not take it any further. Is that the situation here in WA?

**Mr Field**—We do two forms of reporting about that telecommunications intercept function. We send a report about all of our activities during the year in relation to the auditing function, our own compliance with our legislative requirements, what we have found and any suggestions for improved compliance. We would, of course, have also spoken to the relevant agencies where we identified any such matters.

Those reports to the relevant ministers are, of course, to them and to them alone. Then what they propose or choose to do with those reports is ultimately a matter for them. We do have a public reporting function, though, and that public reporting function is in my annual report which, of course, is a public record document. It is available to the public freely on my website. I am accountable for that report. Indeed, at not my most recent estimates appropriation hearing before the Western Australian parliament, but my first upon appointment, there were a number of questions about the telecommunications intercept function. There is an opportunity, through parliament, to publicly and robustly question any issues around that. I think that is a critical public accountability

So, in part, I think there is public reporting of those matters. Certainly there was some public reporting—and it is a matter of public record, obviously; I will not comment upon the details of it—a month or so ago in the *West Australian* newspaper, following on from the parliamentary inspector’s annual report, around telecommunications intercept functions. Once again, there was a capacity for there to be public ventilation of those issues and any consideration of them. Has any of that been a problem from my perspective? No. I am comfortable with the system as it is. But, having said that, any changes to that system would ultimately be a matter for government policy and parliamentary approval.

**Senator JOHNSTON**—Good. Thank you for that.

**Senator PARRY**—Thank you very much, Mr Field. If police did not have confidence in the CCC, is there any way that you could receive a complaint from the police, if they wanted to bypass the CCC? I am not suggesting this is a case apparent, it is simply a matter of process if that is an alternate forum.

**Mr Field**—I will partly not answer your question and then I will come back to answering it, hopefully. Our jurisdiction in relation to the police changed some years ago, where we now have jurisdiction in relation to the Western Australia Police in relation to matters of administration and not in relation to other functionality, which of course moved to the Corruption and Crime Commission.

If they had a concern that involved those sorts of matters, under section 28 of the Corruption and Crime Commission Act, which they are obliged to advise the CCC of, then we would not accept those. We could not. Indeed, I would have thought the police would not do so on the basis that it would expose them to liability under that act. They are obliged ultimately by that legislation to refer those matters through.

Do they refer matters to us? Absolutely they do. They refer matters to us where they think the Ombudsman might be an appropriate agency to resolve a concern that has been raised with them. But in the circumstances you are alluding to, no, we would not be a mechanism.

**Senator PARRY**—It is very hypothetical.

**Mr Field**—As I say, I treat it exclusively as a hypothetical question, as you raise it as a hypothetical question. But there would be no hypothetical situation I could see, assuming the hypothetical question arose, where such a referral would occur.

**Senator PARRY**—I was interested. The police were not sure what they would do if that were the case, so I was wanting your view.

We heard evidence from the police this morning that, if a person was removed because of loss of confidence, they had one right of appeal to the Industrial Relations Commission. I think that was the answer we were given. I presume the industrial relations commissioner, or the commissioner hearing that, could then apply for reinstatement, which defeats the purpose of loss of confidence. Do you have any involvement in that at all?

**Mr Field**—No.

**Senator PARRY**—Are you aware of those provisions?

**Mr Field**—Broadly speaking. Generally speaking, those sorts of loss of confidence provisions are not ones which are in my jurisdiction, unless there were a situation of some potential public interest disclosure, some sort of whistleblower issue, which may potentially come to my office. I am generally a little reluctant to delve too deeply into the public policy issues that are specifically around my jurisdiction. I am particularly reluctant to delve into the public policy issues that I do not deal with, if nothing else because I might embarrass myself by not knowing enough about it. The truth is that it is not an area of mandate jurisdiction or even of particular interest to us on a day-to-day basis.

**Senator PARRY**—Thank you. You probably will not want to delve into my question either. The role of the parliamentary inspector in WA is slightly different to the role of what is called the parliamentary commissioner in Queensland—

**Mr Field**—Correct.

**Senator PARRY**—in the sense that the parliamentary commissioner is guided and directed by the parliamentary oversight committee. In WA the parliamentary inspector has the right to commence investigations and report directly to the parliament or the committee, or both, apart from some statutory provisions that the parliamentary inspector must perform. Do you have a view that the parliamentary inspector should be more a direct instrument, guided and directed by the parliamentary committee, or should have the free rein that the current position seems to enjoy?

**Mr Field**—I might largely respond in the way I responded to the last question. At the end of the day, there is no question that agencies like the Corruption and Crime Commission and my own agency require levels of scrutiny, and that comes from potentially multiple sources. Indeed, I think it is a good thing that there are multiple sources of such scrutiny.

There is clearly a proper role for a parliamentary inspector. I know that the CCC have stated publicly many times that they believe that to be the case. I am sure the parliamentary inspector believes that to be the case. Indeed, I gather that from his public comments in his reports. I think that the exact scope of that jurisdiction is a matter for government policy and, ultimately, for the parliament of the day, and I will not comment upon it more than that, except to say that the scope of it will depend on the context of the situation as well.

Some jurisdictions will have a variety of accountability mechanisms. I, for example, do not have a select committee specifically overseeing my office in other jurisdictions. That is not the case. But I have a range of other accountability functions that perhaps other agencies like mine do not have. It is a question ultimately, I suppose, of getting the balance right and ensuring that the system balances up the expenditure of taxpayers' money with the maximum probity, basically.

**Senator PARRY**—Just as an aside, can you be removed from office? Is it by a resolution of parliament, or can you be removed—

**Mr Field**—We are definitely speaking about serious hypotheticals now!

**Senator PARRY**—Yes.

**Mr Field**—I can be and, if I ever do any of the things that are in my act that require me to be, I should be.

**Senator PARRY**—Yes.

**Mr Field**—There are two ways I am removed from office. One is at the end of my five-year term. There is a right of a further term, but the term ends at that point and only by reappointment would I be appointed again. There are provisions in my legislation—such things as bankruptcy and misconduct—but ultimately, in terms of protecting the independence of my office, obviously the provisions to remove are reasonably onerous, in the sense that they require both houses of parliament and also the Governor to sign off. Yes, absolutely, and that is exactly the way it should be as well.

**Senator PARRY**—Finally, in the federal ACLEI model we have, we do not have a parliamentary inspector or commissioner, or whatever title we give that role. Obviously, you see that as being a fairly substantial working arm of the committee, irrespective of the parameters surrounding the powers of that person.

**Mr Field**—Yes.

**Senator PARRY**—Would you recommend to us, or suggest to us, that we look seriously at having a commissioner or an inspector in that particular role attached to the committee?

**Mr Field**—I would probably urge what I urge at any time I am talking about these sorts of issues publicly—that is, in preserving our democracy and the liberties and freedoms we have, we need accountability agencies, but those accountability agencies also must be kept to account. We need to find the right frameworks to do that. I think in Australia we have those frameworks broadly right. That is my view. I think we basically get that right.

**Senator PARRY**—I do not think any person would disagree with your notion. Let's examine that. The parliament appoints a committee. The committee oversees the anticorruption organisation, in whatever form that takes. Then the anticorruption organisation oversees the anticorruption process, in whatever agencies it has jurisdiction over. It is three-layered.

**Mr Field**—Yes.

**Senator PARRY**—The inspector or the commissioner is attached to the parliamentary committee, basically to do the work of the committee—to be the committee's eyes, ears and power.

**Mr Field**—Correct.

**Senator PARRY**—It is not really throwing an extra layer in; it is just giving a bit of teeth to the actual committee. That is how I see the modelling working in every jurisdiction we look at. It is really just about working out whether you need that person or that inspectorate agency, headed by a person, to do the work of the committee or whether the committee needs to broaden its scope and work through other mechanisms. That is where I am heading with the question.

