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Proof Committee Hansard

PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN
COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Integrity testing

(Public)

FRIDAY, 19 AUGUST 2011

CANBERRA

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

Friday, 19 August 2011

Members in attendance: Senators Cameron, Macdonald, Parry, Singh and Wright and Mr Hayes, Ms Parke, Mr Simpkins and Mr Zappia.

Terms of reference for the inquiry:

To inquire into and report on:

The possible introduction of a law enforcement integrity testing framework at the Commonwealth level. The committee will consider:

- (a) the various integrity testing models, including the advantages and disadvantages of random and targeted integrity testing, effectiveness as a corruption deterrent, and possible entrapment issues;
- (b) the legislative and administrative framework required to underpin an integrity testing regime;
- (c) the Commonwealth agencies to whom an integrity testing regime could apply;
- (d) the potential role of the Australian Commission for Law Enforcement Integrity in integrity testing; and
- (e) any other relevant matters.

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

SELLARS, Mr Nicholas, Director, Strategic Support, Australian Commission for Law Enforcement Integrity

Committee met at 09:02

CHAIR (Ms Parke): Good morning everyone. I declare open this public hearing of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity. The committee is hearing evidence on the committee's inquiry into integrity testing. I welcome you all here today. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, 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 that they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such request may, of course, also be made at any other time.

I remind committee members that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of departments are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Finally, on behalf of the committee, I would like to thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry.

I now welcome representatives from the Australian Commission for Law Enforcement Integrity. You have lodged a public submission with the committee which we have numbered as submission No. 4. Would you like to make any amendments or additions to that submission?

Mr Moss: No, I would not, thank you, Chair.

CHAIR: I invite you to make an opening statement and then the committee will ask questions.

Mr Moss: Thank you, Chair. As always, it is a pleasure to appear before the committee. I take this opportunity to thank members of the committee for their continuing work in developing the Commonwealth's anti-corruption framework and the direction and governance of ACLEI. I wish to acknowledge the contribution made by past members of the committee. I also acknowledge those members who are new to the committee. ACLEI staff and I look forward to engaging with you and assisting you to become familiar with the work of ACLEI and with the operational environments of the agencies within the Law Enforcement Integrity Commissioner Act 2006 jurisdiction.

In relation to integrity testing, my starting point is a reminder to ourselves that there is no crisis of confidence in federal public administration generally or in law enforcement agencies. The incidence of established corrupt conduct is very low, and there is a very strong policy expectation from government that public servants must act with integrity. There are also a number of agencies that contribute in their specialised ways to the public sector anti-corruption framework. I acknowledge here especially the work of the Australian Federal Police, the

Australian National Audit Office, the Australian Public Service Commission, and the Commonwealth Ombudsman. ACLEI is part of that integrity line-up, although with a small jurisdiction and a closely focused remit—namely, to counter possible corrupt conduct in law enforcement agencies.

When I consider the challenge that may face my jurisdiction, I am reminded of the title of a 1996 Australian Law Reform Commission report which first proposed an anti-corruption commission in relation to the Australian Federal Police and the then National Crime Authority. The title of that report was *Integrity: but not by trust alone*. The report's theme was that when it comes to high corruption risk environments, it would be ill-advised to rely only on shared values and trust, as important as those factors are. This principle reminds us that a seemingly appropriate culture and a seemingly effective control environment will not always mean that everyone will resist temptation or manipulation by outside forces. It also reminds us that not all opportunities for corrupt conduct can be easily removed or controlled. Accordingly, some checking is required, and the form that this checking takes must be matched to the challenge.

The question for the present inquiry is whether there is a case to add some additional checks in the form of integrity testing. I have spoken with this committee in recent years and in my annual reports about the aggressive tactics used by organised criminal groups to achieve their aims. The risk of infiltration and corrupt compromise in agencies engaged in the fight against organised crime continues to engage ACLEI. I have spoken also about the problems of the conscious opponent and the invisibility of corruption. These phenomena make it difficult to detect and gather evidence about corrupt conduct in a law enforcement environment, and we should not underestimate the challenge involved. Accordingly, I believe it would be timely now to add integrity testing to the options available to combat corruption. It will not be a panacea and it will not be the right method for every agency or in every instance; however, for the right situations, it will be useful to have the ability to conduct integrity testing.

As I mentioned at the outset, we are not in a situation of crisis in federal law enforcement. Accordingly, I do not see a need for the complexity and expense of a developed program such as those in some other jurisdictions both in Australia and overseas. However, some enabling legislation would be desirable in our situation, amongst other things, to give certainty about how evidence may be used and to afford legal protection to those officers who are involved in conducting the test.

