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JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY

Reference: Law enforcement integrity models

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SYDNEY

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JOINT STATUTORY COMMITTEE
ON AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Tuesday, 18 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: Senator Cameron, Ms Ley 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

AHRENS, Mr Michael Clifton, Executive Director, Transparency International Australia.....	60
CAREY, Acting Deputy Commissioner Paul, Acting Deputy Commissioner, Specialist Operations, New South Wales Police Force.....	16
CRIPPS, the Hon. Jerrold, QC, Commissioner, Independent Commission Against Corruption.....	48
MOSS, the Hon. Peter James, QC, Inspector of the Police Integrity Commission	34
PRITCHARD, Mr John William, Commissioner, New South Wales Police Integrity Commission	1
SCIPIONE, Commissioner Andrew, Commissioner of Police, New South Wales Police Force	16
WERKSMAN, Mr Harold, Member, Transparency International Australia.....	60

Committee met at 10.38 am**PRITCHARD, Mr John William, Commissioner, New South Wales Police Integrity Commission**

CHAIR (Ms Parke)—I 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 a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

I also ask the people in the hearing room to ensure that their mobile phones are either switched 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.

I welcome the witness from the Police Integrity Commission. The committee has accepted your submission as submission No. 1. Are there any changes you would like to make to it before we proceed?

Mr Pritchard—No.

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.

Mr Pritchard—I am happy to use the time to answer questions, Madam Chair.

CHAIR—Very good. Could we perhaps start by asking you to provide a brief overview of what you see are the main features of the New South Wales law enforcement integrity model.

Mr Pritchard—The New South Wales model is probably a little bit different from the other states; a little bit more fractured is probably the best way to describe it. In relation to public sector administration, including the police, there are probably two main agencies. The Independent Commission Against Corruption has a responsibility for investigating and preventing corrupt conduct by public officials and public authorities. The Police Integrity Commission, which was a recommendation arising from the Wood Royal Commission into the New South Wales Police Service in the 1990s, recommending the establishment of a standing commission to solely focus on police misconduct, commenced in 1997. Its main functions are to detect, investigate and prevent serious police misconduct.

The Ombudsman's office in New South Wales also has a fairly substantial role in relation to oversighting police misconduct, in that in the main in New South Wales investigations of police misconduct are essentially investigated by the police themselves, with oversight provided by the Ombudsman's office. That would be the case in over 90 per cent of complaints that are made in relation to police misconduct. That means that the PIC is left to focus solely on serious police misconduct, with the full panoply of powers that we have to do that—coercive powers; hearings; applying for warrants for interceptions, and so on. We oversight a small number of police complaints that are actually investigated by the police, usually where we have a particular interest in the matter or it relates to some other field of activity that we may have an ongoing interest in.

There is also the New South Wales Crime Commission, which is a separate body. As of 1 July this year, the PIC now has oversight jurisdiction for that commission in relation to its activities.

CHAIR—Does ICAC have any residual jurisdiction over the New South Wales Crime Commission, or is it entirely now PIC?

Mr Pritchard—No. As of 1 July, the sole oversight body for the New South Wales Crime Commission is essentially the PIC, even in relation to conduct that occurred before 1 July when the legislation came in.

CHAIR—I notice in paragraph 12 of the PIC's submission it says:

The Ombudsman is resourced to enable it to review the vast majority of NSW Police investigations into serious police misconduct ...

Is 'serious police misconduct' intended to be there?

Mr Pritchard—It is resourced. It is not all serious police misconduct that we look at either. 'Serious police misconduct' is not defined in the act. 'Police misconduct' is very broad under the Police Act.

CHAIR—You are focusing on corruption.

Mr Pritchard—Yes. I suppose 'serious police misconduct' is one arm of the filter before we take an interest, and then it has to meet our own internal settings before we decide, 'Yes, it is serious police misconduct and it's serious enough to warrant the full force of the PIC.'

CHAIR—What kinds of considerations would they be?

Mr Pritchard—There is a memorandum of understanding between ourselves and the Ombudsman's office in relation to categories of conduct—pervert the course of justice; bribery; drug use; any offence that involves a penalty of five years. It is mandatory or obligatory for both the Ombudsman and the police to notify us when they receive a complaint that falls into those categories.

CHAIR—Drug use did you say?

Mr Pritchard—The use of drugs, yes; drug supply—things of that nature. We have access to the police complaints system, mirror access.

CHAIR—Real-time access?

Mr Pritchard—Yes, real-time access. The police complaints system is called c@tsi. As soon as a complaint goes onto that system we see it. We trawl that weekly to pick off matters that we see as falling within our jurisdiction and those categories of matters that I have just mentioned, and we make an assessment as to whether we will take it over.

CHAIR—Do they also have mandatory reporting for things that they see as serious misconduct?

Mr Pritchard—That is how they comply with their mandatory reporting requirements—by us having access to their complaints system.

CHAIR—So they don't highlight any particular matter?

Mr Pritchard—No, not to us. We accept that they discharge their obligation by letting us see their complaints in real time. When they put them on, they categorise them as conduct falling into a certain category. There used to be what they called 'category 1' and 'category 2', but we have moved away from that. We still loosely use the same subjects within those categories, but usually it will be framed in terms of 'pervert the course of justice', 'excessive use of force'—things of that nature. It is a summary of the conduct that is involved in the complaint. As soon as we see that, that is a trigger for us to have a bit of closer look at it, to go behind it. Then, if we choose to, we can tell the police, 'We're taking that one. Thanks very much. We're taking that over. You stop. We'll let you know when we're finished.'

CHAIR—Is there a definition of 'corruption' in the legislation that you go by?

Mr Pritchard—No. As I said, 'police misconduct' is defined in the Police Act, and it is very broad. It can range from anything that might involve a sanction, from as low as counselling, to a serious criminal offence. 'Serious police misconduct' is not defined; it is simply left to the commission to develop its own internal guidelines and settings to work out what it will regard as 'serious police misconduct'. 'Corrupt conduct' is defined in the ICAC Act, which you see in our act as well. The PIC also has jurisdiction over non-sworn officers of the New South Wales Police Force—that is, civilian officers, of which there are 2,000-odd, I think. So we have both sworn officers, which are the bulk, and non-sworn officers, but because there is a very elaborate regime of a complaints system that applies to sworn officers, there are different provisions in relation to what are called 'administrative officers', and some of that picks up the terminology of the ICAC Act that we use in relation to those officers.

CHAIR—We have seen already this morning, when visiting the PIC hearing room, that you have quite an advanced investigation capacity and hearing capacity. What sort of education and prevention role does the PIC play?

Mr Pritchard—We do not have 'education' specifically mentioned in our legislation. We have a prevention function, and a lot of what we do in the area of prevention is done in

conjunction with the police. A lot of it is also done in conjunction with investigations. One of the things you may hear in relation to agencies of this kind is that the investigations very much inform your prevention work. What comes out of your investigations will often be associated with highlighting systems failures or procedural failures; why corruption was allowed to occur in the first place.

It is often said in these agencies that corruption is opportunistic as opposed to being deliberate or planned or so on, so often there may be procedural or systems weaknesses that allowed the opportunity or the climate to be created that was conducive for the corruption to be practised. That helps to feed your prevention programs. A few years back the PIC did a big investigation into misuse of drugs by police officers and identified a number of prevention areas that were then taken up, in the way of programs with the police to foster a remedial culture as opposed to a punitive culture of trying to address the reasons why police officers were using drugs; whether there are any wider messages there; sending the message via the police themselves about antitolerance. Then there was an amnesty period for a while in relation to police officers coming forward and acknowledging their use of drugs and so on.

We currently have some projects that look at certain misconduct risks within particular commands—for example, the antiterrorism area. It changes its name weekly. It is now the antiterrorism and security group; it used to be called the counterterrorism command. There are particular misconduct risks that are associated with those sorts of powers that you have: covert search warrants, things of that nature. The old special branch here in New South Wales was the subject of close examination towards the end of the royal commission and the beginning of the PIC and there were some unsavoury practices unearthed in terms of collection of information, dossiers, things of that nature. We have a project that looks at how different commands have different risks, how different regions have different particular risks.

CHAIR—How does that get communicated? Do you put it in your annual report or do you communicate that directly to the New South Wales Police?

Mr Pritchard—We tend to do it by working closely with the police. We do research work. The prevention capacity of the PIC has slowly grown. I would not put it in the same investigative league as yet, but we do the research. We engage the police because the police have a significant prevention capacity themselves. We are doing one at the moment, an early intervention system which is designed to identify problem behaviour before it becomes full-blown misconduct. The police are driving that, but there is a working party that has been formed that consists of us, the police, the Police Association and the Ombudsman's office. We are providing research. We provide advice and input into the direction that that system should take.

For an agency of our size in this area—and it is the same for ICAC to some extent with the public sector—it is very much a suggestive role, a 'putting forward ideas' role, as opposed to driving it. Particularly with the police, they have a good capacity themselves in corruption prevention these days and building resistance, so we tend to just assist and provide the expertise that we have in those areas. But it can result in reports. We have mentioned annual reports, but very often we produce a report which we make public after engaging the police consultation and getting their feedback and so on.

It can often result in changes in policies and procedures. We have recently done one in the area of misuse of confidential information, where we found some defects in police policies and procedures in relation to handling confidential information, awareness by police officers of how to handle confidential information and where to find policies within the police on how to handle that. That might give you a bit of a flavour of the sorts of things we do.

CHAIR—Can you tell us about the PIC’s relationship with the New South Wales Police? How is that managed? Is it a cosy relationship or is it arms-length and a little bit tense?

Mr Pritchard—It is not cosy. It is not at arm’s length. I suppose it is in the middle there somewhere. It is generally a healthy relationship. Since the time of the royal commission—and the PIC has been going for about 12 years now—I think everybody has come to accept that we are here. There might have been a bit of resistance to begin with. I meet monthly with the Commissioner of Police Mr Scipione informally to talk about matters of mutual interest, often to flag things that might be coming but more just to keep open the lines of communication.

We have a weekly meeting with the Professional Standards Command, which is the internal affairs division of the police, where they conduct their own investigations and we monitor those. We often share information because there is great scope for duplication. As I said, the police investigate most complaints themselves, and we do not want to tread on each other’s feet, so we talk quite a bit. It is the sort of relationship that you would expect between an oversighter and an oversightee, I suppose. There are tensions. Our interests are not the same.

But generally it has been accepted that we are here and, as a result of the royal commission and certainly in New South Wales with the ICAC for the time it has been running, it is now generally accepted that in relation to all law enforcement agencies and public administration, there should be oversight. Now even the Police Association begrudgingly accept that. They may not always agree with the way we go about it, and that will always be the case, but it is generally a professional relationship. Our act specifically prevents the PIC from employing either serving or ex-New South Wales police officers. That was a recommendation made by Justice Wood as a result of the royal commission.

Previously to that, the ICAC used to have the jurisdiction of police misconduct and there was an argument that, because it did employ ex and current New South Wales police officers, there was scope for the culture of mateship to come into play: to band together to protect one another. It was suggested that investigations were often foiled because of that problem.

But, yes, it is a healthy relationship. It is a productive relationship and I have to say that both the current Commissioner of Police and the previous commissioner Mr Moroney, with whom I have worked, were very big supporters of oversight and, in particular, the PIC. That makes a big difference, from our point of view. The police commissioner has a very high public profile. My view is that agencies of this kind should not seek to have a similarly high profile. The commission should have the profile, so for the Commissioner of Police to come out and make it quite clear that he supports an agency in the form of the PIC continuing to have oversight over the police certainly is very helpful.

CHAIR—Given the number of oversight agencies that exist in New South Wales, do you think that there is confusion in the public mind? Do you do public information campaigns? Do any of the agencies do that to raise awareness?

Mr Pritchard—Yes. I have just come from one this morning. There is no doubt that there is scope for that, but at least here in New South Wales—and I speak from having previously come from the ICAC before I took up my current position—there generally does appear to be a recognition by most people that, if only because of our name, there is certainly a suggestion that we look after police corruption and that any other public sector corruption goes to the ICAC. Certainly we do not get many complaints from the public about the public sector. I know from my experience at the ICAC that there were not many complaints by people about police. Bear in mind that both agencies can still look at the other's jurisdiction. The PIC Act provides that the ICAC can look at the conduct of police officers, so long as it involves the conduct of public officials, and we can likewise look at the conduct of public officials, so long as it involves also the conduct of police officers. We communicate regularly, so we disseminate information to one another. We each know our own jurisdiction. We work well with one another. I think that is very important. Where you do have it a bit fractured, there are no petty jealousies between the agencies. There is regular communication. We share resources often with one another.

CHAIR—That goes, we think, for the Ombudsman as well?

Mr Pritchard—Yes. There is not so much of a risk in that area with the Ombudsman, because it does not really have what you would call a hardcore investigative capacity, given its jurisdiction. But certainly from the point of view of, say, oversight in police, we talk. We communicate regularly and closely with the Ombudsman's office.

Yes, the scope for duplication is there, but we are all mature enough and sensible enough to realise that, so we talk to one another and make sure that it does not happen. And I must say, having been at the ICAC and now the PIC, there is no doubt that investigating police misconduct is a different kettle of fish to investigating public sector conduct.

I recently attended a conference where the ICAC displayed some of their investigative prowess. I think it was in relation to State Rail. They played some of the product and some of the material that had been played in the hearing room, and it occurred to me from seeing that that, compared to the way that we investigate, some of what they were disclosing was like shooting fish in a barrel. Police are trained investigators and they very often employ the same strategies that you yourself employ as an investigator, so police misconduct is very different from public sector misconduct.

CHAIR—Given what you are saying, do you believe that, if the Australian Commission for Law Enforcement Integrity's role were to be expanded, it should include all public sector agencies or workers or be confined to law enforcement bodies?

Mr Pritchard—When I say that you have to treat it differently to, say, public sector corruption, speaking candidly, I do not think it follows that you necessarily need two agencies. You just have to tailor your investigation to meet the conduct you are investigating. Here in New South Wales the policy position is that we have chosen to have two separate bodies concentrating on police and public sector. I do not think it follows that you do need those; that is

a matter for others. But you certainly do need to take a different approach and there is nothing in itself objectionable that I can see about a policy decision to put them all under one roof.

There might be other issues. There is a lot of duplication of resources. In the area of electronic eavesdropping, the technology changes so rapidly, and it is very expensive to keep up with. The service providers rapidly change and you always get the impression that the law enforcement area is catching up. There are prepaid mobile phones and then trying to trace mobile phone numbers and who has them. It is just so easy to get mobile phones and to give false names these days, for example, and law enforcement agencies are presented with some difficulties in keeping up with that. For each agency to have its own electronic eavesdropping capacity is very costly. I think that is a factor that needs to be considered if you are going to fragment it. You saw the hearing room for the PIC, for example. There is a very high cost in maintaining those sorts of things. That is something that needs to be borne in mind as well.

CHAIR—Thank you.

Ms LEY—Mr Pritchard, the PIC has been in existence now for just over 10 years. Can you paint us a picture of the state of police corruption in New South Wales and what trends and emerging issues there might have been over that period of time?

Mr Pritchard—Certainly since the days of the royal commission. What you saw during the royal commission to a large extent also was historical. You also saw a lot of what I would call process related corruption in the sense of what may be the classic sort of fit-up or planting of evidence and so on. There have been associated changes in evidentiary requirements in courts these days as well. The interviews have to be electronically recorded. The New South Wales police have a policy of videoing search warrants to limit the scope for allegations of planting of evidence and things of that nature.

As a general summary, in terms of an overall change in trends you do not see the systemic, entrenched corruption that perhaps the royal commission exposed. A lot of it is behaviour that is outside their duties as police officers, not necessarily planting evidence and things of that nature. Drug use amongst police officers is still a bit of a problem, particularly amongst younger officers, and to some extent that is just a reflection of the wider community.

One of the features I have noticed in particular is that there still is a bit of a tendency, when police do engage in misconduct, for the misconduct itself to be generally of a low-level nature and generally involve only one or two officers. It is what they do afterwards to then cover it up that starts to snowball and gain momentum. It is like what someone referred to as the watergate phenomenon. It is not so much what they did; it is what they do later to cover it up that starts to take on proportions that are just so out of sync with the actual misconduct itself. If only they would simply own up to that misconduct and be dealt with, rather than what they do later on in trying to pervert the course of justice, trying to coach other people about coming in to give evidence in hearings and things of that nature. That is something you see a lot more of.

At the moment the New South Wales Police Force has got imperatives on it to recruit certain numbers for certain reasons and, up until recently at least, that is in the context of a very tight employment market. The scrutiny that might have been applied at the initial vetting stage for acceptance of police officers might have been a bit loosened in order to meet numbers. So you

tend to get a lot of younger officers, who generally are perhaps not as mature, and they do not have the wherewithal about them of, say, more senior officers. So a lot of what you see is what you could loosely call just stupid conduct, just silly sorts of things—for instance, just excessive use of force.

In fact, I tend to think that in about three to four years time, for agencies such as the PIC in New South Wales there might be a bit of explosion of work, because policing is not necessarily seen as the career that it used to be. You tend to get a lot of people joining the police force and seeing it as just something to do for a few years before moving on to something else. They do not really see themselves rising up to the ranks of a commissioner or an assistant commissioner. There is not that ingrained sense of, I suppose, civic duty that a lot of people who join do carry with them.

But that entrenched sort of culture of the scrub-down, as it used to be called, or the closing of ranks has certainly changed. Recent statistics in relation to police complaints this year will show that a lot of complaints against police are now being made by police themselves. That is a significant change. Police complaining about their colleagues' conduct was not something you would have seen a few years ago. So that is at least an acceptance that it is not tolerated and that they have confidence that, if they do make a complaint, it will be dealt with.

Seniority is an issue at the moment. That has implications for corruption because, again, a lot of younger officers are just lacking supervision. They are not getting the supervision and direction that is often a necessary part of corruption resistance. They are left to their own devices. They do a lot of silly things. There is misuse of resources. I think it is at the minor level. You do not see it as systemic. It is usually isolated instances by one police officer as opposed to drawing in networks.