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

Having said all of that, I think Western Australia is a good case in point for the success of such a parliamentary inspector. As I understand it, it is bipartisan-accepted and I think for good reason. That model has worked reasonably well. The CCC is an agency that I think largely executes its functions well, but it has very powerful functions, and ought it to have such an agency as the parliamentary inspector? Yes, I think that is true, and I think all the agencies and government and other parties generally over here have agreed about that over a period of time. Is

it something the Commonwealth could look at? Yes, absolutely. It could potentially be a model worthy of consideration.

**Senator PARRY**—Good. Thank you.

**CHAIR**—You would have had an opportunity to observe the relationship between the CCC and WA Police. Do you have any comments you would like to make about that?

**Mr Field**—No.

**CHAIR**—Have you had an opportunity to look at the legislative structure of the Australian Commission for Law Enforcement Integrity framework?

**Mr Field**—When I said ‘no’, what I would say is that my general view is—and it is a view held sincerely—that, largely, all public sector agencies in this state execute their functions with integrity. They are people with integrity, executing their functions with integrity, and largely I think they do a very good job. Those comments would extend to the Western Australia Police and the CCC. Sorry, I have now interrupted that second question you were asking.

**CHAIR**—The question was whether you had had a chance to look at the legislative framework for the Australian Commission for Law Enforcement Integrity.

**Mr Field**—Yes, I have looked at it. I have also considered the commentary given by my colleagues the Commonwealth Ombudsman and the Victorian Ombudsman, and largely I found myself in agreement with Professor McMillan’s comments. I would have thought he was in a reasonable position to have made those comments, in particular given his role in helping to establish the office. I saw no significant points of disagreement with the views he expressed to this committee.

**CHAIR**—Do you have anything you would like to add?

**Mr Field**—Not specifically. The only thing I would say is that it is obviously relatively early days for the committee. Apart from my general views about ensuring that the proportionality and balance is right—and that is not an easy task; it requires perseverance and, potentially, adjustments over time—

**CHAIR**—The balance of what?

**Mr Field**—The balance between making sure that the actions of agencies are not overly encumbered by regulatory frameworks and at the same time, of course, that they are not so unencumbered by appropriate public sector governance that they can act inappropriately.

**CHAIR**—In your view, what are the essential elements for an external oversight agency?

**Mr Field**—Transparency to the public. As you would, of course, every day, we bring a very strong view about the fact that we are spending other people’s money. It is all well and good to make bad decisions about spending your own money but not so much about spending other

people's money. All of these agencies are publicly funded and they need to have very high accountability and transparency.

I think they have to keep the agencies to account in both a compliance way and a regular audit way. They have to be visibly present with the agencies. Generally speaking, though, that does not mean they cannot work cooperatively with the agencies, and that is probably in the best interests of everyone. I also think it is important that those agencies that keep others to account ensure that they are always mindful of the potential costs and burdens that they can impose.

What we want to do is encourage the public sector to be innovative, to take appropriate risks and to do things which involve in some sense the exercise of unencumbered judgement, but at the same time, of course, there are appropriate frameworks and there needs to be absolute vigilance about matters which are inappropriate or which lack integrity. It is about getting that balance right. I think that is what the agencies need to do. It is a very difficult thing to get right, mind you. Every regulator in this country would struggle with that balance every single day, as do governments.

**CHAIR**—Do you have any particular comments to make about the resourcing of ACLEI? Do you support the statements made by John McMillan?

**Mr Field**—I am sure you have sat on enough committees to know that every regulator wants more resourcing.

**Senator PARRY**—That's a shock!

**Mr Field**—I noticed his comments. I tend to want to keep my resourcing as a regulator as limited as possible, because I am spending other people's money and not my own, and I am generally of the view that we ought to keep regulators' budgets as economical as we possibly can. Of course, having said that, we simply cannot do what we do not have the resourcing to do. We get to a certain level of optimal efficiency and after that, if we want to do other things or do new things, we need more money. They are public choices we have to make. We have to make choices about whether it is sufficiently important to us to undertake those sorts of functions and we have to allocate the money to do them.

**CHAIR**—Are there any other points you wish to make?

**Mr Field**—No. I sincerely think it is a critically important matter that you are looking at and I appreciate the time you have given me this morning.

**CHAIR**—I thank you very much for taking the time to give evidence today.

**Proceedings suspended from 12.02 pm to 12.45 pm**

**McCUSKER, Mr Malcolm James, QC, Parliamentary Inspector of the Corruption and Crime Commission**

**CHAIR**—I welcome the parliamentary inspector for the Corruption and Crime Commission. I note that we have the media present here today. Are you happy for these proceedings to be filmed?

**Mr McCusker**—I have no objection.

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

**Mr McCusker**—As an opening statement could I raise a question? That is, I do not have a full understanding of the ambit of inquiry of this committee, so I am not here armed with some opening statement or proposition to pronounce. My understanding was that I was to come along and give the committee whatever assistance I could. Perhaps if the committee could let me know what areas they would like me to address, I will do my best to do it.

**CHAIR**—Absolutely. We will. We can move straight to questions. This is the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.

**Mr McCusker**—Yes.

**CHAIR**—Or ACLEI. ACLEI was established relatively recently in 2006. It has really only been operational for 18 months. This inquiry is into the different state based law enforcement integrity models, with a view to informing the committee as to possible changes to ACLEI's functions, powers or structure. That is the overall purpose of what we are doing here.

**Mr McCusker**—This is a joint committee of the federal parliament?

**CHAIR**—It is. So we will move straight to questions. I will start by asking you to briefly outline your functions and powers as parliamentary inspector of the CCC.

**Mr McCusker**—Essentially, my functions as parliamentary inspector are to audit the operations of the Corruption and Crime Commission and to deal with any complaints that any member of the public may make against the commission or any of its officers. The extent to which the audit function extends has not been, as yet, very clearly defined. Certainly it involves consideration on a day-to-day basis of the way in which the commission is carrying out its functions, to ensure that it is carrying out its functions in compliance with the law.

One area which has not yet been resolved but is possibly going to be resolved is the question of whether the audit functions of the parliamentary inspector enable the inspector to carry out an audit of all of the material used for the purpose of telephone intercepts under the Commonwealth telephonic interceptions act. It is not a debate so much between me and the commission, but the question is whether, on a proper construction of the Commonwealth act, the commission is acting lawfully if it allows me to inspect that material.



Provided it is satisfied that it is not going to incur some form of reprisal by the Commonwealth DPP, it is perfectly happy to let me do that. So that is one area which needs some resolution, because it is a very important part of the armoury of the Corruption and Crime Commission that it carry out telephone intercepts. It is a major part of its operations. The parliamentary inspector deals with complaints made against the commission and its officers, which may be complaints of misconduct. They may be complaints that the commission has not properly dealt with, without there being any allegation of misconduct—a particular complaint made by a member of the public to the commission. That often means—not always, but often means—that a member of the public who has made a complaint to the commission cannot understand why the commission has said, ‘We’re not going to deal with that.’ The prime reason the commission would say that in answer would be that it is beyond its jurisdiction.

A lot of people still do not understand that the Corruption and Crime Commission’s functions, in terms of inquiries into misconduct, are limited to misconduct by public officers. That is as defined by the Criminal Code, in fact, in Western Australia. A public officer is essentially someone who holds office under a statute of the state—state public office, not a Commonwealth public officer. That means that the Corruption and Crime Commission could not, for example, deal with a complaint made by an employee of a corporation against his or her employer that matters were occurring which might be labelled misconduct in the broad sense. Misconduct under the Corruption and Crime Commission is specifically defined as relating to conduct of various types by a public officer. Does that satisfactorily answer the first question?