The legislative model should not compel anyone to use the integrity testing method but enable agency heads or the Integrity Commissioner to use it as an integrity measure in relation to their functions and responsibilities if the need arises. Ideally it should also ensure that, in respect of the LEIC Act agencies, they are required to notify the Integrity Commissioner if an integrity test is to be authorised by an agency head. This measure will ensure that the action proposed does not cut across what ACLEI may already be doing or contemplating.

For the purposes of illustration, it may be useful to consider how ACLEI or another agency could use an integrity test. For example, as part of a broader investigative strategy concerning a law enforcement officer suspected of certain corrupt conduct, it may be useful to be able to place an illicit substance or something having that appearance in his or her path in order to see what happens. Would the officer register the item as is required? Although the officer may be suspected of corrupt conduct, the test would not necessarily be designed to yield conclusive evidence about corruption. In the present example, the test may stop at the point when the drug-like substance is not registered rather than at the possible later point of on-selling the substance which might assist in establishing corrupt intent. A test designed in this way would avoid complexity but could still produce valuable information that may lead to other avenues of inquiry or that may substantiate the use of other powers. The evidence gathered may also be used to achieve a disruption affect; for instance, informing a decision about employment suitability or for another intervention such as specialised training or closer supervision. The integrity testing method offers an additional option for skilled investigators to dismantle the levels of secrecy and deceptive behaviour that characterise corrupt conduct. For these reasons, I see a place for integrity testing. When used in the right circumstances, the method would improve the efficiency of corruption investigations. I conclude my opening remarks at this point; thank you, Chair.

CHAIR: Thank you, Commissioner. I will just open up by noting that, in your submission, it was noted that, 'if integrity testing had been an investigation strategy available to ACLEI, some past investigations would have benefited from its use.' Could you expand upon that, please?

Mr Moss: Yes. Without being comprehensive, there are two operations that I had in mind when that point was noted in my submission to this inquiry. I do not really feel free to go into further detail about that, just to assure the committee that, having surveyed the work of ACLEI now for almost five years, there would be times when we could have used this particular method.

CHAIR: Okay, thank you. Also in your submission you have stated that the emergence of targeting of government officials by organised crime groups in some jurisdictions means that integrity testing now warrants close consideration by agencies that may be vulnerable to such attacks. Can you, without going into detail, broadly outline how or in what area organised crime groups are targeting government officials?

Mr Moss: Yes. Just to preface my response, I do not see a direct link between the targeting by organised crime of public sector officials and therefore the need for integrity testing because of that; I see the link as the need for another measure that would be available in the detection, investigation and prevention of corrupt conduct. As to the types of targeting that ACLEI has seen by organised crime of law enforcement agencies, certainly the standout is the passing of information to organised crime. ACLEI talks in terms of the corruption handshake, which is where organised crime seeks facilitation from within to assist its criminal intent and criminal activity. So that is certainly one area. Another area is inappropriate association. But as I say, in these kinds of contexts, you have hopefully, if the committee so decides and recommends, another measure to use in this situation.

Senator IAN MACDONALD: Thank you, Mr Moss, for your very comprehensive and, I might say, helpful submission, and for your opening statement. There is a bit of a different view on who should conduct integrity testing. If it was to be your commission, do you have the skilled personnel and the people that could do that, or would you require additional resources or additional training? Are you capable of doing it?

Mr Moss: It is probably a key issue in relation to the present inquiry. Some years ago when the topic of integrity testing first came up in relation to this committee, the AFP seemed to be on the point of establishing a regime for integrity testing of its own members. At that point, I adopted the view that the best way forward would be for ACLEI to be able to work with the AFP in that it would have a regime in place and that there would be some involvement of the integrity commissioner and ACLEI in any work that the AFP would do under that regime. Now, that has not happened, but I see that, in its submission, the AFP shows enthusiasm for revisiting the question of establishing an integrity testing regime, and it sets out various options, starting from high cost to low cost, and you would see that table that they have provided. Again, my preference would be to have access to a regime conducted by someone else rather than the alternative or one of the options which is for ACLEI to have this arrangement and control it.

In terms of whether ACLEI would have the staff to conduct integrity testing, I doubt that we would, but I note that where integrity testing is part and parcel of the work of integrity agencies in the Commonwealth, and I think here in particular of the Corruption and Crime Commission in Western Australia and of the Police Integrity Commission in New South Wales, that they do not have separate integrity testing units; they merely use integrity testing as another method among other powers and methods they have in their investigation.