Relationships with criminals have changed as well. The police certainly have tightened up their controls around informant management and things of that nature, where there is always scope for corrupt relationships to form. I do not know whether that might give you a bit of an insight.

Ms LEY—Thank you. I am not saying they are in the category of foolish mistakes, but what you have just talked about suggests small things that might have got out of hand, and the chair did talk about this a little, but can you give the dividing line between the serious misconduct that the police, the PIC, looks into and stuff that really does not make it that far? We certainly had a sense when we visited the site this morning that we were talking the very hard edge.

Mr Pritchard—Yes. I will put it broadly, picking up the categories of what used to be called category 1 conduct. There is bribery: any suggestion of benefits going to police officers in order to take action or to turn a blind eye or things of that nature. There is drug use: very often, drug use and drug supply; police officers supplying drugs.

Ms LEY—So it wouldn't be just personal drug use? It would go beyond that?

Mr Pritchard—No. Well, personal drug use is usually associated with a bit more than just for personal use, because it raises questions as to where they are getting it from. Drugs are illegal, so if they are getting access to contraband, there must be some other aspect to it that is worthy of

inquiry; usually from another member of the community who is a drug supplier. In relation to 'perverting the course of justice', whether it be in an attempt to derail an investigation or not, 'pervert' covers a pretty broad range of conduct. There are even cases of police officers conducting robberies and things of that nature—crimes that carry penalties of five years or more. It does not sound like much, but the nature of investigating police is different from the public sector, in that when you find out about it, it usually is still occurring, so that means you have to devote a bit of time to watching it or getting a proper handle on the dimensions of it. Police misconduct tends to be, to that extent, different from public sector conduct.

My experience has been that, very often in the public sector, there is an allegation that, 'Something has happened, and we want you to go and investigate it,' whereas police misconduct is, 'This is happening. I think it's happening,' so you have to find out if it is happening and then you might have to watch it for a bit longer. They take a lot of resources, they take a lot of commitment. A serious police misconduct investigation does not really complete itself within, say, a good few months to a year or something like that.

Ms LEY—That is resource intensive.

Mr Pritchard—It is very resource intensive, yes. As I keep coming back to, they are police officers. You are applying the same investigative strategies in relation to people who use those strategies themselves: they are trained investigators. If they know that they are doing wrong, then nine times out of 10 they will behave in a way that will avoid them being detected. They know the sorts of techniques that investigators are going to use, so they will not use phones, they will not talk in rooms or something like that, thinking that they are being bugged. They are very careful with their communications, they will not leave records and things of that nature, whereas I suppose your typical common-or-garden variety public servant who is deciding to go corrupt may not necessarily (1) know that and (2) give thought to it. It makes things a bit difficult.

Ms LEY—In the hearing rooms this morning we heard about the untruths that are told in the witness box, particularly by people—I do not remember the term—who give evidence under protest.

Mr Pritchard—Yes, under objection.

Ms LEY—Under objection.

Mr Pritchard—Yes.

Ms LEY—And the actual act of lying in that situation is itself able to be the subject of—

Mr Pritchard—It is, yes.

Ms LEY—How much work is generated by the lies that are told in the witness box during the course of an investigation that then can become the subject of an investigation? Are they automatically pursued as perverting the course of justice or not?

Mr Pritchard—No. From our point of view, they are really only pursued as offences in themselves for giving false or misleading evidence before the commission.

Ms LEY—That is a separate offence, is it?

Mr Pritchard—That is a separate offence. The circular nature of police misconduct is such that that offence itself can constitute police misconduct. You have to be a bit realistic about that.

Ms LEY—I suppose it has to come down to the penalty that somebody is facing and the deterrent that that penalty might present. Is it a serious enough deterrent?

Mr Pritchard—Particularly with police witnesses—and I was saying this to the chair before we started—the argument about having such an intimidating hearing room as the royal commission one, which is what we have inherited, is that for witnesses that are called in—it is not a court, so you do not have all the paraphernalia and the trappings that go with a court—it brings home to them that this is serious business. It is a hearing room, so there is some psychology in making it as intimidating as possible to bring home to them that, ‘You haven’t been called in because you’ve been up to a spot of jaywalking or something. This is pretty serious business.’

I say that because police officers and a lot of witnesses know that when you are being called in for a hearing, you are not being called in to be asked who, what, where or why questions. You are being called in to have questions asked that we probably know the answers to already, so very often there is a game played where they will just try and tell you what they think you already know, without falling into the trap of telling a lie. It is quite amazing how people’s memories can be refreshed when they have a telephone call played to them and they hear their own voice. There is something that they did not remember but now they all of a sudden can.

You can use the hearing room for different reasons, I suppose. Sometimes the hearing is not an end in itself; it can be used as a means to suggest to somebody, ‘We do know a bit more about you. You might realise you’re in a spot of bother, but you can help yourself out by helping us.’ We often do send briefs to the DPP for consideration of prosecution action for lying or giving false or misleading evidence before the commission. Sometimes you do feel a sense of futility about doing that, but it is important to get the message out, and the courts provide assistance in this respect: ‘Lying to these bodies is a serious offence. You are hindering an agency from carrying out its investigations.’ To the extent that the message gets out that, ‘If you do lie and you are convicted, there are serious penalties for it and you could go to jail,’ that is very important from our point of view. We do tend to pursue them with a little more vigour where sometimes people might think there is not much of a practical point in doing so. We do that because there is a message that we do want to get out—the importance of not doing it, I suppose.

Ms LEY—What is the relationship and where are the tensions between yourselves and the inspector of the Police Integrity Commission?

Mr Pritchard—Tensions between ourselves and the inspector? I am not quite sure where you would have got that idea from.

Ms LEY—There may not be any tensions. I do not have a view that there are tensions. I am just imagining that, with such a model, there might be.

Mr Pritchard—No. That is probably, at a micro level, the same relationship that we have to the police. The inspector model is a good one in terms of accountability for bodies like this. We have quite onerous and quite formidable powers. It is more than appropriate that there be oversight on the way that the powers are exercised to make sure that they are not abused and that they are exercised appropriately. The nature of the model with the inspector is very similar to the nature of the model that we have with the police. We only recommend to the police that they might want to, say, take disciplinary action or that they do certain things. We cannot direct, and I would not seek to have that power. I do not think the model should do that. It is the same with the inspector: the inspector recommends things to us. Very rarely would we disagree. He may point something out to us that he thinks we have done wrong, and we would say, ‘Thanks for that, but we don’t agree.’

Ms LEY—You say, ‘Thanks for that. We don’t agree,’ and then that is—

Mr Pritchard—To some extent. As I said, it rests on the recommendation area. If the inspector were to recommend something to us where he says, ‘I think you’ve got this wrong and I recommend you take this action,’ we would not dismiss it lightly, but we might come to a view and say, ‘We’ve looked at it. We don’t agree. So in relation to any recommendation for further action, we find it difficult to do that, because we don’t agree with you.’ Again, it is a mature relationship and a professional relationship. I meet weekly with my inspector. He has full access to our records. Everything is there for him to see, and I think that is an important part of the accountability measure for who watches the watchers. It has to end somewhere, obviously.

The other limb of the accountability here in New South Wales is that we have a parliamentary committee ourselves, but the parliamentary committee cannot look at specific conduct under the PIC Act. The parliamentary committee cannot delve into particular matters—‘Why didn’t you investigate this? Why did you come to that view?’ There is an argument that, ‘All right, there’s a bit of a gap there,’ but someone who can do that in certain circumstances is the inspector: he can delve a little bit more into those areas, rather than the parliamentary committee.

CHAIR—Can the committee direct the inspector to look into a certain issue?

Mr Pritchard—No, it is not a parliamentary inspector model here in New South Wales. As I say, in Queensland I think it is for the CMC, and in Western Australia I think it works that way as well.

CHAIR—In Western Australia, the parliamentary inspector can initiate investigations of his own motion.

Mr Pritchard—Yes.

CHAIR—It does not have to be on—

Mr Pritchard—Sorry, but I—

CHAIR—But if he is asked by the parliamentary committee he would—

Mr Pritchard—That is right, but here I think the parliamentary committee can suggest or recommend. It is more of that flavour, as opposed to directing and that position holder being sort of an agent of the committee. The inspector operates autonomously in that respect.

CHAIR—Does he present his reports to the parliament?

Mr Pritchard—He has the option of doing that. He has just had that clarified, actually, because it was a bit unclear who his reports went to. I am not sure if it has gone through yet, but it is proposed that the legislation allow him to present reports to parliament. He can do that anyway, but the legislation now makes it clearer that he can make them public.

I am mindful of the commissioner sitting behind me at the moment! But it is the same relationship between us and our inspector. The oversight relationship should not be cosy. That is not the nature of the structure. It would not be a good thing at all if the public were to think that it was cosy. Our interests are not always the same and the structure, to a large extent, recognises that. We have differences, we work them out, and we do need the support of the police and the support of the public. These bodies in particular rely very heavily on public support. There are two things I always say: ‘You need political support,’ and, ‘You need public support.’ If you lose either one of those, then your existence is very much in danger.

Senator CAMERON—Mr Pritchard, I assume you have got a legal background?

Mr Pritchard—Yes, I am a lawyer. I hoped that was apparent!

Senator CAMERON—So you not only have the responsibility to manage the PIC but you have a role in the hearing rooms, do you?

Mr Pritchard—Yes, as the commissioner, I preside at hearings. The legislation provides that hearings must be presided over by a commissioner or an assistant commissioner. I can appoint assistant commissioners under the act. Very oddly an assistant commissioner does not have to be legally qualified to preside at hearings, but they have to be legally qualified to issue the summons to have the person turn up for the hearing. It is a bit of a quirk under the legislation. I do not have a deputy, but there is a director of investigations, a manager of the legal unit, who is a solicitor of the commission, and we have a director who looks after prevention. They are the three key areas.

Senator CAMERON—You have raised on a couple of occasions this morning the issue of people lying and covering up and that leading to further hearings and more serious outcomes. Why do people lie? Is it because their career is absolutely destroyed? Is there a zero tolerance position?

Mr Pritchard—In relation to?

Senator CAMERON—In relation to anyone caught misbehaving.

Mr Pritchard—You mean by us or by the police?

Senator CAMERON—By both. Maybe Mr Scipione can take this on.

Mr Pritchard—Certainly I know the commissioner’s message in relation to misconduct. From our point of view, we have discretion in relation to those matters that we decide to look at. We obviously cannot look at every complaint of even serious police misconduct that is made, because we just do not have the resources to do it, but I certainly think the message that the commissioner sends out is that misconduct will not be tolerated. Why do people lie? How long have we got?

Senator CAMERON—No, I am not asking why they lie. The point I am trying to make is that people make mistakes.

Mr Pritchard—Yes.

Senator CAMERON—People make mistakes, and if people make a mistake, it seems to me from your evidence this morning that there is a general view that they try and cover it up. That compounds the mistake. The reason that they lie would probably be because their career could be destroyed by that mistake. I am just wondering if we are forcing people into this lying approach?

Mr Pritchard—I will just clarify that. I would certainly like to think that we do not go after people for making mistakes. When I say they may have made a mistake, I put it a little bit higher than just inadvertence or accident or negligence. There is still an element of intentional misconduct about the initial conduct. No, I would not suggest that people have just made a mistake and that that snowballs into something bigger. There is still an element of deliberate wrongdoing about the initial conduct, but it is made worse by what they do later, and really it would be best just to acknowledge it up-front before it gets to a higher level than it needs to.

Senator CAMERON—So it is the hardheads you are dealing with mainly?

Mr Pritchard—Yes. That is really left for the PIC to look at.

Senator CAMERON—Would you see a benefit in pooling the electronic eavesdropping resources between all of the integrity groups around the country?

Mr Pritchard—The one benefit that instantly leaps to mind is cost. I do not know whether that would be a decisive factor. There are other issues, but from my own perspective I think that, given the proliferation of integrity agencies at the state level and now one at the national level, there is going to come a point where there has to be some consideration given to consolidating certain aspects of their functioning. One of those is electronic eavesdropping. As I said, the technology in that area is changing rapidly. It is costly. It is very costly to maintain. It is costly to find people. You only have to look at the employment ads on the weekends to see the intelligence agencies constantly looking for people with an electronic information and technology background in the area of information gathering and intelligence gathering by way of electronic means.

It does strike me as being a little bit nonsensical for us all to be competing for the same resources. There is no doubt that a lot of these agencies think it is quite prestigious to be able to say they run their own electronic eavesdropping facilities, and one argument that the PIC often puts is that it is very difficult for us to join resources with the police, for example, in that area,

but there is an ICAC here. The ICAC and the Crime Commission share an electronic eavesdropping capacity.

I would say, merely from a cost perspective, that I think it will get to the point where the costs become prohibitive and there will have to be some attempt to find a better way of doing this that still allows everybody to maintain—to not compromise—the integrity of their individual functions. The use of electronic evidence is a huge part of how these agencies operate and to suggest that we can all maintain our own systems in this rapidly changing technological environment, given the cost associated with it, I really do think is going to call for some serious thought.

Senator CAMERON—ACLEI has been established by what has been described as a building block approach and, in some of the evidence we have had, that has been compared to some other agencies that have come about because of discovered systemic corruption. I am not sure. I have heard the argument that there is no clear systemic corruption in the Federal Police, therefore the building block approach can take place and you can build up—

Mr Pritchard—Incrementally.

Senator CAMERON—Incrementally, yes. What is your view on that? Surely, where the Federal Police get their recruits and resources from is no different from any other police force, and they would suffer the same failures and the same problems as any other police force. Just because you have not seen the problem, does that mean you should not put the resources in?

Mr Pritchard—No, I do not think it does, because prevention is better than cure. There is no doubt that if you look at the history of any of the oversight agencies—New South Wales, Queensland, Western Australia—without exception they have all been created in response to a very public disclosure of detection of misconduct.

The ICAC had its history in suggestions of ministers being convicted for taking bribes for early release of prisoners. The Queensland CMC grew out of the Fitzgerald royal commission. The Western Australian CCC grew out of Western Australia Inc. and the police royal commission. To a large extent these integrity agencies are often playing catch-up—'The conduct has occurred, we'd better do something about it'—rather than the model of doing it incrementally and saying, 'Experience suggests that sooner or later there will be a build-up or there will be a coalescing of this sort of conduct and it's better to deal with it now rather than respond to it when it does happen,' because if you look at any of these bodies, that is the history of them. They rarely come in without some sort of cathartic event that brings the problem to bear so that it cannot be ignored.

To that extent, I do not see why the Federal Police would be any different. The nature of federal policing is different from state policing, but there are still misconduct risks. Rather than wait for them to present themselves, prevention is better than cure. There is an argument for, 'You should be not catching up but be ahead of disaster.'

Senator CAMERON—Should your funding be linked to a proportion of the overall policing budget?

Mr Pritchard—I would probably say it should be. But, no, I do not think there is any link there. We have a staff of about 100. Our budget is about \$18 million or \$19 million per year. Bear in mind that 70 to 75 per cent of that is fixed in the sense of salaries and wages. Even in New South Wales at the moment, it is no secret that there are some revenue problems for the government at the moment, but I am certainly not in a position where I would say that because of that I am prevented from doing something that otherwise I think I should. That is the point that you need to use as a guide where it is suggested that you might need more funding or you cannot absorb cuts. We operate efficiently but, in terms of what the act says I am required to do or the commission is required to do, I cannot say that I am prevented from discharging that from a funding point of view.

CHAIR—Following up from that, are there any capabilities that you think are absolutely essential to have in-house as basic building blocks?

Mr Pritchard—You need access to electronic eavesdropping. Whether you need it in-house or whether you piggyback off another agency I do not think really matters, to some extent. You just need access to it. You need electronic eavesdropping.

The hearing room power I think is an effective one. Public hearings are probably the most contentious issue associated with these bodies. There are people who have very firm views about conducting them and those who have very firm views about not conducting them and there are merits on both sides. But the capacity to conduct a public hearing I think is an important one. You have to use it properly. If you look at the forerunner to the CCC in Western Australia, the old Anti-Corruption Commission, one of the arguments that was put up for the failure of that body was that it could not hold public hearings.

It does not mean that you have a public hearing every day, and it does not mean that the first thing you do when you get a complaint is have a public hearing, but the capacity to do it when the occasion arises is important. With private hearings, there is no doubt that the ability to take evidence under objection without relying on the privilege against self-incrimination makes a lot of difference. I think the ACC has some different provision in that respect.

CHAIR—Commissioner, was there anything else you wished to say to the inquiry?

Mr Pritchard—No, I think I have said more than enough.

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

Mr Pritchard—Thank you very much.

[11.34 am]

CAREY, Acting Deputy Commissioner Paul, Acting Deputy Commissioner, Specialist Operations, New South Wales Police Force

SCIPIONE, Commissioner Andrew, Commissioner of Police, New South Wales Police Force

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

Commissioner Scipione—Thank you, Madam Chair. Thank you for the opportunity to make this statement to the joint committee on law enforcement integrity models. As has already been indicated, I appear today with the acting deputy commissioner, specialist operations, Mr Paul Carey. Paul is the substantive commander of our Professional Standards Command and is with me today to answer any specific questions that you may have about the practical applications of integrity models as they affect our Professional Standards Command within New South Wales.

Let me start by stating that, as a police force, our commitment to integrity is integral to the standards and values of the New South Wales Police Force. In this state, there is a state plan that drives the whole-of-government approach to public service integrity and accountability. The force is at the forefront of implementing anticorruption measures and related initiatives that promote integrity and accountability at every level and in all of our processes to enable us to fulfil our commitment to the community.

At the organisational level, our corporate plan, which we have copies of here for you today, sets out the strategic direction for integrity in two key areas: first as a means of increasing community confidence in our police officers and secondly to provide a safe and supportive work environment for our people. We see those as two really important components to this part of the business. The plan also reflects the strategic direction of the Professional Standards Command, whose charter is to lead best practice in professional standards.