**CHAIR**—Thank you. I know that my colleagues have some particular questions to ask about matters that you have referred to. How does your role complement that of the parliamentary joint standing committee on this policy?

**Mr McCusker**—The parliamentary inspector is designated under the statute as an officer of the parliament. The joint standing committee is a committee which is appointed by a decision of both the upper and lower house. Although the joint standing committee has no power to actually direct either the parliamentary inspector or the Corruption and Crime Commission, nevertheless it plays a very important broad oversight role as regards both the functions of the commission and the inspector, because both the inspector and the commission provide reports to the joint standing committee.

From time to time the joint standing committee holds meetings with both the inspector and the commissioner, although generally separately, not together. In fact, this very chamber is the usual venue for those meetings. The meetings may be for a particular purpose because some specific matter has arisen or it may be just as part of a general review of the operations of both the inspector and the commission. But there have been some issues that have arisen, essentially, as to the extent of the parliamentary inspector’s audit function.

It was intended, in fact, to attempt to resolve those issues and we were a long way towards that shortly before the calling of the state election a few months back, which put everything back in the melting pot because the joint standing committee then ceased to exist. But one of its functions could well be—and was intended at that time to be—a meeting between all three parties for the purpose of seeking to resolve any issues that existed.

**CHAIR**—Are you aware of the situation in Queensland where the parliamentary commissioner can only investigate matters as directed by the parliamentary committee there on crime misconduct?

**Mr McCusker**—That is my understanding, yes.

**CHAIR**—What is your view of that system?

**Mr McCusker**—It narrows the role of the parliamentary inspector. Of course, it commensurately could enlarge considerably the role of the committee, because if complaints cannot be made directly to the parliamentary inspector by members of the public, as occurs here, then any complaint would go first to the committee and the committee would act, I suppose, as some kind of a sifting operation and would pass some of those, but not necessarily all, to the inspector. It seems to me that the present situation in Western Australia—that is, without sounding too parochial—is a better one.

**CHAIR**—How many complaints do you receive approximately from the public?

**Mr McCusker**—How many complaints annually?

**CHAIR**—Yes.

**Mr McCusker**—I did not bring the numbers here, but around 50 to 60 complaints a year, so it is not a huge number compared with the number of matters which the commission, which is of course a very large body, actually deals with.

**CHAIR**—What resources are made available to you to exercise your powers as inspector?

**Mr McCusker**—My position is part time, you will appreciate, but I have the services—and I have had since earlier this year—of a full-time legal officer, who is designated the legal officer of the parliamentary inspector. He is a qualified lawyer. We advertised extensively last year to try to fill that position and it was very difficult to fill. We were fortunate enough to get the present occupant of the position—the first occupant—who is not only a qualified lawyer but also has relevant experience, notably as a legal officer in the WA police force, as well as a short period with the Corruption and Crime Commission itself, until he decided that he would like to take on the position of the legal officer of the parliamentary inspector.

We also have accommodation made available. If it were necessary—but it so far has not proved to be necessary—for the purpose of conducting some inquiry into an allegation of misconduct against a commission officer, because I am an authorised agency under the Commonwealth act I could actually have recourse to telephone intercepts. But I stress I have not yet had the need to do that.

**Senator JOHNSTON**—Mr McCusker, thanks for coming along today. The only issue that I want to have some clarification on is this matter that you raise with respect to telephone intercepts. Do you think it is a matter of interpretation of the legislation—the 2003 act for the CCC and your statutory provisions—or is it, rather, more an inadequacy of the legislation in not spelling out the functions more clearly as to the length and breadth of your powers and the

length and breadth and where they stop of the CCC's powers and then the Ombudsman's role and what have you? Could you tell us whether you think it is an interpretive matter or simply a shortfall in the legislation, or both?

**Mr McCusker**—In a sense it depends upon how one interprets the legislation, so it is an interpretive matter, but—and, I mean, we do not want to go to court over this—if the interpretation were in the end to be that possibly or probably the parliamentary inspector did not have the power to audit the telephone intercepts, then I think that would be an inadequacy in the legislation, because it is such an important aspect of the commission's operations. Perhaps I can expand on that.

**Senator JOHNSTON**—Certainly.

**Mr McCusker**—When an application is made for a telephone intercept—that is, a warrant for a telephone intercept—the commission is obliged to support that application with an affidavit in which it should set out all of the relevant facts and circumstances giving rise to a suspicion that misconduct has been, is being, or is about to be committed, to use the words of the section. It is not just misconduct. It has to be misconduct of such a nature—so I should correctly say 'serious misconduct'—that a conviction of it, if it were a criminal offence, could result in a term of imprisonment of seven years or more; so it is very serious.

**Senator JOHNSTON**—So intercepts relate to a very particular, upper echelon of misconduct and criminal activity?

**Mr McCusker**—Absolutely. That is certainly the case. It is important to correct a misconception which I think exists to some extent, that the commission can intercept any telephone conversation it wishes. It must establish to the satisfaction of a judicial officer that the particular matter under investigation is such that, if it were proved, it would carry such a term of imprisonment—that is a very high threshold indeed—to enable a warrant to be obtained. I am not suggesting that there has been anything untoward in the way these warrants have been obtained, but it is important to ensure that the underlying basis for the application of warrants does exist, or reasonably does exist, and, following up from that, that indeed what then does occur is an investigation of a complaint or an offence of that nature.

To answer your further point, the Ombudsman does not carry out that kind of function. It is a very limited function. I think, therefore, that unless the Ombudsman is given greater, broader powers, which he may not wish to have anyway, it is important for the parliamentary inspector to carry out the audit function fully, to have the power to do that.

The anomaly in all of this is that, because of the interpretation, it is not in dispute that if I am conducting myself an investigation of alleged misconduct on the part of any commission officer, I then do have the power to examine all of the telephone intercepts. But that is a specific situation as distinct from a general audit power. Since the legal officer has been appointed, I have had sufficient resources to carry out what might be called in general terms an ongoing audit, so we have already completed an audit of all of the work that has been done and all the material relating to surveillance devices, because that falls under a state act in Western Australia. That being so, there is no problem. I certainly have the power to audit surveillance devices, but that is not the same of course, you can appreciate, as telephone intercepts.

**Senator JOHNSTON**—That is right. So what is the solution? A solution appears to me to be that we need to itemise and spell out the parameters of your jurisdictional responsibility and the adherence to that of the CCC in a clear form in maybe your legislation.

**Mr McCusker**—Yes, in our legislation certainly, because there is reference to auditing compliance with state laws. The Commonwealth act, of course, is not a state law. The other side of the coin, though, is that it would be desirable to get a clear statement from the Commonwealth DPP that if the state commissioner of the Corruption and Crime Commission does allow me to audit the reports, he will not be on the end of a writ or a summons. The commissioner has said, pragmatically, ‘If I can get an assurance that there is no problem,’ despite the commissioner’s legal interpretation which he admits is not absolutely crystal clear, ‘then I’ve got no concern about you auditing the warrants.’ Either that, or the Commonwealth legislation itself should be amended so that the power is clearly given, or the authority is clearly given, to make this material available to someone in my position.

**Senator JOHNSTON**—Thank you for that.

**Senator PARRY**—I want to return to the role of the parliamentary inspector and some of your functions. This is all in the context of us examining whether or not a parliamentary inspector or equivalent should form part of what we have as part of the Australian Commission for Law Enforcement Integrity.