So, to bring that to some point, what I would be hoping for if a decision was made to proceed with integrity testing, would be a very low level, low-cost approach to integrity testing, and it being added in that sense of another option rather than the more expensive possibility of integrity testing units and all the expense and issues that go with that. But that does raise the question inherent in your own question—that is, do you then have the sufficient skill in your investigators to use or to gain maximum effect from any integrity testing conducted? I leave it there.

Senator IAN MACDONALD: Sorry, how did you answer that question? Do you have the skilled personnel?

Mr Moss: No, I think I said at the outset that I did not, but what I would envisage is a very light use of integrity testing if it were to be available to the integrity commissioner. By being a light use, I am trying to avoid the need for a dedicated unit. I would be trying to avoid the need for really deep specialist training for people who would conduct integrity testing.

CHAIR: Did you have something you wished to add?

Mr Moss: I am just being reminded that other methods are combined with integrity testing, but that may not be germane to your question right now.

Senator IAN MACDONALD: I would not mind the information in any case, even if it was not germane to the question.

Mr Hayward: I think the point of your question was: what are some of the tools required to undertake an integrity test? Some of those tools that may be used in an integrity test are things like covert police surveillance and some of the technical aspects around that. Going to what the commissioner said, that does not need to be a part of a program as a standalone. I think the AFP draws out in its submission some of the requirements around covert police surveillance.

Senator CAMERON: When does the integrity test become entrapment?

Mr Moss: The term 'entrapment' is also linked to the term 'inducement', and that is the term more commonly used in our legal framework, but the two are the same. It is when an inducement is inherent or when a fact is inherent in the integrity test that leads a person who is the subject of the test to make the wrong decision. The inherent principle of integrity testing is that there be clear, equal opportunity for a person who is subject to the test to pass the test or fail the test. An inducement would be where the factors relating to how the test was developed and then applied would skew that need for an equitable approach.

Senator CAMERON: There are two cases on this: *Ridgeway v the Queen* and *Bunning v Cross*. They go back to 1995. Are they the latest cases?

Ms Baker-Goldsmith: *Bunning v Cross* is the leading case around admissibility of evidence and the factors that are to be taken into account if evidence is improperly obtained. *Ridgeway* was specifically on the issue of entrapment, and that is where the High Court said that there is no defence of entrapment at law in Australia, but under certain circumstances taking into account factors, it may be appropriate for certain evidence not to be admissible.

Senator CAMERON: Well, there is a defence of entrapment in the US, and they use the term 'unwary innocent'. Are you aware of that term?

Ms Baker-Goldsmith: Only very broadly. I am not an expert on US law. There have been some developments—

Senator CAMERON: But the High Court did discuss that in the case that you mentioned ?

Ms Baker-Goldsmith: In *Ridgeway*, yes. *Ridgeway* very firmly stands for the principle that there is no defence of entrapment in Australia whilst it is in other jurisdictions. In that case the High Court determined in relation to the conduct of the police in *Ridgeway* where they went very far down the line of participating in an importation of illicit substances, for public policy reasons, that evidence should be excluded. You will have to forgive me, Senator, I am not as up on *Ridgeway* as I would like to be, but in that case the prosecution was effectively stopped.

Senator CAMERON: I do not want to try to conduct a test on *Ridgeway* here.

Ms Baker-Goldsmith: I appreciate that.

Senator CAMERON: Do you not think it is important that, if ACLEI wanted to use this process of integrity testing which could easily move to entrapment, you should actually be across these issues? It is not you personally; I am saying ACLEI. It is okay saying you want to use integrity testing, that is fine, but there are issues in relation to integrity testing that High Courts have debated, other countries have taken a different view on, and it may be something that parliament may want to revisit. If you start using integrity testing and you get it wrong, then the capacity is there for it to become a political issue to deal with. I put it to you that if you are using integrity testing you would need to understand the background as to how the High Court has determined that integrity testing should be used, and the minority views that pointed to some of these other issues. This is so that if you are training people on integrity testing, they will get some idea about the background to the use of integrity testing. Is that clear?

Mr Moss: Yes.

Senator CAMERON: I am just worried that it is easy to say, 'Let's do integrity testing', but it has lots of legal and moral implications.

Mr Hayward: They are very good points, and I think that is where, in our submission, we mention it being intelligence driven, about putting in place that when you do the integrity testing it is within the lawful and policy sort of framework, that an operational risk assessment is done before the test, of which all those factors that you highlight are made in that assessment phase. With the entrapment issue, it is about setting the test up in a way so that the conduct was done in a way that it was not likely to induce them into an unethical, corrupt or criminal behaviour. I think it is that they undertake the test in a way that they would normally have reacted. It is not about putting them into an environment where their intention would have otherwise been something different. It is about working with the intelligence and those frameworks to give that pass or fail, depending on their intent at the time.