The PSC, as we affectionately know it, has around 200 staff collectively. They are responsible for a range of proactive and reactive measures that ultimately are all about promoting integrity throughout the force. Those proactive measures include corruption resistance planning, integrity testing, intelligence profiling and complaints investigation training, along with ethics education. The reactive measures include providing front-line support for complaints management and conducting traditional internal affairs investigations.

The PSC does not do this alone. It is important that I make that clear. In all of our regions and local area commands, police deal with integrity issues on a daily basis. They conduct complaints investigations under delegated authority and they rely on professional standards managers or PSMs and specialist duty officers whose main job is to focus on breaches of ethical standards within their respective areas. In the important area of preventing and dealing with harassment and discrimination, our corporate human resources area is in the process of establishing what we will be calling a dedicated workplace equity unit, to deal with matters involving allegations of

workplace harassment and discrimination by both sworn and unsworn officers. The New South Wales Police Force—and I noted it was one of the questions you asked of the commissioner that was in before me—certainly has a zero tolerance for such conduct and the unit is intended to ensure that all staff can feel confident to report and seek resolution of not only complaint matters or corruption but also workplace harassment and discrimination issues.

In conjunction with the government, the Ombudsman, the Police Integrity Commission, and the Police Association, last year we started and this year we finished a major review of the complaints management system as it applies within the New South Wales Police Force. That review was driven by a need to both reduce red tape, particularly the time taken to resolve complaints about police, and to reduce the stress on the officers that were subject to the complaints. That review certainly has resulted in a streamlined process for managing complaints, including things like the imposition of a 45-day completion deadline. While it is very early days yet, all the signs are that this streamlined process is working extraordinarily well and we have, to date, seen no negative impact on integrity; in fact, it is shaping up to be one of the great successes of some of the more recent work we have done in this area from an organisational perspective, a community perspective and, as importantly, from an officer perspective. That is really important and I am sure we will talk about that as we go on.

Every police command within the New South Wales Police Force is required to maintain not just a corruption resistance plan but a meaningful corruption resistance plan that requires commanders to identify, assess and manage corruption risks arising from their people; but not only their people, the environment that they are operating in, and their core business. We have modelled it and linked it to a published standard, and that's the Australian/New Zealand Standard for Risk Management.

On the individual level, all potential police officers are assessed for professional suitability prior to their attestation, so they run through professional suitability screens and filters before they even join us as a probationary constable. The process includes background and behavioural checks. During the constable education program recruits receive the ongoing training in corruption prevention and integrity that they need. They need to be starting to get their head into this space before they even join us.

Once they are in service, all police attend mandatory training in our code of conduct and ethics, which comprises just 10 easy steps to follow. Those principles will bed them down. The code itself is reflected in our career management system, which is about dealing with people during the course of their career, and it provides an ongoing process for performance management, and not only management of performance but improvement, because that is a big part of what we see as being one of the areas that generally police struggle with when it comes to their personal behaviour and which leads to potential corrupt behaviour.

An early intervention system project chaired by Mr Carey at Professional Standards Command is currently under way as well. Early intervention systems, or EIS, are very well known in a number of police forces, and I am sure you have had some exposure to them. The literature would tell you, as we have seen from our own experiences, that these programs allow those that run them to target police whose behaviour is assessed as being at risk, through the analysis of a range of key indicators. Ideally, such programs are staff welfare focused, not punitive in nature,

and they should integrate with a comprehensive range of existing measures that police forces have that are aimed at promoting integrity.

The intervention takes account of the myriad of work-life issues that police face during their careers that can affect their work performance. If you run a successful EIS, you should expect, and you would think, that the community would get the maximum possible return on their investment, both in terms of the high cost and the impost of training police officers, by prolonging their careers that could otherwise end prematurely. That is the great cost.

Integrity is a core value in our promotions process. It is incumbent on me as the commissioner to inquire into an officer's integrity before approving a promotion. Officers who come under notice with significant integrity issues have those issues comprehensively examined by a panel that we have set up—it is an internal panel of senior executives—before the promotion is promulgated. That has worked very well for us.

All serious complaints alleging police misconduct are subject to internal investigation, as you would expect. On occasions they can be taken over by oversight agencies such as the PIC. However, the vast majority of these are managed by local area commands under our internal security and external oversight arrangements. Outcomes can range from remedial and performance measures to criminal charges and statutory provisions that enable me to remove an officer in whose conduct, integrity, competence and performance I have lost confidence, and I do that regularly.

CHAIR—That enables you to remove an officer, did you say?

Commissioner Scipione—Correct.

CHAIR—Can you also suspend pending an investigation?

Commissioner Scipione—We do that as a matter of course. I do not have to rely on what is known as my 181D provision to do that. But every officer that is charged is certainly considered for suspension. That can be with or without pay. That is done quite regularly.

CHAIR—Is there an appeal right from the dismissal?

Commissioner Scipione—In terms of dismissal there is. There is an appeal provision to the Industrial Relations Commission in New South Wales, and they exercise that right often.

CHAIR—Thank you. I am sorry to interrupt your statement.

Commissioner Scipione—That is okay. In conclusion, our oversight agencies—the New South Wales Police Integrity Commission and the Ombudsman in New South Wales—have a significant role in ensuring police integrity, and they also have a significant role in maintaining community confidence in policing. The police relationship with these bodies, as Commissioner Pritchard indicated, is highly professional; occasionally robust but always mutually respectful, and you would expect that.

Ladies and gentlemen, that is a very brief overview for you of the way we manage professional standards within the New South Wales Police Force. I am happy to take any questions and, if I cannot answer them, Mr Carey may be able to give you some information. If we fall short in that regard, we will come back and give it to you, if your question is that strange and exotic that we had not thought it through before we got here. Thank you.

CHAIR—Thank you, Commissioner, for that overview. I do have some questions. In relation to recruitment, is it a policy of the New South Wales Police to try to recruit with an eye to diversity, promoting diversity within the police force in terms of the age of recruitment and the education of the people recruited, as well as getting more women in and people of different cultural backgrounds?

Commissioner Scipione—Yes. Let me give you a snapshot of our recruitment strategies at the moment. By way of profile, I think the current average age—and this moves all the time, but generally speaking—of a recruit going into the college at Goulburn sits at about 27, 28 years of age, which is very different from when Paul and I joined the police force where the vast majority were 18, 19, with many coming out of cadets that had started when they were 16. So that has shifted. The diversity in the force now in terms of skills—not only general life skills but those that have got previous qualifications—is enormous. Nearly 30 per cent of our recruits are female, and we are moving towards that across the force. We are probably further advanced in this regard than any other force in Australia, and certainly my knowledge and my interaction with forces around the world would tell me that we are probably sitting right up there. If you can get about 30 per cent of your police force female, then you are doing very well.

The average age of officers within the police force is sitting much higher than 27; it is sitting close to 40—it is about 38, 39. That means we have as many officers that are 39 years of age or older as we do 39 years of age or younger, which in itself is very interesting. I closely monitor things like attrition because that is part of the business process when you are a very big organisation and, as an organisation in law enforcement, we are certainly the biggest by far in Australia with not that far under 20,000 in total numbers but well over 15,000 sworn officers. It is good to know where your attrition points are. In the past, we had, I think, a bit of an issue running at the 12-year veteran point. That has dropped off. It is now not the focus that it was. With an attrition rate sitting at about 4.6 to 4.7 per cent of the organisation at the moment, it is pretty good. Most of our attrition happens in the first, second or third year of the organisational life of an officer. That is probably because people come in and they now try a few careers; they try it, and then say, ‘It’s not quite for me,’ or they decide to move on.

Our diversity is growing. As recently as 12 months ago, I made a determination that we needed more Aboriginal officers. I have got 750 to recruit, consistent with election commitments here in New South Wales, over the next three years. We have previously recruited very heavily in what we would call ACLOs—Aboriginal community liaison police—that were not sworn but worked within communities in our uniform; they did not carry the powers of a police officer. They have been extraordinarily helpful, but I think that we can get more benefit by actually having larger numbers of sworn officers, so we have been pushing very hard in that regard.

I have lifted our organisational targets. I have almost doubled them. We are certainly working with a range of other government agencies to lift the number. We have seen some great results

already. So diversity is important. We are working on it. We are seeing a good cross-section in terms of male-female and across diverse community groups as well.

CHAIR—Do you have a system of police rotation into the internal integrity professional standards unit? In WA the police provide a 10 per cent loading to encourage staff to go into that unit.

Commissioner Scipione—It has been an issue for a while but I might hand over to the assistant commissioner and get Paul to talk about it. It is certainly something that has been an issue for a long time in law enforcement, not only in Australia but right across the world. You might want to talk through your current arrangements, Paul.

Mr Carey—Thanks, Commissioner. We do not at the moment. The tenures that apply to sworn police officers who come into the Professional Standards Command are the normal tenure arrangements. Yes, it is difficult to attract some people to my part of the organisation, although I think that that is changing. What we are looking at are proposals, particularly in relation to the pools of prospective commanders. We have pools of people about to become inspectors or superintendents of police.

One of the strategic directions I will submit to the commissioner is that we start to bring those people into the Professional Standards Command. They are our future commanders. They should come to professional standards and work through not only the complaint investigation process side but the process of dealing with officers—most of our officers stay with us, regardless of the seriousness of the complaint; we dismiss a few—and learn about the preventative and corruption prevention type actions and strategy that we have in place.

I would rather see an easing up of the tenure in relation to police officers who come to professional standards, but a recruitment of potential commanders; so more senior people coming in to do some of our investigations, to run some of our projects, and then move back out into the field and take that experience with them.

CHAIR—How long would you envisage them staying in the unit?

Mr Carey—With the busyness of our command, if I had them for six weeks to three months they would learn a lot.

Senator CAMERON—We have had evidence in previous hearings that the police force itself is under some cloud by not having people moving from the police force into the integrity area; not your area, but the commissioner's area. I think that is a Wood royal commission delineation.

Commissioner Scipione—You are talking about moving from the force into the PIC?

Senator CAMERON—Into the PIC, yes. There seemed to me to be some resentment from some of the senior police witnesses that we had that this put a cloud over the whole police force; that the good people who were in the police force then could not move into this other area. Should Wood be revisited?

Commissioner Scipione—That issue was not an issue for us because, at the end of the day, it was the law. That was the way the legislation was structured. I sat in Paul's chair, as the assistant commissioner, professional standards, in 2002 for about a 12-month period. Even then there were issues running, as you have said, that highlighted the lost opportunities to some of the oversight agencies, particularly when it came to some very experienced police investigators that knew that turf, that knew this particular force well, that had the utmost integrity and, because the legislation was as it was, they were not allowed to be even considered. At the end of the day, the legislation is the legislation, but probably the best way for me to capture that is to say that there was lost opportunity there.

CHAIR—How would you describe the relationship between the New South Wales Police and the Police Integrity Commission?

Commissioner Scipione—As I have said already, probably one of the best things that happened to us as an organisation was having to go through that period of self-examination that came through a royal commission. It is never easy, and it is certainly never pleasant, but history would tell us that there are times in organisations that have been through these types of events where it is healthy to do some self-examination. Coming from the Wood royal commission obviously we have the Police Integrity Commission. I have to say, and I have said publicly before on the record, that I think it is probably one of the most valuable oversight arrangements that exist within government because it certainly puts us on notice that we are being scrutinised, and that is not a bad thing. If the notion of dread that comes from having an efficient, effective, powerful oversight agency is something that regulates behaviour back into my organisation, then that is a tick in the box.

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

CHAIR—Are there any areas where you have disagreements on issues?

Commissioner Scipione—It is not so much a matter of disagreement. The legislation as it stands within New South Wales makes it very clear that the PIC gets access to all of our complaint material. Every matter that constitutes a complaint goes onto an electronic system. That system is something that they have complete access to, through the c@tsi process. There has been some discussion in the past as to, 'Is it appropriate that oversight agencies get that level of access?' but at the end of the day, as I say, there is an arrangement in place which has probably stood us in good stead. It is not so much that we are in disagreement or opposition: we work within the boundaries of the arrangements, and just get on with it.

CHAIR—When we were in Queensland we heard evidence from the CMC about their relationship with the Queensland Police, which is a very good relationship. But they do have some areas of disagreement. One area of disagreement is about appropriate sanctions for misconduct. Do you have those kinds of issues?

Commissioner Scipione—We have had to deal with recommendations that come from the commission. We have clarified recently what the expectation of the oversight agency might be when there is a determination that an officer be considered for dismissal. In my discussions with the Police Integrity Commissioner, I have said that my loss of confidence is exactly that—it is my loss of confidence, not another agency's. The commission makes recommendations that I consider 181D or dismissal from the force. I will do that in the way that gives procedural fairness to everyone that is involved, and I do this regularly.

So there is an understanding, I think a mature understanding, by the commission—as it is within the force—that if we are expected to bring a management outcome, which could be anything from a sanction though to the other end of the scale, which is dismissal, then it is something that we need to manage. At the end of the day, as Paul said, the vast majority of people that come under notice and are dealt with under our complaints system, for instance, do not exit the organisation; they stay with us. We have to manage them in the workplace. So the commission, I think, understands that, at the end of the day, there will be a decision: they will communicate that and suggest certain things. But the Integrity Commissioner is very clear in his advice to me that he expects us to consider that within our organisational needs and outcomes, and that has not been a problem, certainly of late.

There is the ultimate sanction, which is criminal charges. That is a matter between the Integrity Commission and the DPP, because they would make recommendations, and then that matter is taken out of our control. But a criminal matter is dealt with in a very different way.

CHAIR—How do you assess and measure the impact of your internal integrity arrangements?

Commissioner Scipione—How do we measure it in terms of whether things are getting better or things are getting worse?

CHAIR—Yes. That is right.

Commissioner Scipione—You might want to talk about the number of complaints and how we manage those.

Mr Carey—Certainly. We monitor the trends in relation to the complaints against officers, both sworn and unsworn, to consider what the environment might be.

On average, there are about 5,000 complaints that are notifiable to the Ombudsman received per year, and 300 to 500 of those could be considered very serious complaints that require some form of formal or criminal investigation. The commissioner spoke about the new process. In the old process, those 5,000 complaints would require some reasonable investigation. The new process is in its early days, in the first six months, but supports the fact that about 80 per cent of our complaints are matters that can be dealt with other than by way of a formal investigation—by consultation, resolution with the complainant, or declining the matter. So about 80 per cent of those matters now are dealt with that way.

CHAIR—These are complaints that come to you and then—

Mr Carey—They can go to the Ombudsman, the local area command, the local member of parliament.

Commissioner Scipione—And the Ombudsman might refer it through to us.

Mr Carey—Yes, and would ultimately come to us to investigate.

CHAIR—When you say ‘notifiable to the Ombudsman’, what does that mean?

Mr Carey—It is notifiable under the Police Act and a class and kind agreement we have with the Policy Integrity Commissioner, the Office of the Ombudsman and the police. So it is a class and kind of complaint that is notifiable to those. It is an agreed position.

Commissioner Scipione—It is set out, and part 8A of the Police Act—and we have got some material which we are happy to leave you—sets out clearly what we need to do on receiving a complaint. It is captured in the legislation and it is quite prescriptive. So that is at part 8A. That is what we know as a complaint.

CHAIR—Does the Ombudsman have the same access to real-time information about complaints as the Police Integrity Commission does?

Mr Carey—All of our notifiable complaints are put on a system called c@tsi, and both the Ombudsman and PIC have access to c@tsi.

Commissioner Scipione—Direct online access. Real time. They can go back in and look at the status of an investigation. They can see it the first notification. It is really quite comprehensive access.

Mr Carey—I meet weekly with John Pritchard from the PIC. That relationship is good and robust and we provide information on a weekly basis, apart from the c@tsi information. The Professional Standards Command is working on a range of serious investigations. We provide John with a schedule of where we are at with those and talk through those. Some of the issues that we are talking through with the PIC at the moment in relation to matters we might want progressed are: matters of procedural fairness in hearings; the right to appear at a hearing in a way which gives us access on a daily basis to the transcripts rather than sitting in the back of the court, and there has been a lot of progress in relation to that; the way and the style in which the reports by PIC are written, and that is what the commissioner was just alluding to in relation to the recommendations. There has certainly been some movement in that.

One of the things we are very concerned about is the risk to the community, commands and employees when PIC take over an investigation, which in effect becomes their investigation but involves our employees, who might be the subject of private hearings. We are looking at an exchange of information in respect of those investigations, without interfering, to manage the officer in the workplace if they are being investigated by PIC, and we are getting a good hearing from Mr Pritchard about that. The last one is joint operations with the PIC. We have broached John in recent times about doing some joint operations again with PIC and the PSC.

CHAIR—Joint operations?

Mr Carey—Investigations.

Commissioner Scipione—We have, over many years. We come together in a task force arrangement. They are not employees of the organisation but they come together under an MOU. They will run operations that require a contingent from New South Wales Police and certainly they will join with the Police Integrity Commission in conducting investigations.

Senator CAMERON—I was just looking at these numbers. PIC has got 100 staff and a budget of about \$18 million to \$19 million. The Professional Standards Command has got 200 staff, and then you have got professional standard managers all over, so you have got a huge resource.

Commissioner Scipione—Professional standards managers work within regions. The level of oversight in New South Wales is really quite extensive. If you deal with what we have internally, we start first and foremost with supervisors because, at the end of the day, every corruption problem that you will encounter in a modern law enforcement agency comes where managers are not managing, supervisors are not supervising and leaders are not leading. So you actually have to start there. The problems start there. That is where you need to invest. So we have very heavy involvement with supervisors and managers.

Every one of our 80 local area commands has a duty officer at the rank of inspector that has a portfolio responsibility within their command to manage ethics and professional standards—so that is every local area command in the state of New South Wales, at the rank of inspector. Then you have within the regions, which bring together the local area commands, a professional standards manager at commissioned officer rank. Then you have a region commander that has more than a passing interest, because all of our performance management schemes have involved, in managing performance and measuring performance organisationally, complaints management: the number of complaints, the types of complaints—and how long it takes us to handle those complaints, because a big part of what Paul talked about relates to the fact that many of these matters can be dealt with. They are almost like disputes: if you can deal quickly with a complainant, you may well get an outcome that is good for them, good for us and good for the officer, so that we are not trying to deal with a traumatised officer.