**Mr McCusker**—I understand.

**Senator PARRY**—We took evidence from Queensland authorities in Brisbane last Friday and I am interested in getting a comparison of the two. You have the ability to generate your own investigations and you have a fair degree of autonomy, rather than at the direction of the committee, where in Queensland the parliamentary commissioner, which is the title there, does not have that same ability. Can you just explain the advantages, or disadvantages if you see any, in the way you operate in relation to that?

**Mr McCusker**—Yes, certainly. I should mention though that although I have, independently of the joint standing committee, the power to carry out investigations in such areas as I think appropriate—given the terms of the statute and my functions; I cannot go beyond that—there is also specific reference in our legislation to carrying out any investigation or inquiry that may be delegated to me by the committee—so the committee can have a voice in it—and also by the parliament itself.

**Senator PARRY**—But you are not subservient only to the committee? The committee is not there as an instructing authority.

**Mr McCusker**—No.

**Senator PARRY**—It is an advisory, monitoring type of authority?

**Mr McCusker**—It is. I would not say it is subservient and nor would the members of the committee, but there is a role for the committee to play if it chooses to give me a direction to carry out a particular investigation.

**Senator PARRY**—Can I put a case to you, just to try to simplify the description of your role. If the parliamentary oversight committee is there to monitor and report on the activities to the parliament of the CCC, having an inspector attached, connected or associated with that committee gives the committee the investigative power, the armoury, what it needs, to physically carry out its duties. If that is the case, your role is then a step above and beyond that. That is how I am seeing it, but comment on that would be appreciated.

**Mr McCusker**—The joint standing committee, I suppose, if it required it, could get the resources to carry out its own investigation into areas of misconduct of public officers, but to the best of my knowledge it has not done so. It does carry out other work which is related to the Corruption and Crime Commission. For example, it conducted a thoroughgoing review of the protected witness program in relation to the police force. It did that with the assistance of the Corruption and Crime Commission and they asked me for some comments as well. I do not think you could regard the committee here, the joint standing committee, as of itself an investigative body of any nature.

**Senator PARRY**—It cannot. By its make-up, it cannot do that anyway.

**Mr McCusker**—No, it cannot do that.

**Senator PARRY**—That is right. But do you see yourself as an arm of the committee to be able to perform that function for the committee or on behalf of it?

**Mr McCusker**—Certainly. I suppose there are two aspects of that question. If the committee asks me to, then certainly under the act I am bound to carry out a particular investigation, so in that sense the committee is using me as its arm. But I also carry out investigations of my own volition based usually on complaints and report to the committee on the outcome of those investigations.

**Senator PARRY**—Does that include—could you investigate—parliamentarians?

**Mr McCusker**—Yes.

**Senator PARRY**—It is within your remit to do that?

**Mr McCusker**—Yes, because they are public officers as defined under the act. In fact, the commission has carried out a number of investigations and given reports with respect to parliamentarians, who by definition are also public officers. I have not been asked to conduct any investigation of a parliamentarian, but I have been asked by several parliamentarians who have been the subject of reports to critically examine the report, with complaints about the way in which the report has been produced.

**Senator PARRY**—So if you had to examine or investigate activities of a parliamentarian, are you obliged to report that to anyone, or can you just do that confidentially without reporting to any other person?

**Mr McCusker**—I could in fact carry out an investigation without any report to anyone. It is highly unlikely that I would do that. If I carried out an investigation relating to a parliamentarian

and concluded that there was some misconduct, then I would certainly, though not compulsorily, report the outcome of that investigation to the joint standing committee. I do not have to. In fact, reports on investigations that the parliamentary inspector conducts may be made to the joint standing committee or directly by tabling in the House.

**Senator PARRY**—How do you physically table in the House? By lodging it with the Clerk, I imagine.

**Mr McCusker**—Exactly.

**Senator PARRY**—So you could bypass the entire parliamentary process by a simple tabling. You do not have to talk to any single parliamentarian or committee.

**Mr McCusker**—I could. I do not think I would, but under the statute I certainly could simply table a report. On at least one occasion in my tenure as parliamentary inspector I have made the committee aware of an investigation I was conducting and an examination of a report, in fact, and the committee has said, ‘Look, we’d prefer that you didn’t table it to us. That’s one way of getting it through to the House. We’d prefer that you tabled it directly.’ I think in that instance it was because the committee did not wish to appear in any way partisan or involved in it.

**Senator PARRY**—Do you have to report to, or are you accountable in any way, shape or form to, the Attorney-General or any other minister?

**Mr McCusker**—No, I do not. Obviously the Attorney-General is a very important part of the whole process, but the Attorney has no statutory function in relation to the parliamentary inspector. So the short answer is that I do not report to the Attorney.

**Senator PARRY**—How can your position be terminated? Is that by a committee, by a joint sitting of the parliament?

**Mr McCusker**—It is by the joint of the sitting parliament, as I recall. I am not absolutely certain though.

**Senator PARRY**—One hopes it is not something you have to have as top-of-mind awareness.

**Mr McCusker**—No. Or it can be terminated by effluxion of time, of course.

**Senator PARRY**—Yes. So really your tenure is quite secure.

**Mr McCusker**—Yes.

**Senator PARRY**—So you can operate without fear, favour or affection, by all standards or measures.

**Mr McCusker**—Yes.

**Senator PARRY**—And you can launch your own investigations if you deem necessary. But primarily you are concerned with the performance and the function of the CCC.

**Mr McCusker**—That is right.

**Senator PARRY**—In every respect.

**Mr McCusker**—Yes. When you say ‘launch my own investigations’, yes, but the primary body for doing investigations of misconduct or serious misconduct of public officers is, of course, the Corruption and Crime Commission. If someone came to me and said, ‘I’ve got a complaint against X, a public officer, guilty of misconduct,’ the first question I would ask would be, ‘Have you been to the commission?’ If that person says, ‘Yes, I’ve been and I’m dissatisfied with the commission for the following reasons,’ I can then carry on myself and conduct an investigation. But if the answer is, ‘No, I haven’t been to the commission,’ then I not only do but must refer it back to the commission, at least to see what the commission says.

If someone says, ‘I’ve been to the commission and I’m dissatisfied,’ then I would in that case generally refer back to the commission to seek further explanation of why didn’t they deal with this in this way? I must say, the commission has always been very cooperative in giving explanations, supplying all its files and so forth. I have got complete access to the commission’s files if I require it.

**Senator PARRY**—If you were required to launch maybe a major investigation into the commission, where would you draw your resource from? From state police, from external jurisdictions? What sort of authority do you have to do that?

**Mr McCusker**—Under our act I am entitled to coopt suitable persons to assist me. If the legal officer alone is not enough, I can engage on a part-time basis officers of the WA police force, if I sought to do so. I have in one particular investigation, which did in part involve the commission, in fact used a number of officers of the commission. I swore them in as officers of the parliamentary inspector.

That might seem a bit odd if I am investigating a matter which involves the commission’s operations itself, but it was only peripherally that the commission was involved. The officers whom I did coopt were very experienced officers and, I must say, very capable, and I was able to ensure that they had nothing to do with the particular matter.

**Senator PARRY**—Can you step outside the Western Australian jurisdiction and coopt assistance from outside the state?

**Mr McCusker**—I see no bar to it. Yes, it is possible.

**Senator PARRY**—Thank you. They have been very good answers.

**CHAIR**—Looking at the WA integrity system as a whole, do you see any overlaps or any gaps, apart from the telephone intercept audit issue you mentioned, that could possibly inform us of issues at the Commonwealth level?