Senator CAMERON: In Scotland, the main authority there is *Browns v HMA* which stated, 'Entrapment will occur when law enforcement officials cause an offence to be committed which would not have occurred had it not been for their involvement.' There are remedies available that correspond with that in England. Given that our law was on the basis of British law, I do not want to get your view on why the High Court made that decision, but I just raise the issue. If we start to use integrity testing widely, and it becomes a political debate about whether or not this is entrapment, then it could mean that the law becomes subject to some consideration by parliament again.

That is why, if you are going to use it, people have to understand the broader issues, not just the operational issues. Is that fair?

Mr Moss: Yes, it is. I think that is right. The preference that I have expressed in my submission is that there would be a legislative framework around integrity testing. The expectation would be if a law were enacted that there would be debate about the issues in the parliament, and these could come forward at that stage. I would also expect that, if integrity testing were to be introduced and available at the Commonwealth level, we would take note of what had happened in other jurisdictions and ensure that the experiences of things going wrong previously would be well countered in any framework, approach or procedure that we adopted ourselves.

Senator CAMERON: What is the best practice approach to integrity testing in Australia?

Mr Moss: Do you mean which agencies would be using this to best effect?

Senator CAMERON: What agencies have the best practice? What have you looked at?

Mr Moss: I think I have already mentioned the two that I would be looking to myself; that is, the CCC in Western Australia and the PIC in New South Wales. I am aware that other agencies also use integrity testing but I am not familiar with exactly what they do. Therefore I am not putting any hierarchy on the two I mentioned vis-a-vis the others. But that is where I would be going to see what their experience was. We have in fact made contact with them in relation to preparing ourselves for our appearance this morning.

Senator CAMERON: Have there been any failed cases because of bad operational procedures on integrity testing?

Mr Moss: In the Australian jurisdiction?

Senator CAMERON: Yes.

Mr Moss: Not that I am aware of, no.

Senator CAMERON: Does that mean no or yes or you do not know?

Mr Moss: I do not know.

Ms Baker-Goldsmith: I think it depends on the purpose for which the other jurisdictions are conducting integrity tests. Also, there may be what might amount to a colloquial definition of an integrity test whereby if a law enforcement officer is suspected of corruption, he is investigated in the ordinary way. I am not aware of any case law specifically on a failed integrity test in Australia.

Mr Moss: Senator, you mentioned earlier illegal conduct by those involved in the test. I draw your attention to the controlled operations framework where the same issue arises; that is, something illegal in that sense is done in the course of conducting the operation but for the indemnity given by the controlled operation legislation and in relation to the integrity test. That would be one of the reasons you would want a legislative framework. For instance, if you wanted to conduct an integrity test, you might put false information in a database so that a person who you suspect of unlawfully disclosing that information to another person would then see that information and then disclose it, and that would be a form of integrity testing. But the placing of the data in the first place, without the coverage, would be an illegal act.

Senator CAMERON: I must say I did not realise it was such a complex legal issue. I do not suppose it is that complex here in terms of the decision in *Ridgeway v the Queen*, but other jurisdictions have raised real concerns about how this is used and have said it should not take place. I am just coming from that perspective, I must say. It is a contested area around the world. Even though our High Court has said under common law here there is no bar in doing it, it raises all the issues that are raised in the US, Scotland and Canada. They do not go away as moral issues, do they?

Mr Moss: No, they do not. I think it is worth taking into account that integrity testing as a term encompasses a wide range of types of testing. You would have noted in the various submissions, including my own, that there is the division between targeted or intelligence led testing and random testing. It may be that these cases are drawn from that broad continuum. I just do not know where they stand.

Senator CAMERON: I must say I have not looked any deeper; it is a very shallow look I have had at it this morning, just looking at what was available on the net. What jumped out immediately was that there are these contentious issues relating to it, and in some jurisdictions that we would rely on, such as the basis in law in the UK, it is not allowed.

Mr Moss: I note your comments about the complexity of it. It certainly is a complex legal area, but I also note that controlled operations has addressed this to some extent, and one could seek guidance from that legislation

and that approach also, and there is a relationship between controlled operations and integrity testing which we can go into later if you wish.

CHAIR: I would just note from my own meeting with the New York Police Department Internal Affairs Bureau last week that they are very careful when it comes to targeted integrity testing to pass by the District Attorney's office any scenario that they are planning to ensure that it complies fully with the law.