But then it goes on, because then we have a professional standards command. We have integrity panels that look at and manage these matters as they go through. There is very senior representation, assistant commissioner led, with a number of other assistant commissioners determining what I should do with the matter if it comes to the point where there is a dismissal.

That is just internally. Outside of that we have a plethora of bodies. We have the Police Integrity Commission. We also have the Ombudsman, who deals with many of our complaints. If it does not get to the threshold for the PIC, it probably will sit within the bailiwick of the Ombudsman, who has a sort of police responsibility and some large numbers. But it goes further, because corruption is not only about a police officer taking a bribe or selling drugs or getting involved in assaulting somebody.

Corruption prevention, resistance, resilience in a modern law enforcement organisation does not only cover off on the sworn component. It is as much applicable to the unsworn officer in the unauthorised release of information, or even in some of the day-to-day processes, like managing

the procurement process, contracts, personal favours. So we have an Independent Commission Against Corruption that provides so much of the training government-wide but impacts on us significantly when it comes to things like contracts, tender, those sorts of issues.

But, over and above that, we still have the ACC—the Australian Crime Commission. I get many reports from the CEO of the ACC of allegations of corrupt activity involving police. We have the New South Wales Crime Commission. When you actually start to roll it through, we have layer on top of layer on top of layer.

Senator CAMERON—That is what I am looking at, and this is a very rough figure, but for every 15 serving officers you have got an individual dealing with corruption.

Commissioner Scipione—Essentially.

Senator CAMERON—That may not be the correct figure, but it looks to me, just on those numbers, as if it is a huge resource.

Commissioner Scipione—This is always a difficult act to balance. Sometimes you go in and say, ‘So what’s the price in delivering that? What does it cost us to do that?’ Sometimes you have to say, ‘What would it cost us if we didn’t do it? What’s the price in not doing it?’ We have been through the lows organisationally of having to go through a very hard look at ourselves through the police royal commission. It is important that you do that, and I talked about that a little earlier. But can I say that when you have been through that much pain, you do not want to go there again, and the way you do not go there again is to change culture.

You were talking about building block approaches. My old professor at university said there are two ways you can approach these sorts of issues—not specifically corruption—and it is that notion of a building block approach or catastrophic change. Often the easier way to do it is by the building block approach, but the old professor used to sometimes describe that as almost creeping death. Sometimes you have actually got to go, ‘Bang! It’s here.’ It sends a message. There are some people who are going to struggle to get on board, and we saw that organisationally, and there are some who will not, but unless you make it ‘the way we do business around here’ you are never going to effect the change. More than half of my force were not here when the royal commission was on.

Senator CAMERON—That is the other argument: you cannot change culture, you can only change people. That is another argument, isn’t it?

Commissioner Scipione—That is. That is what I am saying. This is a difficult balancing act. But certainly what has to happen is that you have to have the debate. You have to work through it, and every organisation in every setting will be different, I am sure. Certainly there is a price to be paid but there is also the alternative—that is, if you do not do it, what is the price to be paid?

Mr Carey—Can I just comment on the issue about the culture. We are still looking at this. It is my gut feeling that this is what happened, though I cannot prove it just yet: last year, the commission had an extraordinary job and there were nearly 1,800 new recruits sworn in as probationary constables between January and December 2007. In that calendar year, the complaints dropped between 15 and 20 per cent. In real terms, those 1,800 probationary

constables went to front-line police stations—that is, in most places. They did not go to all the 80 local area commands, but to a goodly proportion of the very busy ones. That could have been 15, 20 or 25 new people in some locations. I think they set the standards. I think all those not necessarily young faces but fresh faces have come into the organisation and, once into that front-line delivery of services role, that has had an effect on complaints. But I cannot prove it.

Commissioner Scipione—That is because the culture is the one that they take with them, not the one that they find there. You have to make them culturally strong and give them an understanding of what is right and what is wrong, because most police officers over history do not join the police force with a view to saying, ‘I’m going to be a corrupt officer. I’m going to go in there and make as much money as I can and get involved in as much badness as possible.’ They go in there with the very best of intentions, and one bad choice or one bad decision can start the spiral down. It is about choices; that is life. The better your choices, the better your life. It is the same organisationally.

As Paul said, the idea is to be in a position to get them early and have that culture go with them—‘If you see a problem, tell somebody. Don’t hide it’—and where they feel confident enough to come forward. If you look at some of the survey work that has been done in recent times, the percentage of complaints that are now coming from officers about officers is very interesting. I do not know if you have got those figures there with you.

CHAIR—Is there an anonymous complaint line?

Commissioner Scipione—We have got all of those opportunities. But do you want to talk about more recent trends?

Mr Carey—More than 50 per cent of our complaints come from internal complaint processes. That could be from an individual officer making a complaint about another officer, but it is also from our compliance and audit systems that might raise concerns. More than 50 per cent of those complaints are directed and commenced internally.

Commissioner Scipione—That is the culture that you want. You want a culture that feels confident about being able to say, ‘That is not right. That is wrong and I need to do something about it.’

CHAIR—Do you have a research and evaluation section within the professional standards unit?

Mr Carey—We do. We have a strategic directorate under the direction of Mr Chris Leeds, who is in the background there, that does not only policy but also strategic directions, future directions and trend analysis. Certainly we have got the capacity to look at that as well within professional standards, not just internal investigations.

Commissioner Scipione—I want a mature process that actually gives us the early warning. I want to see a trend emerging. I do not want to see an individual that has to be dealt with and say, ‘He’s a problem there and, in isolation, there’s a problem there,’ because generally speaking you can see trends emerging. That is the work that Chris and his team would be looking at so that we get the early warning advice. The radar is blipping, saying, ‘You may have an emerging issue in

this particular area.' I think that is the sign of a mature organisation that is trying to deal with systemic problems.

I heard your earlier question. The reality is that there is no organisation in this business, anywhere in the world, where the chief executive could put his or her hand on their heart and say, 'We do not have a problem.' To do that would be naive and probably would be an insult to the intelligence of the person that you are talking to. That is a fact, that is the reality, which means you need to be ever vigilant and you need to make sure it is a priority when it comes to the way you do business, wherever you are.

I have to say that is why I feel that we are in better shape now than we have been for generations in the New South Wales Police Force. We have a long history. We go back to 1862. I do not think, in all of the years that we have been together, that we have been as well placed to know. It is the entire environment. As I said, we are well populated. That space is pretty well populated when it comes to oversight and integrity checks. It just keeps going externally and internally, and perhaps the nature of how we do business will change. Right now I am confident that we have the balance about right and you can never ever take your eyes off this area.

CHAIR—Thank you.

Ms LEY—You say, Commissioner, that the balance is right. Do you think the average serving police officer is quite exhausted by the amount of spotlight on integrity matters? Do you think that that continual questioning, that they may perceive by the public, is affecting their morale?

Commissioner Scipione—Part of what you are saying could be correct, but most of the issues that arise out of how they feel about what goes on are linked to red tape. Red tape in this area has been enormous. That is why we have worked so hard to go into the complaints streamlining process. Paul, it might be wise if you just run over the top of what we have done. The complaints streamlining process began when we sat down with the oversight agencies and said, 'We need to actually streamline. Let's get rid of the red tape.' This is where our businesses differ.

Whilst integrity, monitoring integrity and improving performance through integrity is a really important issue to any commissioner, at the end of the day it is not my core business. The core business is to deal with crime, to prevent crime, and to bring those that commit crimes to justice. We can never take our eyes off that as our primary focus. However, for an oversight agency, it is a different outcome. They are particularly concerned about this part of the business. To do that means you need to burn up a lot of horsepower. That is the red tape side of it. There is a lot of paperwork that needs to be done: the way we managed the complaint; at what stage it became a complaint or an investigation; and what happened then.

We sat down constructively with the oversight agencies and said, 'How do we improve this?' We then put a model together and trialled that in a number of commands across the state to see what the police feedback was, because we were concerned about wasting resources, about morale when a matter just goes on and on for months, sometimes years. That is not a good outcome for anyone. The notion of having to deal with a matter and just go through hoops became almost mechanical. So we trialled it.

The feedback was outstanding from our industrial associations, from our commands, from the police that were the subject of this new complaint process, so much so that they almost knocked down the door, saying, ‘Can we roll this out wider, because it is so positive?’ You might just want to talk about the streamlining process, where we started and where we are now.

Mr Carey—Simply, the previous process relied heavily on a system based processed, which was that we had to go through that system before we could talk with the complainant or talk with the officers involved. That took some time and it was a more formal way of investigating things. In reality, given the figures that I have spoken about earlier, most complainants and the police officers involved want the matter resolved very quickly. The complainants want something heard. If they have an issue, they want it heard, they want something resolved.

The previous system did not allow us that day or that week to conduct preliminary inquiries—things like, ‘Was the officer even on duty?’ We could not go to the roster. Under the previous system, if there was a complaint about an officer’s conduct, we could not simply go to a roster and look at whether or not that officer was on. That was conducting an investigation. The new system allows us to do that. We can, for example, go and check if he was working in the charge room, we can make those inquiries, and if he was not, we can simply decline the complaint. We can talk to the complainant very early and resolve the matter with the complainant. The complainant wants to hear from the police very quickly—‘What are you going to do about my complaint?’

We have reworked the system so that we in essence conduct informal inquiries very quickly and have a 45-day time limit, although most matters are resolved much quicker than that.

Commissioner Scipione—So if we can get to the nub of the matter, we can then work out what needs to be managed. It could be a local management issue. It can be a simple complaint where some mediation needs to happen, but it also allows us to push out the matters that need some significant investment. They are the ones that we can look at closely, certainly with the oversight arrangements, with the two other oversight agencies seeing those come online immediately.

In terms of morale—invariably those that are the subject of a complaint, be they in some way potentially guilty or otherwise, criminal or otherwise—no-one likes to be put under the spotlight. However, under this new process, the majority of those matters where it is not warranted that we go down and deal with somebody that has probably said a word that may have upset somebody, as opposed to somebody that has been involved in some sort of serious criminal activity, can be dealt with the same way. That has made a big difference.

Mr Carey—We do not necessarily apologise for any of that. Police have extraordinary powers: we can take away people’s freedom; we have lethal force. At the end of the day, the community has very high expectations of what police officers do with all those powers.

Ms LEY—From time to time state police officers are seconded to either the ACC or the AFP. In their submission to us, ACLEI have suggested that where corruption issues are known about individual officers that may be working, let’s say, on a relatively informal basis with the ACC or the AFP, the state agencies—and this may be yourselves or the PIC—be obliged to pass that

information on, given the length of time that these matters may take to play out. Would you support such an increase in reporting requirements to ACLEI, to the integrity commissioner?

Commissioner Scipione—We would report to ACLEI as opposed to the agency that would be getting the seconded officer?

Ms LEY—The integrity organisations in the state would report to the integrity commissioner about known issues of corruption. If you consider that there is a scattered database of corruption inquiries that may still not have been resolved but may be working their way through the system, is it appropriate for ACLEI to have access to that information as an individual body?

Commissioner Scipione—I think you are talking about an officer that has already gone, are you?

Ms LEY—Or is in—

Commissioner Scipione—Let's start with the latter first. If an officer is about to leave New South Wales and go to another agency for a duly authorised purpose—let's say on secondment for a year or two years—there should be, and I think there is, certainly from our perspective, a formal process where we will not let that officer go if there is a current investigation of a type or nature that would suggest that there are some significant corruption issues. I think we actually take inquiries from places like the Australian Crime Commission prior to officers going there. We probably run them through your probity area to get some understanding. It is like we deal with promotion.

Mr Carey—They would run their own probity checks as well.

Commissioner Scipione—And they do their own probity checks. If that is something that you would see as being useful across Australia, from a New South Wales Police perspective, it sounds eminently sensible. Once they are there, if corrupt activity comes to the knowledge of us as an organisation, clearly we have an obligation to pass it on to the agency that they are working for, as we do, importantly, before they go. We have a very clear understanding.

One of the other problems that was encountered in this bit of the business some time ago was that no-one was quite sure who was responsible for the officer. Were they subject to my professional standards arrangements or the host agency's professional standards arrangements? We now nail that in writing so that we all understand exactly who is accountable for these folks before they go, so much so that—as with the airport uniform policing model, which you have seen across the nation—we have in our MOU a very clear understanding, set out in black and white, of what it is that we are accountable for and whose disciplinary system they will be held accountable under.

Regardless of that, if there is information that we get that would relate to an officer in any jurisdiction, whether that officer is one of our members or a member of any law enforcement agency, we would bring it to the attention of that agency anyway as part of the normal transfer of information arrangements. We do it as a matter of course and the reverse happens as well. We have to pay particular attention to that because we know that, under part 8A of the legislation, we in fact breach our own act of parliament if we do not notify other sole agencies like the

Police Integrity Commission and the Ombudsman. The problem that you are identifying I would not see as being a problem for us. I am not sure if you have anything to add to that.

Mr Carey—No. I would think that most of those agencies that we are involved with would, under the MOU, depending on the behaviour—if it were behaviour by a New South Wales police officer—seek to have that officer returned to us, and that has happened with the airport police.

Ms LEY—So there is an MOU in place whenever something needs—

Commissioner Scipione—Yes, governing secondments.

Ms LEY—Governing secondments.

Mr Carey—Let's say it is the ACC and there is an AFP officer and a New South Wales police officer involved in some sort of corrupt conduct involving ACC duties; that might be one that we would have to think about.

Commissioner Scipione—I served for seven years at the National Crime Authority. In my time there, it was a grey area. I think if I had my time again and if I were dealing with that today, I would probably want to be held accountable against the provisions that applied to the agency at which I was performing my duties. So if I were going into the federal environment, then I would expect to be dealt with under their complaint discipline system. That in fact is appropriate, and I think that is the way we actually do it now because it is too difficult to do it by remote control. In that regard, I am sure that, as we have had in the past under those arrangements, we get advised if there is a breach of the disciplinary codes and, certainly, if we get any intelligence regarding an officer of ours that is in another agency, we pass that on with some due haste, you can be sure.

Ms LEY—Thank you.

Senator CAMERON—Commissioner, I have been concerned, in this process that we are undertaking, that the individual officer's rights are upheld. I have been concerned that, if an officer goes to the PIC or ACLEI or any of the other agencies, there is a bit of a pall over their career opportunities. It is interesting that you have the fallback position of the Industrial Relations Commission here. I do not think that happens anywhere else. How do you find the appeal right to the IRC working?

Commissioner Scipione—Under the arrangements that are open to me and the organisation, there are non-reviewable sanctions and reviewable sanctions. The non-reviewable sanctions generally are at the lower end of the scale when it comes to actions that are taken. Matters involving dismissal, however, fall clearly within the realms of being reviewable sanctions. The IRC exercises its role in this regard, and they do it vigorously. From my perspective, I ensure that I work through every opportunity to guarantee procedural fairness in this, because it is a matter of procedural fairness to the officers involved. It does not only involve the officer: it involves his family, his workmates, his loved ones. To remove somebody from an organisation like ours is a very big step to take and I agonise over it.

There is a due process that we go through under the 181D notifications, where I will take advice from them. I would invite them to show cause why I should not dismiss them. They have

access to, and make very good use of, legal support in this regard, generally provided by their industrial associations, and I also take good legal advice to ensure that we do get this right at law. For me to get to the point where I say, 'Issue the 181D,' we have been through a process that does not leave too much to the imagination.

However, there is still that ultimate right that they can exercise—to take me to the IRC. We have had officers that have been convicted of serious crimes, serious assault matters, where I will say, 'I've lost confidence and, as the commissioner, I deem that you no longer have a position because I have lost that confidence.' They go to the IRC and I have been forced to take them back because it has been determined that my actions have been too harsh. Do I agree? Well, if I had agreed with that in the first place, I would not have dismissed them. But at the end of the day, under the current arrangements, the IRC is the independent umpire. That is a rarity, but it happens. Over the years it has been an issue that will come up from time to time. The dilemma, though, is this: I have got somebody that is convicted of a serious assault and been found guilty and dealt with by the courts, and then I have to take that person back in and have them involved in an area where they are administering the law in the area of assaults. It is very difficult.

We talked about unauthorised access to information, or matters where they may lie to cover up in a matter, where ultimately that is worse than what they did in the first place. It is the lying, the misleading on oath, for instance, on many occasions, where I have to take a very harsh view, because at the end of the day they are professional witnesses. If you betray the trust the community puts in you as an officer, in that you are less than honest—that is, you lied, and you are prepared to lie in a court proceeding—and I dismiss you, and then you go to an IRC and they say, 'No, you need to understand that these things happen,' it is very difficult not only for me, not only for the officer, but for the organisation, because the credibility, the community support, comes from knowing that they have officers that do tell the truth every time and that when they do not they are dealt with very harshly.

The notion of zero tolerance was something that I heard mentioned a bit earlier. If you go right back to the origin of this phrase 'zero tolerance', it comes out of New York and it comes from Bill Bratton. Bill Bratton laughs. We talk regularly and he often reminds me, 'The notion of zero tolerance, Andrew, didn't come from minor crime. That's a theory from somebody in a textbook. The zero tolerance approach that we brought as an organisation, that I brought as the commissioner of the New York Police Department, related to one thing, and that was integrity.' So there was a zero tolerance to police corruption in New York. When you put it in those terms, the notion of me dismissing somebody because I have lost confidence is a last resort and it is used sparingly. But, having said that, when the IRC determines that they have to come back, I do not have too many options open to me.

CHAIR—Do you have to take them back in the area in which they were before?

Commissioner Scipione—No, I can look at how I manage them, and that in itself is certainly one of the means by which we manage them.

Senator CAMERON—Mullumbimby!