**Mr McCusker**—No, I do not think I can give you an answer to that one.

**CHAIR**—Leaving out the Commonwealth aspect of it, just looking at the WA system generally?

**Mr McCusker**—It is not perfect. I am trying to think of how to answer your question. There is always room for improvement, I suppose, but by and large it operates very well. You have read Gail Archer's report, have you, on the review of the commission's operations? That review had to be undertaken. It was a matter of statute. One of her recommendations, with which I did not agree—and the government of the time certainly did not agree either—was to extend the operations of the Corruption and Crime Commission more broadly to members of the public generally. It seemed to me that the problem with that is that it would, in effect, create a second police force.

I suppose the reason for my hesitation when you asked me that question, Chair, is that there is a view, which is at least arguable, that the operations of commissions such as these should be left to the police force because many of the investigations relate to conduct that could be said to be not simply misconduct—a disciplinary offence—but conduct involving the commission of a criminal offence and that such commissions' operations might be more usefully directed simply to the police force itself, to investigate allegations of misconduct against the police.

At present, in our state—and I think it is the same in others—if a complaint of any sort is made against a police officer, the police have an internal investigation unit. I am not for a moment casting aspersions on their operations or independence but, from an outside viewpoint, there has been criticism of the police investigating its own. That is always a problem of perception. I am not saying it is a problem in reality, but it is a problem in perception.

Because the Corruption and Crime Commission has a function which extends beyond simply investigating the police force, it cannot investigate every allegation made against the police. To put it into concrete terms, suppose a citizen makes a complaint to the police commissioner about the conduct of certain police officers and that in turn is passed to the internal investigations. They come out with a report on that, in effect saying there is no basis for the complaint. The citizen can then go to the Corruption and Crime Commission and the commission may then either undertake its own investigation, or what it does not infrequently is to refer back to the police internal investigation and obtain a report from it. There is a bit of a flaw in that, in that the citizen who has made the complaint—and I have had this then come to me in turn—is saying, 'I made a complaint to the commission and they've referred it back to the very body that I was complaining about.' So that, it seems to me, is a matter that is worth considering.

**CHAIR**—Have you had an opportunity to look at the legislative framework for the Australian Commission for Law Enforcement Integrity?

**Mr McCusker**—I have not, I must confess.

**CHAIR**—What, in your view, are the essential elements of an effective external oversight body?

**Mr McCusker**—In respect of something such as the commission or the parliamentary inspector?



**CHAIR**—The commission.

**Mr McCusker**—I think it is essential that there be an objective approach taken, and that is a matter of the culture within the particular body, to ensure that there is an objective and independent approach taken to allegations. It is also important that there is seen to be by the general public that independent approach. The question has been raised—and it is an ongoing debate—as to whether such bodies should have the power to conduct publicly held hearings. That has been an issue of considerable discussion in Western Australia.

There are pros and cons with public hearings, but the problem is that the person who is the subject of a public hearing and against whom allegations are made and propositions are put has no right to be represented by counsel for the purpose of counsel then questioning witnesses on whose evidence allegations might be based. In short, it is not a court hearing in the normal sense, where there is the requirement for a fair trial, because, as the commissioner quite correctly says, these are not trials. But the outcome of them is treated as if they were trials, and people's reputations can be seriously damaged. When that has been put to the commission, the commission has repeatedly said, 'But we haven't even made findings. We've simply expressed opinions.' But to the general public it makes no difference. Once those opinions are expressed, particularly in a report that is tabled in the parliament, the damage is done, and certainly irreparable damage is done.

That is an area that I think should be carefully considered. The present commissioner has held few, if any, public hearings. I have previously voiced some concern about the way they are conducted.

**CHAIR**—Did you have any other comments you wished to make?

**Mr McCusker**—No, thanks. I think I have said all I can.

**CHAIR**—I thank you very much for giving your time today.

**Mr McCusker**—My pleasure.

[1.23 pm]

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

**TUCKER, Ms Bernadine Cathryn, Private capacity**

**CHAIR**—I welcome witnesses from Edith Cowan University. Do you have any comments to make on the capacity in which you appear?

**Prof. Ross**—I am in the School of Law and Justice.

**Ms Tucker**—And I am a student at the Edith Cowan University.

**CHAIR**—The committee has accepted your submission as submission No. 15. Are there any changes you would like to make to it before we proceed?

**Prof. Ross**—No, we are quite happy with that, thank you.

**CHAIR**—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.

**Prof. Ross**—Thank you very much for the opportunity to come here today and express our views, which is most welcome. It seems to me, when we are looking at what models we need for an integrity agency, one of the central questions that we need to answer is: what degree of independence does it require as against what mechanisms of control it needs to have? We talk about these agencies being independent. They are, to a degree, and it is that degree that your committee to establish.

If these commissions of inquiry were truly independent, if something went wrong—and something always will go wrong—it would be just the commission that was held to account, but that is not the way it works in reality. The government of the day will be held directly responsible by the public, or at the very least indirectly responsible, and will be required to explain what went wrong and why and how it is going to fix it. So they are not independent agencies to the fullest extent possible.

Over time these agencies can run off the rails a little bit—lose focus and become overzealous in the application of their powers—and I think a good example of that is perhaps ASIO in the seventies, with the Hope royal commission being required to bring it back on track.

There needs to be a balance of independence and control. If it is on some sort of continuum, it is where you put the cleaver through that is important. If it is too far to the left, the body might be very independent and have the confidence of the community, but it may engage in things that it perhaps should not. If it is too far to the right, the agency might have too much control and lose the confidence of the community and the ability to perform its function.

In saying that, it is not just one measure of independence and control. There are quite a number. The ones that I think are probably most important are: control over the appointee, control over the resources—

**Senator PARRY**—Sorry, who do you mean by ‘the appointee’?

**Prof. Ross**—The control over how the commissioner or commissioners are appointed and by whom and under what circumstances—jurisdictional control, operational control and accountability control. I am happy at some stage to go through what I mean by all of those terms. It seems to me that it is somewhat of a matrix, in that you can be very tight on one measure of control which allows you to have some latitude on others. So you have a number of balances that you are trying to play with to get the measure of independence and the measure of control that you require. I think that is the great task that confronts you people.

**CHAIR**—Thank you. A number of submissions to this inquiry have emphasised the importance of prevention and education—a function like that for external integrity agencies.

**Prof. Ross**—Yes.

**CHAIR**—What, in your view, does a strong corruption prevention program look like?

**Prof. Ross**—I think everybody would agree that the best bang for the buck comes from prevention rather than cure, be it in health, education or whatever. But I think it is also true that every now and then you need a white cross on the hill, just to focus people’s attention, and that is achieved through having the operational people exposing the corruption. Corruption prevention is not something that people readily embrace, and there needs to be some compelling requirement for them to embark on it. In WA it became a premier’s circular which required each agency, as part of their risk assessment process, to include a report on corruption prevention in their annual reports. It really is essential that you have some method of coopting people to engage in corruption prevention.

In terms of what corruption prevention is, it is the usual things: education and awareness. From my experience in the corruption prevention area, it is absolutely amazing the differences that people will see in a concept like ‘conflict of interest’ and the lack of understanding of what that means and the lack of understanding of what ‘a perception of a conflict of interest’ means. So we have people that are operating without a shared understanding of what those words mean. In some ways it is analogous to the word ‘democracy’. We have an understanding of democracy, but they also have a democracy in Indonesia and they have a democracy somewhere else but it is not the same. It is a bit like that with the terms that are used in corruption prevention. There is not necessarily a shared understanding and there needs to be.

It has become of greater importance in the Public Service as it has come from the early 1980s where it was a career for life and everybody came in at the bottom and percolated up. Now, with lateral entries, with people coming from the private sector, not having an understanding of public sector values and ethos, sometimes their private sector entrepreneurial skills that they have been valued for get misapplied in a public sector environment, so there is this necessity to educate and advise persons such as that.

**CHAIR**—Do you have a general assessment of the WA integrity system? Do you believe that there are particular gaps or overlaps that should be addressed?

**Prof. Ross**—The CCC Act has a peculiarity in that it refers to its main purpose and object as being the reduction of organised crime and that certainly has not been a feature of its operations to date. The next thing that it is required to do is to reduce the incidence of corruption, so a preventative activity. That all sounds well and good, but when it comes down to the inside of the act and you read it, it is all about the operations of it. So a central question that needs to be answered in looking at what your commission is to do is: is it inquisitorial or is it prosecutorial? That then drives you in particular directions. If it is inquisitorial, then you are looking to expose the corruption—'sunlight the best disinfectant' and so on—and unearth it so that people become aware of it. That is the role of the inquisition.

The prosecutorial role seems to be what captures the flavour the most. All of the agencies, not just in WA but elsewhere, seem to have some sort of scorecard on how many convictions they have had, how many prosecutions have arisen from their inquiries. There is an emphasis on the operations and prosecutions, and that drives the organisation in a particular way in terms of how they allocate their resources. Invariably, corruption prevention will be a much smaller directorate than operations in any of the agencies around. That is a fundamental issue to determine: what is the purpose of it? Is it to prosecute or is it to expose?

**Senator PARRY**—Can't it do both?

**Prof. Ross**—I was listening to Mr McCusker and he raised what seems to be a vexing question about public versus private hearings. That is the nub of whether it is prosecutorial or inquisitorial. If you are looking to use the hearing room as an investigatory tool, then you need it to be heard in public because, by exposing a particular issue, people ring up and say, 'I know a bit about that case,' or, 'I've got a similar story to tell about something else.' As an investigatory tool, it draws more people in to provide information that you would not otherwise have. However, it can then limit the capacity to go on to prosecute that person, because they have given the evidence in the inquiry. The other way is where it is closed. It is interesting that the legislation in Australia varies as to whether it is private unless there are good reasons for it to be public, or public unless there are good reasons for it to be private. It depends on what you are looking for your agency to do.

**Senator PARRY**—Generally it is the latter, isn't it? It is accepted as the latter in just about every sphere?

**Prof. Ross**—Yes. It is interesting, because the basis for these commissions is that they are standing commissions of inquiry, following on from the good work of royal commissions that preceded them. In Queensland the CMC, or the CJC before that, as you would know came out of Fitzgerald, Wood and PIC, and so on. The royal commissions would get a terrible bashing if they conducted all of their hearings in private. They are conducted, in the main, in public and people accept that, so the issue about being called before them does not seem to have the same taint as being called before these standing commissions.

I think it is because they are so infrequently used, whereas royal commissions have hundreds of people coming through and it is accepted that a whole lot of people will get brought in and

asked questions. If you become very selective about who is coming in and whether it is public or not, it does put a focus on that person and the reason why they are there. As an investigative and educational tool, open hearings could be used a great deal more.

**CHAIR**—Have you had an opportunity to examine the legislative framework for the Australian Commission for Law Enforcement Integrity?

**Prof. Ross**—I must confess, I did when it was in the bill stage but I have not kept track of it. I was interested in it when it was in its genesis.

**CHAIR**—Did you identify any problems or limits with that legislation or have you seen anything—

**Senator PARRY**—The bill was largely unchanged.

**CHAIR**—Have you identified any problems with its operations?

**Prof. Ross**—Yes. I think I made an earlier submission on this point. Just focusing on the AFP and the ACC is, in some ways, placing those agencies in a position of being somehow so much different from every other agency in that they are the only ones where we have real concern about corruption or integrity as an issue. That really should not be the case, I believe.

**CHAIR**—So you are saying other agencies should be included?

**Prof. Ross**—Yes.

**CHAIR**—Or do you mean across the public sector generally?

**Prof. Ross**—Both, actually. I do not think it is a bad plan to start with it small and then, as you develop your expertise, to move into the other quasi-policing functions: customs and immigration et cetera, those that are exercising considerable powers. But the end always has to be to include all of the government agencies, particularly where there are large sums of money and where they are being allocated on the basis of grants and so on. There is a great area there for corruption to occur.

There is another thing that I believe needs to be considered. Because we have gone through periods of corporatisation and privatisation and whatever, we have a lot of functions that were previously public which are now private. We even have some that are private that are perhaps now being considered to come back to public. I notice that New Zealand is bringing their railways back under control, and so is Singapore. So we have these functions that can either be public or private, but there is certainly a great public interest in their running, and whether they also should be brought within the aegis of the commission is something that needs to be considered. I would probably say that they ought to. How you delineate between what is private but performing that public function would be quite testing, I am sure, but certainly theoretically I think it should. I have just lost the train of thought on your question, I am sorry.

**CHAIR**—It was about the legislative framework for ACLEI and the way it is operating in practice, and your views, if any, on the resources allocated to it.

**Prof. Ross**—When it started off, it sounded as if it was quite a modest effort. That was the other thing I wanted to say, sorry, if I can just jump back to that. If you have a concentration just on your policing functions, there is a potential that you are setting up the organisation to fail in that they are perhaps tougher eggs to crack than some other areas, particularly if you are only doing the prosecutorial and not too much corruption prevention. Activities can go on for years without a result, so it can make the agency look a very good area when the razor gang needs to trim back, whereas if you have a strong corruption prevention component, you always have something to justify your existence. Certainly if you have the other agencies in, where people do not have the countersurveillance experience and are not as comfortable giving evidence or making statements or whatever, you can often have better results with your inquiries than you do with police officers who are very skilled at giving information and evidence and very skilled with surveillance and countersurveillance. It provides your agency with a much better chance to click over and get runs on the board, which it needs to do to survive.

I think the other interesting thing about ACLEI is where it is positioned. I think the other commissions of inquiry report to both houses of parliament, or the single house obviously in Queensland. Reporting as part of a government department is a tad unusual. That is one of those independence and control types of arrangements, and it might be that that has a perception of control over it which might be counteracted by some other level of freedom in something else.

What I would hasten to add, though, is that I think that it is welcome at this stage in the development of commissions of inquiry that we do have different models to look at, because there is a sort of sameness about what we have had in the jurisdictions of Queensland, New South Wales and WA. I think it is very interesting that the Victorians have taken a somewhat different approach, and there is nothing to suggest at this stage that their model is any worse or any better than anyone else's. I think that it is by having the ability to compare and contrast that you can start to see what is the best way to go as opposed to just replicating what has gone before. Hence, the research that my colleague here is doing.

**CHAIR**—How far along are you in that research?

**Prof. Ross**—Perhaps I will get Bernie to quickly explain what the process is.

**CHAIR**—Yes.

**Ms Tucker**—I am using the Delphi technique to gather the research material, which has been used extensively in the health sciences and IT areas but has been neglected in the police oversight field. With the emergence of technology, especially the internet, it makes it easy to get the views of subjects that are experts and bring them together anonymously, collate that information and then send them back out for some feedback and get some responses in that way.

My research has only just started, with the first round of questionnaires being sent out to participants. I have participants from within Australia and internationally, which is quite good to see. The first round of responses is starting to come back in. What prompted me to start the research was comparing the IPCC in England to the WA model, the Corruption and Crime Commission, because both models were started as a result of a commission of inquiry and both models were started in the same year. Because Australia had adopted the British style of policing—their own model—back in the early years, I was wanting to explore whether the

model that they had up and running, which had been going through quite a bit of review, was the best model to adopt here. There are differences between that and the WA and Australian models, which I thought were quite interesting. In wanting to compare them, I realised that there was no analytical tool that was available to do that contrast. Hence, the purpose of my research, but it is only in the early stages at this point in time.