Commissioner Scipione—Sometimes that could be the very worst thing that we do, putting them in that sort of a situation where they—yes. No, it is a rarity, but it is an issue. There is no doubt that it is an issue.

CHAIR—Did you have any further comments you wish to make?

Commissioner Scipione—Thank you, Madam Chair. This is a very important area that you are moving into with your deliberations. I would hope and pray that you get it right, because there is so much at stake. As I have said, we are an organisation that has been running since 1862. I do not think there is any greater betrayal to a community than a person acting corruptly in the execution of law. A police officer has a lot of responsibility placed on his or her shoulders. How we best manage that as an organisation, as a community, and up through government oversight is something that is vitally important. A strong oversight arrangement generally leads to a healthy organisation, and that is to be encouraged every time.

CHAIR—Do you believe that such oversight arrangements should be specialised, that we should have a specific police integrity agency, or do you believe that an oversight agency could deal with other matters, like general public sector corruption?

Commissioner Scipione—That is a sixty-four million dollar question. You could come back and ask: within a police force like mine, do we believe that there should be a homicide squad investigating homicides because they are of such importance? Yes, we do. Can they operate within a wider law enforcement body? Yes, they can. They do, and they do it very well.

The only point that I will highlight relates to the New York experience. If you go back to the Mollen Commission days and look at their equivalent of the police royal commission, in New York particularly it is cyclical. You are going to go 20-odd years and you will have another commission of inquiry or the equivalent of a royal commission. An interesting point that came from Mollen, but even from, I think, the commission of inquiry some 15 to 20 years earlier, was that the one thing you need to be careful about is that if there is an event which leads to a commission of inquiry which leads to the easy solution of, 'Just throw another oversight agency in,' the risk is that you take the available pool of resources and split it in half. Does that in fact lessen the efficiency of having one team looking after the whole area?

The notion that came from New York was, in fact, exactly that. You have to split the available funds. You have to split the available skilled staff. You have to double the effort in terms of resources, and you have heard just how important things like telephone interception, electronic surveillance and physical surveillance are. You can buy those sorts of assets—they cost a lot—but the bodies to drive them are a very scarce resource. If you deal with a specific issue by putting in another team dedicated to that, it sometimes can weaken your response across the whole area. That is very well documented in the New York experience and something that is worth considering. I had to consider it as part of my studies 10 years ago at ANU, and there are some people down in Canberra that are very good at providing advice in this area.

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

Commissioner Scipione—It is a pleasure.

Proceedings suspended from 12.35 pm to 1.31 pm

MOSS, the Hon. Peter James, QC, Inspector of the Police Integrity Commission

CHAIR—I welcome the New South Wales Inspector of the Police Integrity Commission. I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr Moss—Thank you, Madam Chair. I was appointed by the Governor of New South Wales to the position of Inspector of the Police Integrity Commission for a five-year period commencing November 2006. That is the maximum period for which one can be appointed to the position and, once you have served that period, you cannot be reappointed to the position.

As with each of my predecessors, my appointment is part time. I am provided with an office in Pitt Street and I am also provided with one full-time executive assistant. I have a small room for my exclusive use at the Police Integrity Commission's premises in Elizabeth Street. I attend those premises usually on a weekly basis, where I confer with the Police Integrity Commissioner and the commission's solicitor. On those occasions, I am also provided with a written agenda comprising references to all process issued by the commission since our last meeting. That also includes schedule dates for forthcoming commission hearings.

From my room at the Police Integrity Commission, I have computer access to all the PIC's operations and records, and I audit specific operations in that way each week. Of course, each week is a set of different specific operations. I draft minutes of the weekly meeting with the commissioner and the solicitor immediately after the meeting and I provide copies to the commissioner.

The inspector's other principal function includes dealing with complaints concerning the Police Integrity Commission. The relevant legislation is the Police Integrity Commission Act 1996. The inspector's functions and powers are contained in part 6 of that act, sections 89 to 93. I might add that the ICAC inspector is governed by almost identical legislation.

The conduct of the inspector can be made the subject of a complaint to the ICAC under section 126(2) of the Police Integrity Commission Act and the inspector may refer a complaint concerning the Police Integrity Commissioner or an officer of the commissioner to the ICAC under section 126(1).

Finally, for the purposes of this statement, I note that a copy of my 2008 annual report has previously been forwarded to this committee, and some of these matters are further covered in that report. Thank you, Madam Chair.

CHAIR—Thank you. In relation to the premises that you have at the Police Integrity Commission, is that your only premises or do you have another premises somewhere else?

Mr Moss—My office is in Pitt Street, and that is where my executive assistant works. This room that I refer to is a totally separate location, and it is necessary because, when I go there to the Police Integrity Commission premises once a week, I obviously need somewhere to conduct the audit and other functions that I have to perform there. So I have just a small room, but the

important thing is that it is exclusively for my use and it has a computer. With that, I can access the particular electronic system that the PIC uses and I can audit any of the operations of the commission and get into all their records and check their records.

CHAIR—How many days a week are you working?

Mr Moss—I was clearly given to understand that I was expected to do this work on a two-day-a-week basis. Sometimes that has to be extended to three, but typically I try to keep it to two days a week.

CHAIR—And you are paid a flat rate no matter how much time you—

Mr Moss—The inspector is paid the equivalent of the daily rate of a New South Wales Supreme Court judge. The Remuneration Tribunal fixes that rate and, as you probably know, each October the tribunal has a look at the rate and either leaves it alone or increases it.

CHAIR—But you will be paid according to how many days you work.

Mr Moss—Yes. If I work two days a week, I get twice a Supreme Court judge's daily rate for that week.

CHAIR—You said you have a full-time executive assistant. Is that executive assistant legally trained?

Mr Moss—I was about to say, 'Unfortunately, no.' I will just say, 'No.' But that does have consequences for me, particularly when I am dealing with complaints, and particularly complaints that are of substance. Often there is a deal of legal research, because most of these complaints, assuming they are within jurisdiction, really found themselves on what is called a denial of procedural fairness, a development that the High Court has engaged in over the last 10 years or so, so that it has now become quite an acute doctrine. Most of the complaints that come to me which have substance rest on the basis that they claim there has been a denial of procedural fairness. In order to explore that, it is necessary to keep up with the case law, and that is where perhaps a legally qualified assistant would be of particular use. For example, in many ways my position is directly comparable with the ICAC inspector. I do not know whether you are going to see the ICAC inspector. You will find that he is much better equipped in terms of staff than I am.

CHAIR—We are not going to see the ICAC inspector.

Mr Moss—You are not?

CHAIR—Just the ICAC.

Mr Moss—He is much better equipped. He has a full-time highly legally qualified manager for his office and he has two part-time staff, both of whom, as I understand it, are legally qualified. However, for myself, no. I have a very competent executive assistant but not a legally qualified one.

CHAIR—Yesterday we were conducting hearings in Perth, and the parliamentary inspector there has just received the services of a full-time legal practitioner, about which he is very happy. Do you have a capacity to ask for further resources?

Mr Moss—I do not know whether you are aware of the state of New South Wales and its finances at the moment. I probably have the capacity. I have never asked for further assistance, because I have been able to manage. I have recently gained access to a very good law library, and the head librarian there has indicated that she will be very helpful. So my situation has recently improved by having access to this very good law library and the assistance of the head librarian.

CHAIR—What powers do you have to investigate the commission's operations?

Mr Moss—As I say, the inspector's powers are contained in part 6 of the Police Integrity Commission Act. It sets out, in section 89, the principal functions of the inspector—namely:

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

I can exercise those powers of my own initiative or at the request of the relevant minister or in respect of other named entities.

CHAIR—How do you exercise those functions?

Mr Moss—I have to say that many complaints that I get are not within my jurisdiction. For example, they concern the police—that is one of the most common complaints—and I have no jurisdiction over the New South Wales Police. But, if they are within jurisdiction and they are prima facie of substance, then that is all I need to initiate my complaints jurisdiction. I immediately embark on an inquiry into that complaint.

I would have before me five or six complaints at the moment. Almost all of them seem to be of substance and in one of them I have issued a draft report. My practice is to issue draft reports to the parties and to give them a chance to respond before I finally publish a report. Recently I have issued a draft report to the parties in one complaint and I am close to the position of issuing draft reports in a couple of the other complaints.

CHAIR—Do you conduct hearings and have witnesses?

Mr Moss—No. I should finish by saying that the powers of the inspector are extreme. First of all, section 90 gives me power to investigate any aspect of the commission's operations. I can call people from the commission in front of me and I can compel them to answer questions. If the case is serious enough, under section 91 I can hold an inquiry and, if I do so, under the New South Wales Royal Commissions Act I can compel people to give evidence, I can compel them

to attend and I can compel them to produce documents. But neither myself nor my three predecessors have ever found it necessary to go to the extent of holding an inquiry and exercising the powers of a royal commission.

Senator CAMERON—You are the most powerful part-time worker in New South Wales.

Mr Moss—Not quite, because, as I say, the ICAC inspector has exactly the same power, so he is just as potentially powerful.

CHAIR—How does your role complement that of the parliamentary committee on the Office of the Ombudsman and the Police Integrity Commission?

Mr Moss—As you know, they are constituted under part 7 of the Police Integrity Commission Act and I, as inspector, am answerable to them. I last appeared before them about a year ago and, as luck would have it, I am due to appear before them tomorrow. But there has been correspondence between us about matters that are of concern to me. About a month ago they sent me a series of questions on notice, which will be dealt with tomorrow when I appear before them. I have since responded to those questions on notice by providing responses on notice.

CHAIR—When you say you are answerable to that committee, you do not report to that committee, do you? You report to the parliament?

Mr Moss—Only in the sense that I appear before them and I am bound to answer their questions. I am answerable in the sense that they have the statutory power and function to monitor the functions of the inspector.

CHAIR—Can they direct you to investigate any matter?

Mr Moss—No. They can report to parliament if they are dissatisfied with something I do or if they otherwise want to report to parliament.

CHAIR—You may be aware that in Queensland the parliamentary commissioner can only investigate matters on reference from the parliamentary committee and in Western Australia the parliamentary inspector can initiate his own investigations. I am gathering that you also have the power to initiate your own investigations.

Mr Moss—I do indeed, yes.

CHAIR—Of course, you are not a parliamentary inspector.

Mr Moss—No.

CHAIR—There is one other matter I wanted to ask you about before I hand over to my colleagues. Part of your inspector role is to oversee the legality and propriety of operations and activities of the Police Integrity Commission.

Mr Moss—Yes.

CHAIR—There is an issue in WA at the moment as to the parliamentary inspector's role in examining the reasons for use of telephone intercepts, as opposed to technical compliance with formalities, which is the Ombudsman's role to oversee. Do you have the capacity to go behind the reasons why the Police Integrity Commission might be using telephone intercepts, or is your audit function to see if there is technical compliance with the formalities?

Mr Moss—My view is that it is to see that they comply with the law in that regard. Similarly, where I am investigating a complaint concerning the commission, I notice the issue in Western Australia seems to be that the parliamentary inspector takes the view that he can directly challenge opinions come to by that commission in their reports. My own view is that the inspector here, under this legislation, cannot do that, but he can look at how those opinions have been formed. If, for example, they were formed contrary to the principles of procedural fairness, then certainly he would be entitled in his complaint reports to comment on that matter, but not to conclude that an opinion come to by the commission was in fact wrong. I understand that issue has given rise to some problems in Western Australia.

CHAIR—Yes, indeed.

Senator CAMERON—The relationship between yourself and the PIC is obviously a very important one that the legislators have determined has to be in place. Do you think you need more resources and more powers than the parliament has provided?

Mr Moss—Do I need more power?

Senator CAMERON—Yes.

Mr Moss—No. In one respect only have I got concerns and I have got running correspondence with the parliamentary joint committee. I also raise this in my annual report, which I made available to the committee. That concern arises out of the provisions of section 89(1)(b), which is the provision which gives the inspector the function and the power to deal with complaints of abuse of power et cetera on the part of the commission and to deal with that by reports and recommendations.

The problem that I see—and I think at least some of my predecessors have seen—is that the provision does not make clear to whom the inspector is to report. Certainly it makes it clear he is to deal with the complaints by means of a report, but it is silent on to whom the inspector is to report. So I and my predecessors, as far as I can see, have assumed that we are to deliver the reports to the complainant—the one making the complaint—and the commission, against whom the complaint is made. For my part, I also on occasion, if it seems obvious that it should be done, deliver copies to, say, the police commissioner or the Director of Public Prosecutions. I always delivery a copy to the police ministry, as I think it is in the public interest to do so.

But the problem is that that is just something I am implying from the act. It does not expressly say so. Secondly, there is no provision to make those reports public. Thus there is no provision as to what status the reports have once the inspector issues them. The issue that seems to arise is that, if the commission is to be held accountable where the inspector is of the opinion that it has not conducted a fair hearing, and makes a report to that effect, on one view of it the making of that report public would assist in the accountability of the commission. But at the moment that

does not seem to be possible, and I expect that will be an issue when I appear before the parliamentary joint committee tomorrow.

CHAIR—Do you give a copy of your reports to the committee as well?

Mr Moss—Yes, I do.

Senator CAMERON—How do you conduct your hearings or investigations? I am not sure how you would describe them. You don't normally use your royal commission powers?

Mr Moss—No.

Senator CAMERON—So how do you conduct your investigations? Are they hearings or investigations? How would you describe what you do?

Mr Moss—I would describe them as investigations. I investigate the complaints. Usually the first thing I do is to formulate the complaint. Often when it comes in it is not accurately formulated or it may need reformulating. We may have to go back to the complainant by correspondence and seek further and better particulars, but eventually we are in a position to formally put the complaint in writing. I add my own comments sometimes. For example, I might add a comment that it appears to me that something has been overlooked or that something needs an explanation from the commission.

When that document is prepared, I then send it off to the commission and await the commission's response. That comes back in writing, sometimes at great length. I then serve that on the complainant and wait for the complainant's response. Sometimes, in addition to those two parties, it is necessary for me to seek particulars from another party—for example, the Director of Public Prosecutions on occasions or the New South Wales Police on occasions.

Eventually, though, everything comes in and everybody has had a chance to respond to whatever has been put concerning their party, and at that stage I then do a draft report in which I set out my draft conclusions. Do I uphold the complaint? If so, on what grounds and on what evidence? Has there been a denial of procedural fairness? If so, in what regard? That is all set out and that goes off to the parties, and then they let me have their final response. I take that into account and then, in the limited way I have indicated, I publish my report—that is, publish it at least to the complainant and the Police Integrity Commission but sometimes to these other people like the Commissioner of Police or the Director of Public Prosecutions.

Senator CAMERON—So you deal with these on the basis of submissions in writing?

Mr Moss—Yes.

Senator CAMERON—You do not actually sit down across the table from a complainant.

Mr Moss—I have never done so, no. If you can keep your distance, I think you are more likely to be objective. For example, you were saying before how important it is—and how right you are—for a good relationship to exist between the inspector and the commission, and that is not always easy to balance with being the inspector, because no-one likes to be criticised. For

example, in two reports I delivered about 12 months ago, or less, I upheld a complaint by a detective and I found that he had been denied procedural fairness in a number of matters by the commission and that he had suffered grave damage as a result. I have summarised that complaint in my annual report.

As I say, no-one likes to have that criticism visited on them, so what we must try to do, without in any way impairing our role as a complaint investigator, is still keep on good terms with the commission and, I would hope, continue to enjoy the trust of the commission, because we discuss very confidential matters in these weekly meetings and it would not do for some deep rift to develop between myself and, say, the Police Integrity Commissioner. That would make these weekly meetings difficult.

Senator CAMERON—How do you then balance this theoretical argument of regulatory capture, where your office gets too close? You say you have to maintain a good relationship, but that relationship surely has to be based on your office performing—not you personally but your office, and I am not for one minute saying you do not—its functions without fear or favour. It really does lead you to conflictual situations from time to time.

Mr Moss—I suggest it will not, provided that you absolutely ensure that your reporting functions—your complaint reporting functions—are not impaired. You need to be able to look at your reports, where you uphold a complaint, and say, ‘I have been utterly fair to both parties, I have stated at considerable length how I came to this conclusion and it is perfectly clear to the reader of the report what conclusion I have come to,’ and I of course refer to case law to justify the conclusions I come to.

You need to be able do that so that neither side can reasonably say that you have been anything but fair, even though it may be annoying—and naturally annoying—to have the statutory irritant, as I call myself, breathing down their necks. I mean, they are trying to do their job and they have this statutory irritant issuing reports and saying they have been unfair. If that does not cause irritation, I would be surprised. I am sure if I were in their position, it would to me.

As I said, you need to ensure that your reports into complaints are utterly fair, and that is why I give them a draft before I publish, so that they are not taken by surprise and there is no question of saying, ‘If I’d seen that, I could have answered it.’ They have seen it before it is published and they get an ample opportunity to respond.

Senator CAMERON—Again I do not want to cast any aspersions on you whatsoever. I am interested in how the office works, you see, and I am finding it really difficult to understand how you can make a judgement, or your office can make a judgement, purely on written submissions. I am not a lawyer and I do not understand the process. I am just saying that I always, from a layperson’s point of view, understood that a judge, for instance, or an investigator needed to make value judgements based on body language and on the demeanour of a witness. How do you deal with those issues?

Mr Moss—So far the credit of neither the complainant nor the commission has been an issue. With these complaints, it is not the facts that are disagreed; the facts are usually agreed. For example, a witness claims that they were given no warning that they were going to be referred to

by the commission in a public report as what is called ‘an affected person’ under the legislation and then be referred to the Director of Public Prosecutions for consideration of the laying of criminal charges. So the complaint comes in, ‘I was given no warning, yet my name appears in a public report and my reputation has been ruined.’ So the issue is: were they given a warning? It means I go to the transcript and I read their evidence, I read their cross-examination by the commission and I read any other relevant documents. Then the issue becomes: were they given a warning because of the way they were cross-examined? Was it made plain to them, beyond any doubt, that their evidence was not believed, or were they given a separate warning?