**CHAIR**—I wish you all the best with that.

**Ms Tucker**—Thank you.

**CHAIR**—And I look forward to finding out about the results when it is done. How long do you think it will take?

**Ms Tucker**—I am anticipating having it finished by June-July next year, as long as the participants return the questionnaires. That is the only hold-up in this sort of process, because it is qualitative and quantitative data that comes and it is a mix of the two. Just trying to get these responses back in is the hardest part.

**CHAIR**—There is a public accountability conference being held in Brisbane in July next year. Perhaps you could present your findings there.

**Ms Tucker**—That would be very interesting. Hopefully I will have them by then!

**Senator JOHNSTON**—Professor, thanks for coming along. I wanted to ask you a bit about the current circumstances that we find ourselves in in Western Australia, unlike every other state, where we have the Corruption and Crime Commission apparently in disagreement with the parliamentary inspector with respect to the length and breadth and boundaries of the various powers that each of them enjoy.

**Prof. Ross**—Yes.

**Senator JOHNSTON**—We have heard from each of them today. One emphasised a little bit of an interpretative matter and the other suggested that the legislation was in fact falling short of the mark in setting out those boundaries. What is your view of the lines of delineation and the functions and what shortcomings have you seen in the model that we have to this point? One headline says ‘Inspector blasts CCC’ and there is another one that says that there is a rift between the two of them. Clearly, we would not want it to come to the surface like that.

**Prof. Ross**—No.

**Senator JOHNSTON**—What do you think it is about and what is the solution? I suppose the question is: where have we gone wrong?

**Prof. Ross**—Yes. We have two prominent legal personalities, both able to interpret legislation, and they have done so in this case in slightly different ways. It is certainly up to the legislator to clearly indicate what they believe it should be. Whether the parliamentary inspector is providing oversight or whether it is some sort of house of review, where it gets the chance to have another go—some sort of appeal tribunal—I do not think that was the intention.

The way it is now, if you do not have a favourable response to a complaint that you make to the CCC, all you do is kick it up to the parliamentary inspector and say that you are unhappy with the methodology adopted by the CCC in investigating it. It is not very difficult to paint a picture that they have not done it properly, so it becomes another house of appeal or house of review, and I do not think that was ever intended.

**Senator JOHNSTON**—Particularly where the parliamentary inspector is in fact a practising senior counsel, who is used to taking the complaints and/or judicial issues of clients forward in a particular manner, it strikes me that him taking complaints from offended politicians, particularly, is a bit of a recipe for an obvious problem.

**Prof. Ross**—Yes, I think that is right. He is not from the judiciary, he is a defence lawyer of great renown, and I think that there is a tendency for his office, small as it is—himself and one legal officer—to look at what comes before them from the background of their experience in defence. I think that that is the way he casts his eye over things, and that may be part of the difficulty that they are experiencing.

For mine, it is an absolutely essential position to have. I can recall a conversation with Brendan Butler a number of years ago when he was in charge of the CMC. They did not have a parliamentary inspector at that stage, and he was advocating strongly to the parliament to have one. He felt that there was a need for oversight of what they were doing. So it is an extremely important position. Just where you set the boundaries for it is also extremely important. I think it is fine for there to be tension between the two offices—I do not think that that is necessarily a bad thing—but I do not think it is helpful to have it on the front page of your local newspaper, especially when they are both such prominent people in legal circles here.

**Senator JOHNSTON**—Yes.

**Prof. Ross**—One of the difficulties that we have in a place the size of Perth is that everybody knows everybody and it becomes very difficult when your parliamentary inspector has to step aside from a matter because he has previously dealt with it.

**Senator JOHNSTON**—Or acted for one of the parties.

**Prof. Ross**—That is right, and that becomes very difficult. Happenstance has arisen such that legal counsel for the CCC had to stand aside because her husband, who is the Deputy Director of Public Prosecutions, was being looked at. That is just the way these things work. It is very difficult to know what to do, but I think the legislature has to make it clear what the role is and they have to set the boundaries. You cannot leave it to the players, because each side will try and crimp as much their way as they can, as I would too.

**Senator JOHNSTON**—As is human nature.

**Prof. Ross**—Yes.

**Senator JOHNSTON**—Thank you very much, Professor.



**Senator PARRY**—Most of my questions have been asked by my colleagues, but I want to delve into something you mentioned in your opening remarks: the Public Service being a career for life and how that has changed. This delves into the area of, in particular, police commissioners now being on between three- and five-year contracts, where previously they were promoted to that rank and left by resignation, death or the very unusual step of being terminated.

**Prof. Ross**—Yes.

**Senator PARRY**—How can a senior public servant, or for that matter a commissioner of police—although it is slightly removed—give frank and fearless advice if the advice they give may be coloured by the fact that they are looking at contract renewal?

**Prof. Ross**—I do not think they can. That simple.

**Senator PARRY**—So what is the best model then, in light of that answer?

**Prof. Ross**—It was very interesting to hear Justice Kirby's remarks on the judiciary and their appointment tenure, where 72 years was the upper age barrier, and he is saying that that is not the best. He has advocated that there should be a 10-year life span for the judiciary. That is to promote some sort of turnover and regeneration and whatever else. Three years is a very short period of time in which to gauge somebody.

**Senator PARRY**—Although the electorate do it for the federal parliament every three years, so maybe you are right.

**Prof. Ross**—Yes. New South Wales might want to do it more frequently just at the moment. Three years might be too long. But something that spans two electoral periods might have some attraction so that, if I am off tap with this particular government, there is a chance that it might be turned around at the next election. Something around that seven-year mark might be a more appropriate period than five, or certainly three, so that you have got a link.

**Senator PARRY**—Go back to the commissioners of police then. This could apply to other senior officers of large areas where they have a lot of coercive power and rank structure et cetera. Do you think commissioners of police should be promoted there on the merit system and then stay there?

**Prof. Ross**—It would certainly be turning back the tide somewhat.

**Senator PARRY**—Somewhat. Before it was without, necessarily, strict merit.

**Prof. Ross**—Yes.

**Senator PARRY**—But what if you have a pure merit system with then, I suppose, tenure until retirement?

**Prof. Ross**—Because of the role that a police commissioner plays in carrying out very important policy of government, there can be circumstances where they—

**Senator PARRY**—Where they conflict.

**Prof. Ross**—are just not compatible, and there has to be some mechanism to resolve that, whether that be by changing the police minister, which is probably easier to do in some ways in a reshuffle, or whether it be by having the ability to move the police commissioner on. I think that, in general, the public would prefer that the police commissioner stayed. By and large, they enjoy a pretty good relationship with the public and not always with their officers.

We have seen the issues in Tasmania with trying to reappoint a previous police commissioner and how that went. But the police commissioner is a position that ought to be intact and commissioners should be able to see out the term of their engagement, however short or long that might be. I do not necessarily favour having an age limit on it where they get to the age of 65 or something and have to give it away. I do not think we could go back to that any more—as much as I might like to as I get towards that period myself!

**Senator PARRY**—On the role of the parliamentary inspector, do you think the powers are too broad for the parliamentary inspector in WA? Are you familiar with the Queensland model with the parliamentary commissioner?

**Prof. Ross**—Yes.

**Senator PARRY**—Do you have a preference as to which is the better model, in your view?

**Prof. Ross**—I have always been of the view that it is better to give them the greatest array of powers so that they can select from a suite what they need to do the task. This comes back, though, to that issue of, ‘How much independence and how much control?’ You can give them enormous powers if you have other levers of control that you can exercise over that. That is the difficulty. You cannot look at just one thing in isolation. You cannot look at just tenure, for example, without looking at other things. Are they able to hold other offices of profit under the Crown? They have to all be looked at as part of this larger decision making. That is where this research is important. It is quite easy to get individual views on whether it should be one commissioner or a panel of commissioners. A panel of commissioners probably provides greater control because that gives the government more opportunity to appoint people, if they are the appointing agency, but you cannot look at that one thing in isolation; you have to look at all the other factors as well.