For example, the commission follows the procedure where, at the end of these public hearings and other hearings, counsel assisting—who is a barrister that they brief from outside and plays a crucial role in the commission’s proceedings—puts in written submissions. It is the commission’s practice to have counsel assisting nominate whether a witness is what is called ‘an affected person’. So usually the issue is: were they warned before then or was that when they got their warning?

I am only using this as an illustration to indicate that there have been no credibility issues so far. Indeed, it would be very difficult if there were a credibility issue, particularly if the commission’s credibility was put in issue. That would almost certainly mean that you would have to have a hearing and call people. If the result turned on who you believed, you could not do it on the papers, generally speaking. But so far it has been perfectly possible and reasonable to do it on the papers. As I mentioned, my predecessors found that they were able to do it the same way.

But if credibility became an issue then you would have to have a hearing and you would have to have people cross-examined and you would have to then, as a judge does, decide who is telling the truth and who is not. But this system is not really designed, generally, for that situation. Usually the facts are not an issue, but the construction of the facts and deciding what was fair and unfair on the facts is where the inspector comes in.

Ms LEY—Thanks, Mr Moss. How many of the investigations that you do typically are generated from complaints and how many are self-generated?

Mr Moss—So far all my investigations have been generated by complaints. The first year I was in the job I might have got a dozen, two dozen complaints, and I do not think one of them was within jurisdiction. They were all concerning New South Wales Police and I refer those on to the commission, because I do not have any jurisdiction. The second year I received a number of complaints, including the one I have mentioned that I put a report out about, and each of those complaints generated an investigation on my part.

With the exception of the two I mentioned, none of those complaints have yet been finalised, although a couple are getting very close to finalisation. So, to answer your question, all of my investigations have been generated by written complaints, sometimes from the party himself or herself and sometimes from their solicitor.

Ms LEY—Do you feel that you have sufficient access to the databases, the records, be they electronic or otherwise, of the commission to enable you to make fully-informed determinations?

Mr Moss—Yes, because under section 90 I can—and I do. The first thing I do after I formulate the complaint is to write to the commission and say, ‘I would like the transcript of X, Y and Z on such-and-such dates. I would like the written submissions of counsel assisting in respect of those witnesses,’ and exhibits and any other documents. They send me out the copies of all this material and the exhibits that I have called for, and then I sit down and go right through them.

Ms LEY—Do you feel that you are then fully in the picture?

Mr Moss—Fully in the picture. Sometimes I have to go to third parties. For example, in a current complaint I have been, for some months, engaging in correspondence with the barrister who appeared as counsel assisting to get why he did what he did as counsel assisting. That has taken some months, but I have now concluded that correspondence and it has been very helpful. So one way or another, to date anyway, either my powers under the act or the readiness of New South Wales Police, say, or the barrister or the DPP to assist promptly has been more than sufficient.

Ms LEY—Have you, or do you envisage that you might make recommendations to the commission about how they might change the way they do things?

Mr Moss—Yes.

Ms LEY—Does that come up from time to time? Would you say, ‘I’m noticing a trend and a certain type of complaint. You could consider changing your processes accordingly’? In terms of those conversations, do you have the power to direct them to change their processes?

Mr Moss—No, I do not. I do not think anyone in my position, including the WA inspector and certainly not the ICAC inspector—none of us and certainly not me—has that power and it would be dangerous to give us that power.

To answer your question, I have made recommendations to the commission, not only arising out of complaints. For example, each time they issue an annual report I do a written critique of the annual report and if I find it unclear I say so. If I find mistakes, I point the mistakes out. I made recommendations about their annual reports. I have made other recommendations. I think there is an understanding between myself and the commission that, when I get rid of some of these complaints that are occupying much of my time at the moment, we are going to sit down and see whether these complaints can be avoided in the future by taking some simple but important steps. I think that is a discussion that is going to take place.

But first of all I really have to decide whether these complaints should be upheld and what is the basis of the complaint. Having done that, as I say, I can then sit down with the commission and say, ‘Look, are there some steps that could be taken to avoid these complaints in the first place?’ because they can be enormously time-consuming: six months of intense investigation, waiting for people to respond to correspondence and going through piles of transcript—that sort of thing. So it is not only in the commission’s interest, but it is also in my interest, if it can be reasonably done, that we cut down, if not make unnecessary, some of these complaints that have been coming in.

Ms LEY—On that, does the parliamentary committee do a report on the annual report in the same way that you do?

Mr Moss—You mean of the commission?

Ms LEY—Yes.

Mr Moss—They look at the annual report. Indeed, one of their questions on notice to me was: did I think there was any conflict or doubling up between my looking at the annual report of the commission when they have that duty anyway?

Ms LEY—Yes.

Mr Moss—But my response was, no, I do not think there is because, with my deep knowledge of the inner workings of the commission, which they do not have and cannot have because they do not have my powers of access, the sorts of questions that I look for in the annual report are likely to be different from the ones that will interest the parliamentary committee.

Ms LEY—From your perspective on law enforcement integrity in this state, what comments could you make to help the committee—I guess we decide whether they help the committee—about law integrity enforcement models generally? They do things differently in every state.

Mr Moss—Yes. The powers of the Police Integrity Commission are adequate to do the job they are called on to do. The ICAC seems to have all the powers it needs to do the job that it is obviously doing, from the reports that it publishes. This may be stating the obvious, but much depends on who you appoint to these positions, of course. I think people with public track records should be appointed so that the public already has on record their public track record to date. If they have proved effective, then there is no reason to suppose they will not prove effective in this new integrity role. It is stating the obvious that that is a very important point. Nevertheless, sometimes I think it is overlooked and really the most important point is that you get the right people in the right positions.

Ms LEY—That leads me to an interesting point. There has been some discussion—I would not exactly call it criticism—that the investigators in the Police Integrity Commission cannot be ex-police officers. There are two views. One is that you could have some very good interrogators in the job and the other is that, obviously, you ought to keep as much distance as possible.

Mr Moss—Yes.

Ms LEY—From your perspective, what do you think?

Mr Moss—The Police Integrity Commission was set up largely as a result of the royal commission into New South Wales Police. As you would know, the royal commissioner there was very experienced—not only a former Supreme Court judge but a very experienced investigator. He spent years investigating complaints against the New South Wales Police Force, and I would be much influenced by his recommendations. That was one of his recommendations, and I would feel confident that he had very good reasons.

Ms LEY—Do you think he might have just wanted to put some distance between the events that led to the commission and the imminent appointment of investigators on the PIC? Do you think that time could elapse and change that?

Mr Moss—No, I do not think so. I think the problems would still be there. There certainly have been some improvements in the New South Wales Police Force and the systems under which they operate. But I certainly would not recommend any change to that particular provision.

Ms LEY—Do you meet your counterparts at a state level from time to time and exchange ideas?

Mr Moss—The ICAC inspector?

Ms LEY—No, in the different states. Do they all have inspectors?

CHAIR—A parliamentary inspector and a parliamentary commissioner.

Mr Moss—No, I have not yet.

Ms LEY—It strikes me that it would be a useful thing to do.

Mr Moss—One of the problems is, of course, the secrecy provisions in each of the acts. We could discuss hypothetical cases but we could not really, unless we were very careful, say much about exactly what our problems and concerns are about our particular organisations.

CHAIR—Could I clarify something. You said that most of the cases that you look into concern alleged failure to accord procedural fairness.

Mr Moss—Yes.

CHAIR—Have you or your predecessors received other complaints of serious misconduct or corruption within the PIC?

Mr Moss—You do get complainants who quite clearly are mentally disturbed and, if you get them and you check around, you find that the same complainant has gone to the ICAC and to other bodies and made complaints. I do seek further particulars from these people, but eventually it becomes clear that they have got a problem. They make all sorts of accusations, and I have found in those cases that there is not one tittle of substance to their complaints. I have referred them on to the Police Integrity Commission and their responses have satisfied me completely that these really are very dysfunctional complainants.

CHAIR—Those are the only times that you have received those complaints?

Mr Moss—They are the only ones who have suggested that there is actual corruption somewhere in the commission. The other complainants have not suggested anything like that. As I say, what they are complaining about is what they see as a lack of fairness, which has damaged their reputation.

CHAIR—Thank you. Are you aware of the legislative framework for the Australian Commission for Law Enforcement Integrity?

Mr Moss—When I was first appointed I met with Professor McMillan, and before I met with him I did look at the legislation. I would not suggest for a moment that I attempted to understand it or be familiar with it, but I did look at it and I thought, if I may say so, that it was a really complicated piece of legislation.

Senator CAMERON—And you're a QC!

Mr Moss—I think the PIC Act is a complicated piece of legislation. It is all over the place, but there you are! They keep on adding bits.

CHAIR—There are, under that ACLEI legislation, some oversight provisions, and this parliamentary committee is part of that, and also the Commonwealth Ombudsman.

Mr Moss—Yes.

CHAIR—Do you think it could benefit from also having an inspector as an additional oversight mechanism?

Mr Moss—I think it depends on whether there are any gaps. I do not know the legislation well enough to comment, but obviously in New South Wales, if the PIC did not have an inspector, there would be a real gap—similarly with the ICAC. For example, the New South Wales Ombudsman does not have an inspector.

CHAIR—Really?

Mr Moss—No, he does not have an inspector.

CHAIR—The parliamentary committee has oversight—

Mr Moss—The parliamentary committee, but he does not have an inspector. The New South Wales Crime Commission also does not have an inspector; it has a management committee.

CHAIR—And now it has the PIC which is overseeing the Crime Commission.

Mr Moss—I think there is a misapprehension about what the PIC's new role is under the legislation dealing with the Crime Commission. As I understand it, the PIC's role, in short, is to detect and prevent corruption among Crime Commission officers. That, as I understand it, is the extent of the—

CHAIR—So it is not a general oversight?

Mr Moss—It is not a general oversight role at all.

CHAIR—So you think there is a gap there then?

Mr Moss—I am not saying that; I am simply saying that the legislation is confined, as I understand it, to requiring the PIC to detect and prevent corrupt conduct among Crime Commission officers.

CHAIR—Thank you. Do you have any observations regarding what would be appropriate resourcing for a body such as the Australian Commission for Law Enforcement Integrity?

Mr Moss—No, I am afraid that really is completely out of my area. I mentioned my own modest equipment and staff, so I am hardly in a position to go into what somebody else might need to be effective.

CHAIR—Did you have any other information or statement you would like to make to the inquiry?

Mr Moss—No, thank you, Madam Chair.

Senator CAMERON—Mr Moss, your role is to overview the 100 staff, basically, of the PIC.

Mr Moss—Only if there is a complaint or if I were, of my own researches, to see something that needed to be investigated. I do not oversee them generally. It is only in respect of misconduct that I have to have regard to. As I say, unless there is a complaint, I would be unlikely to detect any misconduct otherwise, because it would almost be impossible to do so. If there is misconduct, then is there likely to be a complaint about it? If someone gets hurt, they will complain, particularly if they are police officers who feel that they are being unfairly dealt with.

Senator CAMERON—One of the issues that has been raised on an ongoing basis through the hearings is that the people that you are dealing with—that your office is dealing with—are very highly intelligent, well trained and, in some cases, if they are involved in criminal activity, quite cunning people. Sorry, let me start again. The people who would make a complaint against the PIC have been described in the terms that I have just outlined. Do you understand where I am coming from?

Mr Moss—Yes.

Senator CAMERON—Those people who are involved in corruption or criminal activities within the police force understand what is happening in the police force—know the rules, the regulations, the culture—so they are well equipped, if they go bad, to carry out their activities. These are the people who would make a complaint against a PIC officer, if I can use that term.

Mr Moss—Yes.

Senator CAMERON—So you have to make some real judgements, don't you, about the validity of these complaints?

Mr Moss—True it is that some of the complainants are police officers and true it is that some of them are quite senior police officers who know the force inside out and have contacts

throughout the police force, but others have got nothing to do with the New South Wales Police Force.

They have just been unfortunate enough to have been dragged in as witnesses before the commission. But, regardless of who the complainants are, that process that I mentioned earlier is nevertheless gone through by me—namely, the formulation of the complaint and the request to the commission for all relevant documentation: evidence, exhibits, transcript, counsel’s submissions—and it is from a reading of that material that so far I have found not too much difficulty in eventually coming to a view as to, on that material, whether there is any cause for complaint against the PIC.

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

Mr Moss—Thank you, members of the committee.

[2.24 pm]

CRIPPS, the Hon. Jerrold, QC, Commissioner, Independent Commission Against Corruption

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

Mr Cripps—I must say, until I spoke to Mr Ahrens, that I was not aware I was meant to be making an opening statement. But can I say this: I am not overly familiar with the legislation that is the subject matter of this inquiry, but I thought that my function here, if I had a function here, would be to address issues that you may think are relevant to the nature of your organisation.

I do not know that I really do have an opening statement, except perhaps to say this: that if you want an anticorruption body to function properly, it will have to be either by the extension of its jurisdiction or, by the infusion of money, made to be efficient. The difficulty I have in what I have seen about this particular proposed organisation, or organisation, is that, without the cooperation of other agencies, I doubt whether it could do all the things that, for example, we do in New South Wales and which we feel are necessary to do in New South Wales.

I am not just talking about the public inquiries and the like but I am talking about all the technical things we do, like the tapping of phones and the analysis of evidence and the forensics. I think you need a fairly big organisation—I do not mean huge, but big like New South Wales, which is about 120—to run that, unless you rely on other people to assist you running it. That is all.

CHAIR—The Commonwealth Ombudsman has indicated—I think it was in an interview with the *Australian*—that he thought that at least 50 staff would be necessary.

Mr Cripps—At least 50, I think. Also, I have to say that the New South Wales ICAC—and I assume this is the same—is by its charter directed to, one way or another, preventing or eliminating—preventing perhaps—corruption. It is not established as a law enforcement agency. It is established as an agency that will investigate and expose corruption and as an agency that will educate and promote anticorruption strategies.

It is true—and I think this has to be sorted out a bit better than it has been sorted out in New South Wales—that if you want an agency like ours to be a purely non-law-enforcement agency, you have to think out how you deal with it. For example, in New South Wales, a secondary function to the two functions I have mentioned here is that we will assemble evidence that can be used by the DPP in criminal trials. I suppose I do know enough about your organisation to know that you have introduced into the legislation a notion that, if people are compelled to answer questions but are relying on the privilege against self-incrimination, that question and that answer cannot be used in subsequent criminal proceedings, and that is the law in New South Wales under ICAC.

So a question arises. We finish an investigation, for all intents and purposes; send what we have over to the DPP to prosecute or to give advice as to prosecution; and then the DPP says, 'We want more information. We want more people interviewed,' and the like. The police will not do it. I do not know why they will not do it. I think it is because they think the work we do is too complicated, or at least it takes too many people, that it is all scientific—financially scientific I mean. It is very difficult. They will not do it, and the DPP seems to take the view in New South Wales and elsewhere in Australia that they are nothing more than glorified solicitors. But, whatever they think, they will not do it.

So we have to do it and I have, frankly, a problem about this, because it is true enough that people do not have to talk to us. We could never, for example, utilise, in my opinion, our compulsory hearing processes to get information from people when we have stopped investigating the matter that is before us. To me, it would be a gross abuse of our power. The next question is: can we send somebody out to interview people? I have got a bit of a reluctance about this. Do people really think we are the police or will they think we are a law enforcement agency? That is one thing I think you ought to work out if you are going to have an agency like this.

The other thing I will say, and then I will shut up, is that I understand that this agency is limited to the police and the Australian Crime Commission and, presumably, its predecessor the NCA. I am also told it is extended to the form of corruption as defined that emerges in the result of the execution directly of its law enforcement function, so it would not include, for example, corruption involved in any form of procurement. That is the biggest source of corruption in New South Wales. It may not be such a problem in Canberra, I do not know, but it would be a pity I think for an agency to have this power and just not be able to investigate an allegation of corrupt conduct in procurement.

After all, the whole point of this, isn't it, is to ensure that you have an organisation that in the mind of the public can be as corruption-free as possible, so that people, although they will never love it, can at least have confidence in it, which I think would be lacking if there were great areas that it could not investigate.

CHAIR—Yes. We are just checking now the extent of that:

... a staff member of a law enforcement agency engages in corrupt conduct if the staff member—

and I would assume that would include any staff member of the AFP or the ACC, not just those carrying out law enforcement functions.

Mr Cripps—If I am wrong about that, I am wrong. It is good. That is what I would urge. I have a bit of a reluctance about this urging on the Commonwealth what it should do in its own backyard, but—

CHAIR—We are carrying out this inquiry into the state based law enforcement integrity agencies with a view to informing us as to possible changes.

Mr Cripps—Yes. Let me tell you: although if you had read the newspaper you would think the most significant thing we did in ICAC in the last eight months was talk about the

Wollongong City Council, but of the things we did deal with, that was by no means the most significant. If there was no sex in the Wollongong City Council, I do not think it would have struck a line. More important was the exposure we have had, which you may have seen less prominently displayed in the newspapers, of the corruption that is endemic in State Rail.

CHAIR—Yes, we saw that.

Mr Cripps—And that is all procurement. It is all people engaging in secondary employment and having phoney companies and the like.

CHAIR—Yes. While you are talking about those matters, could you tell us what are the main areas that your agency is focusing on? Obviously, local government is one area and State Rail is another.

Mr Cripps—It comes to us from complaints by anyone in the community and it comes to us from reports by heads of organisations. I think it is a bit the same with yours. Heads of organisations are bound to refer suspicions of corrupt conduct to us. We have to assess every one that comes in. Last year, for example, of the complaints and the reports we got—there were about 2,700—about 70, after assessment, went to what you might call preliminary investigation. Of those, about five or eight went to a full-blown public inquiry.

I suppose it depends what comes through the door, but what has been coming through the door more regularly than anything else that we have investigated is procurement. Let me say this: 41 per cent of all complaints we get are with respect to local government. But people should not draw too much out of this. What you have to remember is that local government in New South Wales is responsible for administering the planning laws. The planning laws are extremely complex. The discretion given to decision makers is extremely wide. The amount of money that is involved in a major development is huge. It is a set-up that is designed to attract corrupt people.

But, of the 41 per cent that came in, only about two per cent were investigated. There is a tendency in planning, and therefore local government, for people to think that if their expectations are not met, the only conclusion they can draw from that is that the council must be corrupt. We have had them. We have had cases of people saying, ‘My next-door neighbour wanted to put an extra room on his house for his mother-in-law,’ or something, ‘and I thought if they did that they’d overlook my swimming pool, so I opposed it and the council granted it, so the council is corrupt.’ People get very worked up about local issues and they tend to see, if their expectations are dashed, that there is only one explanation for it. So the figures do not really mean that much.

CHAIR—There are some submissions to the inquiry that argue that the Australian Commission for Law Enforcement Integrity should be responsible for broader public sector integrity in addition to law enforcement integrity. Do you have a view about that? I understand that in New South Wales, prior to the Wood royal commission, ICAC used to also deal with police corruption.

Mr Cripps—Yes, and I have never worked out why it was taken away, but I have to assume the function was taken away because Justice Wood thought it would be better handled by a

separate organisation. I am not too sure, from what I know now and having seen everything, that that is necessarily the right decision to have made, but it was made. I do not think that you will report me to John Pritchard for these remarks! But I am not sure it was right.

But let me say this: Queensland followed us. They kept it under one organisation. Western Australia followed Queensland. They kept it under one organisation. I think maybe the problem was that ICAC, New South Wales, was the first and maybe they did not handle the police aspect of it as well as they could have, I do not know, but I sometimes think it is a pity that the police and everyone else in New South Wales are separated. But I think that, if you are going to be fighting corruption in the sense of promoting confidence in the integrity of government, you cannot pick out just one agency.

CHAIR—In relation to the New South Wales Crime Commission, we understand that as of 1 July the Police Integrity Commission has oversight responsibility for eliminating corruption from the New South Wales Crime Commission, but we have just heard from the inspector that they do not have oversight generally over the New South Wales Crime Commission, only in respect of corruption. Does the ICAC retain any jurisdiction there?

Mr Cripps—No, not really.

CHAIR—Do you see there is a gap there?

Mr Cripps—We do, actually. Funnily enough, we do retain jurisdiction, which angers me a little. We retain jurisdiction for corruption prevention and the like, but corruption prevention essentially derives from what the investigations turn up, so if we are not investigating, we do not have much ability to have satisfactory risk management or corruption prevention strategies, whereas whoever is investigating the Crime Commission would have that, and should have that function, I think.

CHAIR—Do you think there is a gap there in terms of oversight of the New South Wales Crime Commission?

Mr Cripps—Yes, I do. You have to remember what happened in New South Wales. It happened because a very senior member of the Crime Commission—I think he is still in the big house now, isn't he, awaiting trial?—and his friend were working in ICAC. I was told that, and I was told to do nothing about it because it could jeopardise the federal authority's investigation of the matter. But I think it was thought, 'Well, how did that happen?' We knew nothing about this until it all broke loose.

CHAIR—What kinds of measures does ICAC take to deal with prevention and education functions in the public sector?

Mr Cripps—We produce a number of documents, a number of publications. We have documents on tendering, conflicts of interest, rules relating to secondary employment and all the risks associated with that and what we think is needed in order to explain these matters to people. You have to be a bit careful when you do this. There is a bit of a tendency amongst people who are keen on corruption prevention to think that all you have to do is write down on a

bit of paper, 'Don't take bribes,' and people will not take bribes. You certainly have to have these things that identify the problem, but you have to make sure you follow through.

Perhaps the best way to follow through is not to have some sort of ambit code of conduct but to have one that is relevant to the body that is the subject of it. After all, risk management in local government is very different from risk management in the Housing Commission or risk management in issuing licences. That is what we do: we advise people on that.

CHAIR—Do you do training as well?

Mr Cripps—Yes, we do training. We travel throughout New South Wales twice a year for education and training. We have training that we give. We encourage people to do their own investigations if they can, in their own organisations, and report back to us. The legislation specifically says that is one of our problems. We concentrate on serious and systemic corruption, but we can put lesser corruption out to the agency, and it serves a twofold purpose: it first of all relieves us of a certain amount of work. When I said we have a public inquiry into five or eight of these in a year, there are probably about another 30 or 40 that have gone back to the agency. We have to be careful, of course.

We had an unfortunate experience when I started when we sent something back to one of the agencies. They told us that they were going to attend to it and they told us the people who would run the inquiry. Lo and behold, it was led by the person who was the chief scammer of the matter that was being investigated. So we have to be careful about that. But it does serve another function, once it is done properly: it encourages these organisations to have their own risk management in place, their own ability to investigate corruption and the like. Particularly when they report back to us, we say, 'That's good,' 'That's bad,' 'This is what you should have done,' so it is sort of an education program.

People have to realise that when you set up something like ICAC it is very easy to talk it into little groups: this is education, this is corruption prevention, this is investigation. But it is really all about preventing corruption. There are different ways of doing it and each one feeds off the other.

CHAIR—And then, I presume, builds into a culture of integrity.

Mr Cripps—Yes, it does. That is what we try and promote. But for all of these agencies, you never know how much corruption there was before we started. We do not know how much there is now. You just have to hope that these things that you think work—and I am sure exposure does work—

CHAIR—Do you have any way of measuring it?

Mr Cripps—No. There is a whole industry out there that say they work, but I have never met anyone that has satisfied me they can measure it.

CHAIR—But do you do audits of the different government departments to ensure that they have different programs in place?

Mr Cripps—Yes, we do that. We start off by assuming. If you have risk management and you follow it through and do your spot audits and things like that, I think you are entitled to assume that would have some effect on the diminution of corruption. So we do that. We say, ‘What have you got? What are you doing?’ Particularly, we do it after we have unearthed corruption.

We put recommendations in the report we sent to the government as to what that agency ought to do to ensure that this type of corruption does not happen again. Generally, it has been fairly successful, although, short of reintroducing the death penalty, I do not know what anyone can do to State Rail, because they keep popping up the same way.

Ms LEY—I think you said in your opening remarks, Commissioner, that if we were to establish a new body such as ACLEI—it is already, of course, in its very infant stages—it would have to be appropriately resourced, otherwise forget it.

Mr Cripps—Yes.

Ms LEY—We heard some interesting evidence earlier today that by creating extra oversights of oversights—watching the watchdog types of bodies—if you do not expand the resources considerably, you are simply dividing an existing pool of resources between more agencies and getting nowhere in the process. Can you give us a sense of the extent of the resourcing needed to work well? What is the size of the task and where is it not being performed well that you can observe?

Mr Cripps—In New South Wales?

Ms LEY—Anywhere.

Mr Cripps—I do not know, but I would assume an organisation that could justify employing forensic analysis, financial analysis, people who are skilled interrogators, and you cannot do that by just picking one or two. It is a big organisation. It is like the police do, I suppose. We, I have to say, have not suffered in this regard from the Police Integrity Commission being hived off from the ICAC. But it is big enough. After all, ICAC has jurisdiction over approximately 390,000 people in the public sector in New South Wales, so it is quite a big jurisdiction. We have never had a problem, I do not think, with money.

Let me say this: an institution like ICAC depends, for the public confidence people have in it, on being totally independent of government—not the parliament. I know sometimes people think it is the parliament. We do have jurisdiction over the politicians, but we are not independent of the parliament. What they have created they can destroy if they want to. It is their prerogative. But we have got to be independent. The only area in which we are not really independent is budgets. We are dependent on them. But I have to say that, whatever criticisms may be levelled at this particular government, they have never made us short of money in our pursuits, and sometimes when we get a big rush up, which we have had in the last couple of years, we have had our budgets topped up.

Ms LEY—Given the different organisations across the country that are doing telephone intercepts and intelligence gathering, data capture—all of this stuff, and it is becoming

increasingly more technological—how much overlap do you consider there is and how could we eliminate some of that?

Mr Cripps—From my point of view, I do not know that there is any overlap. What we do still use, even though we do not have it, is some of the arrangements with the Crime Commission's telephone tapping and transcribing of the telephones. That is a huge job, actually.

Ms LEY—You are saying you share resources to do that?

Mr Cripps—Yes. They will do a lot of this because they have got the better equipment to do it. You have an inquiry and suddenly you will read in the paper that this was said on the telephone. What you probably do not realise is that someone has listened to a telephone for 20 hours to get that and then someone has to type it up. That is the biggest resource drain we have. Surveillance is not so much of a drain, although it can be.

Of course, I would think one of the problems that you people would have—when I say 'you people', the police—is the difficulty of using all these devices against people who have probably spent their life applying those devices to other people. The police probably know better than anybody else what sorts of devices can be used to track them down. In ours, it does not happen outside. It has been said to me time and again that, in public inquiries, perhaps we should not use the telephone intercepts that we get because, it is said, sooner or later the villains will know that this is what we do and they will stop talking to each other on the phone.

You can see the argument, but it does not happen. It is extraordinary what you hear sometimes. You hear this type of thing: 'I think we better meet at the pub.' The other person says, 'What's up?' 'I think bloody ICAC is onto us.' This is one I am quoting. The fellow says, 'Don't let's talk about it. We'll just talk at the pub, because they could be tapping this phone,' and they go on talking, and in 10 minutes they are talking about the very thing that they were going to go down to the pub to talk about. It is really quite strange. You think to yourself, 'Thank heavens most of these crooks are dumb.' I do not know what they would be like if they were shrewd. I think the police would be much harder to deal with like this. They would be much brighter doing this.

CHAIR—We did have comments to that effect from the PIC.

Ms LEY—Do you think the Police Integrity Commission loses anything because it does not have ex-trained police investigators asking the questions?

Mr Cripps—No, I do not think so. I cannot really comment on that. The best person to have asked that would have been John Pritchard, because he was the deputy ICAC commissioner before he became the commissioner, so he would have seen them both in action.

Ms LEY—I think we possibly did ask him.

CHAIR—I understand that they actually have former police, but not from New South Wales.

Ms LEY—I wondered about that.

CHAIR—I saw it in their submission.

Mr Cripps—One of their rules is that they cannot have police from New South Wales.

Ms LEY—He explained that is why they do not.

Mr Cripps—It is why they do not. I do not know.

Ms LEY—But from another state.

Mr Cripps—Ninety per cent of what they want to investigate goes straight back to the New South Wales Police, so this separation seems to me to be a bit artificial.

Ms LEY—In terms of the oversight of the AFP, the AFP Association, as I understand, is quite keen to have a parliamentary joint committee involved in the oversight and not ACLEI. Do you have any comment on that?

Mr Cripps—No. As you know, we have a parliamentary joint committee that oversees our activities and I think they operate very well and efficiently. I have, I suppose, some disagreements with them on occasions, but that is fair enough. That is what they are there for. They cannot investigate anything that we have investigated. They are not allowed to do that. That is largely because the parliamentarians are subject to our jurisdiction and they are not allowed to get involved in the investigation.

Before I had this position I recommended that ICAC have an inspector, the same as the PIC has, and that is what they have established. So people who want to complain about something we have done wrong can go to the inspector. They could go to the parliamentary joint committee, but the parliamentary joint committee could not take it any further, whereas the inspector can.

Ms LEY—Lastly, you mentioned that there were some powers that you have that you would not choose to use.

Mr Cripps—Did I say that?

Ms LEY—You said if an investigation had concluded and you had the power—

Mr Cripps—Yes. I was saying not that I had powers. I was saying that I did not have powers, I thought. That is what I was saying.

Ms LEY—That was my question. Are there any powers you do not have that you think would be useful to have?

Mr Cripps—I think this: if, as is frequently said, it is not good enough to just expose people for engaging in corrupt conduct, but people want them behind bars, and they want ICAC to continue to get that sort of information, government and parliament should make clear in the legislation that that is what our function is so that people can understand precisely what it is that we are empowered and encouraged to do, instead of doing it in a roundabout way.

Institutions like ICAC have to be viewed with a certain amount of circumspection, and perhaps a bit of suspicion, really. We have all, in our society, been very suspicious of the standing royal commission, ever since they got rid of the Star Chamber or the Court of High Commission in 17th century England. The theory is that sooner or later they will abuse their powers. That is why one has to be ever alert to make sure that does not happen.

CHAIR—Following up from that, if you had concerns about the conduct of any of your staff members, what recourse would you have? Would you be able to suspend them while you—

Mr Cripps—Yes, I can do that. Let me say this: it has not ever been fully tested, but, of course, the legislation is now structured so that, notionally, I employ every one of them and they have no rights to go to any of the organisations that are set up to protect employees in New South Wales.

CHAIR—So there are no appeals—

Mr Cripps—No.

CHAIR—if you decided to dismiss someone because you had lost confidence?

Mr Cripps—Yes. I can do that.

CHAIR—Have you ever had to do that?

Mr Cripps—Yes. I will not go into the details. I will tell you, without names. One of them, I found out, claimed he was a police officer when he was arrested with some offence and he tried to use his position in that capacity to avoid due process of the law. I felt we could not have someone like that in the institution.

Senator CAMERON—Mr Cripps, we are trying to build an effective organisation, and one of the legacies that we have is that the approach to building ACLEI is described as a building block approach.

The building block has been justified on the basis that there is no overt corruption in the Federal Police—simply nobody has found any overt corruption at this stage—to the extent that there has been in other jurisdictions. Have you got any comment on that sort of approach?

Mr Cripps—First of all, the New South Wales ICAC was established after corruption involving the police was established, as well as a minister of the Crown going to jail, a chief stipendiary magistrate going to jail—it was in the eighties—and there were commissioners of police that were subject to inquiries. Queensland got its commission because of the Fitzgerald inquiry; Western Australia followed. The question I suppose you are asking me is: in order to justify it, do you have to really establish overt corruption? I suppose a civil libertarian would say, ‘Yes,’ but I have to say that anyone who thinks there is no corruption in any police force is dreaming. It is there all right. There is just so much power, and it is so difficult to control. I am not saying that they do not try and control it, but I think it is there.

Whether or not you should set up an institution to start investigating when you have got no overt evidence that anything has happened, I do not know. It makes it a bit hard to know what it is you are directing your work to.

Senator CAMERON—One of the issues we have to look at is: are the recruitment processes for the Federal Police so significantly different from other police forces that the problems that have been exposed in the other police forces do not exist in the Federal Police or exist to a lesser extent?

Mr Cripps—I do not know about that. I cannot comment on that. I do not get into the enlistment processes in New South Wales, much less in the federal jurisdiction.

Senator CAMERON—The other extensive discussion that we have had is about the question of a broad based organisation that goes across a number of different areas or a special police approach. To some extent, with the greatest of respect—and maybe I am picking you up wrongly—I think you are having two bob each way on that. In one area you say, ‘Yes, it should be a broad based approach,’ and yet on the other hand you have said that there are special issues in the context of police. We have continually heard the point that you made strongly—that is, the police have got very special skills and knowledge and, if you are corrupt, you apply this. That is not what you are facing in Wollongong council.

Mr Cripps—No, it is not.

Senator CAMERON—These are professional witnesses—

Mr Cripps—Yes.

Senator CAMERON—who really are impervious to lower level investigation.

Mr Cripps—Yes, I think that is true. I have never, as you know, resiled from the view I have had that it is harder to detect corruption in the police force than it is anywhere else, simply because you are dealing with people who understand all the devices that are used to expose it. But I do not think that means that you then necessarily have to separate them, or that you would lose anything by including others within the jurisdiction of a corruption body. It is just a question of how you deal with them both, I think.

Senator CAMERON—One of the arguments we heard is that it is much more newsworthy to get a corrupt politician than it is a corrupt police officer; therefore, there is this tendency to say, ‘Well, if we get a corrupt politician, this is great news. It reflects well on the organisation.’ There has been a critique along those lines about the broad based body.

Mr Cripps—Yes, that they will just try and pursue politicians.

Senator CAMERON—They will pursue not only politicians but the things that will make news.

Mr Cripps—I have heard that. I have invited the people who have made that comment to tell me, on the occasions since I have been there, when they think that has happened. But nobody has done it. Whether that is courtesy or lack of knowledge, I do not know.

Senator CAMERON—So it is not only us who have heard this?

Mr Cripps—No.

Senator CAMERON—You have heard this as well.

Mr Cripps—I have heard that said before. For example, in our legislation, if people answer questions under objection, it cannot be used anywhere. It cannot be used in civil proceedings, in disciplinary proceedings or in criminal proceedings. My own personal view is that you have got to keep the privilege against self-incrimination—it is so embedded in our system of law that nobody would ever get rid of it—but I do not see any reason why admissions made under compulsion should not be used in disciplinary proceedings. Yet the argument I have heard against it is, ‘If we do that to you, all you’ll do is run off and try and get evidence for disciplinary proceedings and forget about criminal proceedings.’ I do not see the logic of that, frankly.

All the problems we get politically come from politicians, and they come from politicians claiming that there has been corruption by their opponents and they then tell the world that they are being investigated when they are not. Sometimes they have never even told us that there is a complaint. But if there is a complaint it will be assessed. One of the problems is that politicians tend to use the system in a way that is hardly consistent with the parliamentary charter for the organisation—namely, to promote public confidence in it.

Senator CAMERON—You are talking to politicians, aren’t you?

Mr Cripps—Well, you started talking to me, so I thought—

Senator CAMERON—I led with my chin.

Mr Cripps—Of course, as you know, an organisation that is directed to the public sector is going to expose or at least put under threat the government because they are the people who are responsible for this. It is not a question of whether it is the Liberals who are doing it or Labor who are doing it; it is the people in opposition who do it. That has been my experience.

CHAIR—Do you have any other comments that you wish to make, Commissioner?

Mr Cripps—No. Is there anything else that you want me to answer? One thing that is interesting between the two organisations—that is, PIC and ICAC—is that almost all PIC’s complaints come from the people who are being investigated—namely, the police. Almost all of our complaints come from people who say we have not investigated hard enough. That is very interesting, isn’t it? I do not know what you draw from that, but it is a fact. I think we have only ever had one complaint that we have behaved badly from a person who has been complained about, whereas they seem to be almost all the ones that PIC get. I suppose it supports what you said: the police know how to play these games. If you make an allegation against a policeman—

one should not say this too generally—the immediate response is for him to spray out allegations against everybody else, and it tends to divert attention.