I want to come back to a question you asked about difficulties or possible problems for the ACLEI. There is a difficulty because of the spread of area that it is covering. It is not like the others which are state based and, even in a large state like WA, it is mainly around the seaboard.

**Senator PARRY**—But that is only a resource issue.

**Prof. Ross**—It is, but it is so difficult. If the ACLEI officers from Canberra come to Perth to do an operation, everybody will know, because they are not here to start with. We have police at the airports and wherever else. They will have an understanding that they are in town. There are the same difficulties for the CCC if they send teams to Geraldton or Broome or whatever. It is so much harder if the teams are not there all the time.

**Senator PARRY**—Yes, but that is just an operational matter.

**Prof. Ross**—It is, but it is a difficulty.

**Senator PARRY**—I would not perceive it that way, because if it were a covert operation you would do it differently. We are talking about when it is over, when there is something that they are coming to particularly investigate. I would differ with you on that.

**Senator JOHNSTON**—They parachute in, obviously, in some of those circumstances.

**Prof. Ross**—Yes.

**Senator PARRY**—Literally.

**Prof. Ross**—There are some differences when conducting covert operations in the different cities and your people would need to be aware of that. Having a car parked in Preston or Carlton in Victoria up against the side of the road is not going to draw any attention at all, but if you did that in Perth, in my street, everybody would know about it because it is not the same high-density living.

**Senator PARRY**—That is just in the movies. They do not just have cars parked outside people's houses.

**Prof. Ross**—There are differences in the way in which these things occur, but certainly an issue for them is the regionalisation, and also the fact of having overseas operatives and just how that plays out—

**Senator PARRY**—That is complex.

**Prof. Ross**—when you are working in other jurisdictions and whatever. There needs to be some consideration there. But, as you quite rightly pointed out, there are resource implications for this.

**CHAIR**—I would like to ask you to expand upon your analysis of the independence and control aspects. You mentioned operational control, among other things.

**Prof. Ross**—Yes.

**CHAIR**—What do you mean by that?

**Prof. Ross**—On the tail end of Mr McCusker, you were talking about things like telecommunications interception ability. We know that in Queensland they did not have it for the longest period of time. Victoria in their OPI did not have it to commence with. We have other powers. Whether or not you give them the ability to have covert operations or assumed identities et cetera, there is ability to control what they can get into by what powers you give them.

Also, you can put controls in how they execute those powers. For example, if OPI in Victoria wanted to execute a search warrant or an arrest warrant, the officers from OPI could not just go

and do it, they had to actually go and get a police officer to come with them to execute the power. That obviously severely hampers the way in which they go about their business. Whether a search warrant can be issued by the commissioner or whether you have to get a judge to do it and, if it is a judge, what type of judge—whether it is a federal judge or whatever—are the types of issues that can affect the operations and the speed with which you can do things. You can put controls in there as well: ‘We’ve given them the whole suite of powers, but we’ve put these little things in place to make sure that we’re comfortable with it.’ That is how you can control that.

It is the same with all of the areas we mentioned; for instance, jurisdiction—whether it is police or police and public servants or, as here, it includes the judiciary. But also they put special arrangements in for the judiciary and there are special arrangements for the parliamentarians. Normally, misconduct matters that come through would go to the Speaker of the House. Matters that come through on the judiciary that are just misconduct go to the Chief Judge. That is the way they are dealt with in the first instance. You can put different levels of control in. Certainly we do not want the public to lose confidence in those institutions—the parliament or the judiciary.

**Senator PARRY**—Yet the CCC has to be notified of every single offence that any WAPOL member commits.

**Prof. Ross**—Yes. That is not so that they can do anything with them. It is risky if you say, ‘We only want to hear about this top stuff.’

**Senator PARRY**—Yes, but you have just argued the opposite: that that is how they are organised—your parliamentary and your judiciary.

**Prof. Ross**—You still know about them. But, by knowing everything that is going on, over time you can start to develop the tracking systems and the risk management systems to identify what the precursors are to people getting into misconduct situations. You can only do that if you know it from the very base. If you are looking at police, you really want to know who is receiving complaints about their driving, complaints about the way they speak to people when they stop them, who had crashes in police cars. They are very important for building up the profile of those that may go on to commit more serious offences.

**Senator PARRY**—So you are talking about central collation and analysis of that.

**Prof. Ross**—Yes. That is why that was in the CCC legislation. Certainly Queensland started off with all of the investigations of police being conducted by the commission. Then over time, as they grew more confident in the capacity of the police to look after their own, they started farming it back. But obviously the situation in Queensland was far worse than it was in WA. So there was no need for that.

**CHAIR**—I notice that your previous job was as manager, corruption prevention, education and research for the CCC.

**Prof. Ross**—Yes.

**CHAIR**—Can you tell us how that section operates. Does it carry out analysis and identify trends in anticorruption and make recommendations to the various government departments, which then get implemented? How does it work?

**Prof. Ross**—It basically worked in two streams. In one stream was education and awareness, which was going around giving talks and producing documentation, manuals, kits and so on to help people. The other side was undertaking inquiries. I undertook an inquiry into the leakages of private information from government computers. We looked across six agencies at what their control mechanisms were and found quite horrendous gaps in the system.

**CHAIR**—Was that then fixed once it was identified?

**Prof. Ross**—It would be lovely to say it was. No, they have not been fixed, because it is across all government agencies. We have highlighted what the issues were and the requirement is that they build it into their planning processes for computer upgrades and so on. Some of it was calling for legislative changes. We found that something like 312 pieces of legislation had the ability to be breached by people divulging private information and they all had differences in what would happen to the person.

We were suggesting that was not appropriate and that it all needed to come out of the individual agencies, because it was a criminal act and it is covered in the Criminal Code, and you can do some work with the Criminal Code and get rid of all of that and have continuity in the way in which it is treated and it would be up to the magistrate or whoever to work out what the appropriate penalty was, depending upon the circumstances.

We would look at inquiries. We had a look at police property management and the way in which they managed things, from a pair of sunglasses that might be handed in at the front counter, up to the way in which they were storing the proceeds-of-crime assets—sports cars and houses and whatever else. We would do that type of work, as well, to see where there was potential for misconduct to occur.

**Senator PARRY**—Providing the sunglasses matched the sports car, it would be okay.

**Prof. Ross**—It would be. But it is a fascinating area, because up until the other day the police never got any money for storing these assets, and when they were sold they never got any of the proceeds, so they did not put any of their resources into it. You would see a red sports car that had been sitting out in the sun with all the paint baked and peeling off, the tires all flat and the weeds growing up through the engine block. Whatever money was eventually going to be coming from that car back to the Crown was greatly reduced because nobody was looking after it. Whilst that was not necessarily the intent of the inquiry, they were the types of things that we identified along the way. But those are the two ways in which they work: to look at thematic and systematic systems reviews to see how things are going, across agencies particularly, and also education and awareness.

**CHAIR**—Thank you. Was there any further statement you would like to make to the inquiry?

**Prof. Ross**—Only that I was very pleased to be here and I hope it was of some help.

**CHAIR**—It was very helpful. Thank you very much for taking the time to give evidence. I would like to thank all witnesses who have given evidence to the committee today. I now declare this meeting adjourned.

**Committee adjourned at 2.06 pm**