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

Mr Cripps—Thank you.

[3.01 pm]

AHRENS, Mr Michael Clifton, Executive Director, Transparency International Australia

WERKSMAN, Mr Harold, Member, Transparency International Australia

CHAIR—I welcome witnesses from Transparency International Australia. Do you have any comments to make on the capacity in which you appear?

Mr Ahrens—Harold is also a partner in a law firm, Holding Redlich. I am no longer a partner in any law firm.

CHAIR—Thank you.

Mr Werksman—Not that that gives me any special expertise in this matter.

CHAIR—The committee has accepted your submission as submission No. 16. Are there any changes you would like to make to it before we proceed?

Mr Ahrens—No, no changes. I have got some introductory remarks, if that is possible.

CHAIR—I will 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 Ahrens—Thank you. First of all, to introduce ourselves, Transparency International Australia it is quite a unique body, based around the world. It just finished its annual meeting in Athens, with more than 100 chapters attending, including three of our directors here. Frank Costigan, who is our chairman, gives his regrets because he is in hospital at the moment. Another director of ours is Jim Wood, the commissioner who stepped down when he took the big inquiry into DOCS. He is still doing it.

We do not investigate any individual cases at all. We just could not do that and it is against our policy around the world to investigate individual cases. But we do look at the sorts of issues that you are examining: the structural issues, the institutional issues. Towards that end, quite a few years ago, with funding here, we worked with people from the Griffith University key centre producing this volume, which we tender. There are a couple of copies.

CHAIR—Thank you.

Mr Ahrens—A whole team of academics worked on it and produced 21 recommendations, based on our pillars of integrity. The first is that there should be in every state and in the Commonwealth a general oversight integrity body for corruption matters. They are still lacking, as you know, in Victoria, South Australia and Tasmania and we are hopeful that the federal government will take a lead in setting up such a body. It may be outside your terms of reference, but we think that the submissions that are already being made do expose the artificiality of separating law enforcement issues from others.

I was actually surprised at the ambit of the jurisdiction of ACLEI. I have only just seen the annual report of ACLEI which has come out, but we have visited them over the years and taken a view, even under the previous government, that this building block approach was quite inadequate as to jurisdiction and certainly as to funding. Right from the outset it became clear in our view that it was not seen as a player in terms of what was going on in Canberra and the idea that this was not necessary in Canberra—it may be necessary in three of the Australian states, but not necessary in Canberra—to our mind is quite a furphy.

As to exactly what the rationale for that was, we questioned the ministers at the time about that and about their claim that they would be extending its jurisdiction by regulation and so on. We are totally opposed to that idea and have expressed that on a few occasions. We are backed up in that by the May 2008 paper from Dr AJ Brown that we refer to. That is ‘Towards a federal integrity commission’.

CHAIR—Yes. On page 23 of that article Dr Brown’s assessment is that the federal government’s:

... creation of a new anti-corruption body restricted only to law enforcement, and resourced only weakly, was more typical of an attempt to create an *appearance* of action, than a coherent contribution to strengthening of the federal integrity system.

Mr Ahrens—Hear, hear!

CHAIR—Is that the thing with which you would agree? Very strongly.

Mr Ahrens—Absolutely. It had every hallmark of being a paper tiger, a hollow body and therefore a very weak link in terms of oversight that was not justified at all. That is the view we have long taken. The artificiality is very clear and quite a number of examples are given in that paper about that. Quite apart from what Jerrold Cripps was saying about procurement and issues like that, it is a difficult thing.

So the first point is the artificiality and the second is this need to build up, in our view, the capacity of the body. We have spoken to people who work in this area. We are not professionals in any way. This is pro bono work and it is not a background we have especially, but talking to people such as Justice Peter Hall, who has written the definitive study of these agencies and so on, and having them participate in discussions, you get the sense that it is this ability to get experience in handling corruption investigations that builds up—I hate to use that word—a critical mass. It is the wrong term. But it is that idea that you can get a body of experience—not just in an individual agency or two, but across a range of agencies—that brings all the difference, and then go on with the key prevention work.

CHAIR—So that is why you would support extending ACLEI’s jurisdiction to all Commonwealth public sector agencies, not just to other law enforcement agencies.

Mr Ahrens—Absolutely. I can see that there could be institutional resistance to that. This was expressed to us under the previous government. There could be quite a lot of institutional resistance. They have their own little oversight bodies and therefore could claim to be more

specialist and therefore have skills from that. But we do not see that. We think it is outweighed by the general experience.

CHAIR—Yes. Putting aside your support for an all-encompassing Commonwealth integrity agency, could you give us an idea of what you believe would be the core features of an effective law enforcement integrity agency?

Mr Ahrens—The statute that exists there is the start of that. It is a very good statute. It was particularly pointed out to us how well it links in with the Ombudsman's office. In this state there have been problems with a little bit of worry about privacy matters and correspondence backwards and forwards. But, as I understand the linkage between ACLEI and the Ombudsman's office, they play two very distinct functions, but they can suddenly flit from an inquiry into a complaint into a corruption investigation and vice versa. That is the first thing.

The second thing is this notion that you can gain experience from your investigations to help you with prevention work. Jerrold Cripps was talking about education and, through cooperation with the agencies that you have oversight over, getting them to sharpen up their awareness and their risk management.

CHAIR—In your view, what would a strong corruption prevention program look like?

Mr Ahrens—There are a range of things. It is difficult off the cuff to go right through them, but quite a number of papers have been put out by ICAC on prevention work.

CHAIR—Have you seen some very good examples that you could mention from within Australia or internationally?

Mr Ahrens—No, but I would be very glad to take that on notice and bring it back. We have not gone to our body outside Australia for this purpose, but undoubtedly we could. I would be very glad to bring that back and look at corruption prevention examples. It is a tough thing.

Mr Werksman—If you are going to establish an oversight body, one of the key issues that was raised in this paper by Dr Brown is that of defining corruption and the fact that it has to be more than and much broader than just law enforcement. Corruption is not an easy thing to define but one can usually smell it, feel it, and understand that it is there. If it is confined to looking at what might be in the statute books, sometimes that is not going to achieve what you want.

CHAIR—The need to make a better definition has been raised as an issue, particularly by the Commonwealth Ombudsman.

Mr Werksman—I am not sure I would want to proffer a definition now, but I could tell you that it is definitely something that you want to avoid the lawyers getting too involved in a narrow constructions of what is to be the purpose of an overall body. It is obviously aimed at things like integrity, conflict of interest; all sorts of private deals for people that do not go just to criminality.

Mr Ahrens—On your question, one thing that struck us, reading about this, is the need for good working relationships between the integrity body and the agencies affected. You cannot

force this on them. Unless there is a good, healthy working relationship, all your programs and so on are going to fall on deaf ears. As soon as you are out of the room, they are going to turn around and do what the RailCorp does: not see it as part of their reason for existence to have integrity. I was amazed on one radio interview to hear the ex-director of RailCorp say, 'That wasn't part of my job, to worry about integrity within it. I just kept the trains running on time.' That was his job, as he saw it. That was all there was to it.

CHAIR—There has been a follow-up to that inquiry.

Mr Ahrens—I went to the big Manly conference, which was very interesting, on investigations. Repeat examples were given to me, time after time, of officers of RailCorp handing out jobs to their family companies, across the board: all sorts of work, millions of dollars at a time.

CHAIR—Have there been any prosecutions?

Mr Ahrens—I have not seen actual prosecutions.

CHAIR—Mass dismissals? Do you know what is happening to resolve that issue within RailCorp?

Mr Ahrens—To say that it has been resolved I think would be an overstatement of the greatest order. I think it is chronic.

CHAIR—Has it even been admitted by the leadership of State Rail?

Mr Ahrens—Every year they have a new one picked up by ICAC but I do not know whether it is actually being dealt with. It is very important at this time. Unless it is seen as a high priority by the leaders, the head, of the agency, nothing is going to change. It is instilled. That is a huge difference we find, looking broader into the private sector, between the private sector and the public sector. In so many cases, the private sector see this issue as Bible, not just to protect their reputation on the downside, but on the upside of actually creating, regenerating and building the business.

Senator CAMERON—That was particularly evident at Enron, wasn't it?

Mr Ahrens—It was. Yes, that is right. But if you look at wonderful Australian companies like Westpac, they see the integrity factor as a morale building—

Senator CAMERON—Bond Corporation? HIH?

Mr Ahrens—We cannot exactly suggest that all of the corporations—

Senator CAMERON—But this is a very strong statement that the private sector were on top of this issue, which is just not the case.

Mr Ahrens—Some of the private sector undoubtedly have failed abysmally. But when you see the good people going ahead and really taking it as a positive thing, to build integrity in a

positive way, that is when we see a huge difference in the discussions we have with our counterparts in the Corruption Prevention Network and so on in their conferences. The private sector come in, they talk a different language. They talk about retaining the best of the talent, because the sense of integrity in the organisation is so strong.

Senator CAMERON—They do not have to be corrupt. They just award themselves fantastic executive salaries. Isn't that the case? Why would somebody with \$60 million a year want to be corrupt?

Mr Ahrens—That is a huge issue. When they have all the money in the world, why are they still cheating? Why are they still cheating when they do not need the money? It has happened time and again. Fraud cases like that man at Macquarie Bank years ago, the best brains in the business: he just felt it was a challenge.

Ms LEY—They just like living on the wild side. It has nothing to do with the money.

Mr Ahrens—In a way, yes. But I heard Senator McCain talking about the corruption on Wall Street, and we do not go so much—unless we can look at examples—to have a very wide notion of corruption; taking it out. We had that famous Canadian magnate who took it out without getting shareholder approval, the newspaper magnate Mr Black. That was corrupt.

Senator CAMERON—He is still providing references for Australian politicians from jail.

CHAIR—Is he?

Senator CAMERON—Yes.

CHAIR—Do you have a sense that the measures that are taken by ICAC and by the Police Integrity Commission are actually working to enhance integrity within the New South Wales public sector generally?

Mr Werksman—I have acted for numbers of different government organisations in New South Wales, and I can say that just because ICAC exists changes the behaviour of the people in those organisations. So considering whether you should go out to have a cup of coffee with your provider becomes a major issue and, whilst one might doubt whether it needs to go to that level, the fact that you have got an operation like ICAC is by itself important.

CHAIR—Yes, it is important.

Mr Werksman—I have heard Jerrold Cripps bemoan the fact that people are not prosecuted as a result of findings of ICAC. That is something that needs to be addressed, but that is a different forum. It exists and conducts hearings which achieve publicity. You are always going to have a certain number of people in the top five per cent to 10 per cent for whom it does not matter if you have ICAC or the best policemen in the world: they are going to commit crimes and they are going to be capable of doing all sorts of bad things. There are 60 to 80 per cent of people who, if they are tempted to, might go overboard, but because you have an operation like ICAC, that makes a big difference to those people. Those people you can influence and prevent from doing the sorts of things that otherwise they might be tempted to do. In my personal

experience, and talking to people in government, people who have disputes—I do a lot of dispute resolution work—are concerned to do deals in the face of that. The whole concept of mediation has been affected by ICAC, because people who get strong legal advice then in government have to worry about the sorts of commercial arrangements they might enter into because other people might look over their shoulders, so you have to structure different types of dispute resolution mechanisms for them. That is fine, because you would rather have people be much more careful about the sorts of things they decide to do commercially, if they are acting in government, than take risks.

CHAIR—Do you think the same applies in relation to the Police Integrity Commission?

Mr Ahrens—I have no experience in the police work at all, apart from what we hear at conferences time and again. We do not get insights into the way that works, except the constant reference back to what Justice Wood recommended all those 10 years ago, or more now. It was a huge change, a sea change, in the way it was tackled in this state. It went on forever, but even now there are complaints that there should have been a follow-up hearing by Wood as to what happened after that and complaints that it has not been instilled enough. That is all I know.

CHAIR—In relation to resourcing of ACLEI, I note on page 19 of the article by Dr Brown that he refers to:

An effective integrity agency must have the capacity to conduct its own research and build its own intelligence, initiate investigations of its 'own motion', use complaint trends and information from the public domain to identify systemic issues that call for larger investigations. Attracting the necessary information about serious corruption from whistleblowers, informants and those not benefiting from favourable treatment requires having a reasonable public profile.

How do you see that in relation to the issue of ACLEI? Can you comment on that?

Mr Ahrens—I agree with it, but not as an independent check. I do not know that we could provide it. But I do feel that strengthening the resources capacity of ACLEI is part of, in general terms, Senator Faulkner's agenda on accountability. It was very good of him to speak to a meeting of ours on 31 October and, as he went through all those same points in his agenda, it struck me that the strengthening of ACLEI even is part and parcel of it.

CHAIR—I will hand over to my colleagues to ask some questions.

Ms LEY—That is most interesting and the committee would be keen to receive any additional pieces of research that you might locate in the course of your deliberations, because I have certainly found this fascinating.

Mr Ahrens—Yes. We are very impressed by Dr Brown's work and we have been working with him on his whistleblower report. It is a very significant piece of research and surveying and so on; a very important piece. We are on that committee, too. But it is a tough question, even so, whistleblowing.

CHAIR—Yes. I was involved, when setting up the UN Ethics Office, in setting up the whistleblower protection program. So that was very interesting and I am looking forward to a Commonwealth whistleblower protection program being set up here. One more question. In

relation to oversight of ACLEI, we have the parliamentary joint committee, which is conducting this inquiry, and we also have the Commonwealth Ombudsman. Do you think that that is a sufficient framework for the oversight of ACLEI or should there be something like a parliamentary inspector, which exists in other jurisdictions like Western Australia and Queensland, and then you have the police integrity inspector here in New South Wales.

Mr Ahrens—Yes, it is a tough one, isn't it? I just saw their annual report and they seem to be very concerned about accountability and the question of their independence, which is so vital in all of this. It presumably requires a specialist oversight group, rather than a general one. I do not know that our parliamentary committee here has any great function. We tried to access them to talk about these issues and they do not want to even—it is not high on their priorities, let me put it that way—to talk about these issues here, in the New South Wales parliament. So they handed it over to these inspectors. Maybe there is merit in that ongoing building up of expertise.

Mr Werksman—Instead of having a committee that comes and goes.

Mr Ahrens—A committee, yes, coming and going.

Mr Werksman—The difficulty, of course, with the inspector is that the inspector might get to be a bit more corrupt than the others.

Mr Ahrens—This is very interesting. We speak often to groups coming over from China and they say, 'Independent? What do you mean by independent?' They cannot understand that you could have a really independent group. The point that was made earlier about the quality of the individual is absolutely vital. We are so lucky to have people like our Ombudsman in Canberra and Philip Moss, who would be prepared to assert their independence. But you cannot always rely upon that.

CHAIR—I might point out that the Queensland parliamentary committee actually continues to exist, even when the parliament is dissolved. But I do not think that is the case in Western Australia.

Mr Werksman—What about the people on that committee?

CHAIR—They hold their role right up until—I am not sure when.

Mr Werksman—As a person who is going to oversight it, why wouldn't you appoint an ex-High Court judge or somebody like that to oversight that sort of committee or something like ACLEI; somebody who has renowned integrity in the community? Couldn't that sort of person be given the opportunity to look after something like this—to have the watcher watch the watchers?

CHAIR—In Western Australia there is an issue, because the parliamentary inspector is a practising lawyer overseeing the work of the CCC, which is headed by a former Supreme Court judge. That has been seen as a matter that can create some tension.

Mr Ahrens—Yes, a bit of tension between them. You are going to Queensland?

CHAIR—We went to Queensland last Friday.

Mr Ahrens—You probably spoke to Bob Needham of the CMC.

CHAIR—Did we? No, we did not. We met—

Mr Ahrens—What a pity, because he gave an excellent—

CHAIR—Mr Lambrides.

Mr Ahrens—keynote address to the big Manly investigation conference recently and I dug out a part of his paper. I would be happy to send you the whole paper. But his piece on capacity building within his CMC is a very interesting statement, saying in fact that the bulk of the work they do is prevention work, not investigations now.

CHAIR—Yes, we met with Mr Stephen Lambrides from CMC.

Mr Ahrens—One of his people.

CHAIR—Who has been there for 21 years and had been with the Fitzgerald royal commission, so he has been there right through the whole process. He was able to give a fantastic overview of the situation there.

Mr Ahrens—Yes. It is developing, though. This is the interesting thing. Even though these agencies are extremely busy, I believe, both in Queensland and in Sydney always, they have time to get out to do prevention work. That is the interesting thing. They have to have enough capacity to do that. As far as ACLEI is concerned, it seems from that annual report that they are only just starting to get into that stuff and we would argue for the need for a second arm of ACLEI which is devoted to prevention work and separately funded.

CHAIR—Yes. The Integrity Commissioner has raised the issue of resources as something that is preventing him from properly developing that prevention function that he has. So that is certainly something that this committee is looking at making recommendations about. Did you have anything else you would like to say?

Mr Ahrens—One final point, going internationally.

CHAIR—Yes.

Mr Ahrens—I noticed in the report also that Philip Moss has taken an interest in UNCAC, the UN convention. It is a very big issue as far as Transparency International is concerned.

CHAIR—Yes.

Mr Ahrens—That Australia get behind UNCAC and not just have it as a talkfest, but actually see progress made in the region, pursuant to UNCAC. The issues we have pale into insignificance, I am afraid, considering some of the countries in our region. But at the same time, we cannot afford to be complacent about it. Thank you.

CHAIR—Yes. Strong systems require vigilance. If there are no further questions, I thank you very much for taking the time to give evidence today.

Mr Ahrens—Thank you.

CHAIR—I would like to thank all witnesses who have given evidence to the committee today. I now declare this meeting of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity adjourned.

Committee adjourned at 3.30 pm