Senator PARRY: There are three broad areas: I think it goes to legislation, cost and the practical delivery of integrity testing. I want to go into the practical delivery side which seems to be where the complexity is. If we just ignore the expense for the moment, I gather from your initial statement that you would like to see the provision legislatively for you to have the ability to perform or conduct or supervise, and no doubt you would be the lead agency?

Mr Moss: That is not what I would envisage. I would see ACLEI as a user of this arrangement.

Senator PARRY: Not as the lead agency?

Mr Moss: Not necessarily, no. My thinking would be that it would be available to the agencies within ACLEI's jurisdiction to also use the integrity testing within a framework delivered by legislation.

Senator PARRY: Would it not be like how you currently conduct investigations in relation to integrity matters where the agency has some sort of prime role and you have an oversight?

Mr Moss: Yes, certainly that would be part of it.

Senator PARRY: Could we suggest that ACLEI might be the agency that would have oversight over every integrity test if this did come to pass?

Mr Moss: I think that issue itself is up for discussion. I assume you are thinking whether a monitoring role would be appropriately with ACLEI?

Senator PARRY: Yes.

Mr Moss: Certainly the ACC submission talks about consultation. I had in mind something along those lines, too, whereby agency heads would notify me of their intended use of integrity testing, but as to something more thorough going in terms of monitoring, I did wonder whether that was a proper role for ACLEI to engage in.

Senator PARRY: It is fair to say that, outside of integrity testing, you would have an oversight of every major potential corruption issue or investigation in the agencies that you have responsibility for?

Mr Moss: Absolutely.

Senator PARRY: Why could that not continue into the integrity testing regime as well?

Mr Moss: It could. I am thinking more of the technical adherence to provisions of the legislation, in the same way that there is technical adherence to the provisions of legislation relating to surveillance or listening devices or telecommunication interception.

Senator PARRY: Could we just push that to one side for the moment? I am just thinking of an agency—and this is the ideal agency—and I suppose we do need an indication for our deliberations as to whether you feel as though your agency would be the supervising agency, the overarching agency responsible for integrity testing, whether or not you physically conduct the integrity testing? This is so there is some common oversight, I suppose, rather than having several regimes of integrity testing across various Commonwealth agencies.

Mr Moss: Yes. I suppose the question relates to the range of activity that an integrity test could be applied to within any of the law enforcement agencies. For instance, they might want to direct an integrity test against misconduct, whereas my focus, as you know, is corrupt conduct. There might be a question there for—

Senator PARRY: So low level integrity testing then could take place in agencies without you necessarily having a supervisory or oversight capacity. In your opening remarks you indicated that you would like to use it infrequently or low level as in the number of times you would use integrity testing, not necessarily the low level being the nature of the operation, because as we know, integrity testing operations are expensive and costly and time consuming. With that take-out—allowing agencies to do their own minor integrity testing—do you still see a role for ACLEI to have the oversight of all agencies for any major integrity testing application?

Mr Moss: You said putting the technical emphasis aside, yes, I think that is absolutely right.

Senator PARRY: Obviously, if we recommend anything, a consideration for us would be cost and resourcing. I think we are looking at the pure model at the moment. The cost and resource issue would be a secondary phase of our deliberations.

Mr Moss: Yes, I think it would be consistent with the present framework too, that agency heads notify me of corruption issues as they become aware of them, and I would similarly require to be notified beforehand of what their intentions were, if they propose an integrity test—both to keep on top of patterns and trends of where they were seeing concerns, as well as to make sure that there was deconfliction for anything I had intended to do or was doing that they might not know about.

Senator PARRY: We are obviously now just talking at the moment of targeted or intelligence based integrity testing. Do you have a view on random integrity testing?

Mr Moss: No, I do not see a role for it. I see it as having many disadvantages, not countered by advantages, so from that point of view, I am looking at intelligence-led targeted integrity testing.

CHAIR: Could you expand upon what you think are the disadvantages?

Mr Moss: It goes to the question of trust between the employer and the employee. It relates to the evidence already available in jurisdictions that use random integrity testing that the incidence of failure of the test is low compared to the incidence of failure when targeted integrity testing is used. You would note the Australian Federal Police Association's submission about random testing. I think there is just a general view that it adds unnecessary expense. You really want to be focused on what you are doing in terms of targeting corrupt conduct or corruption risk.

CHAIR: There seems to be a view among those police forces that use random testing that there is a high deterrent value in random integrity testing and that might account also for the low failure rate?

Mr Moss: I would suggest that there could also be deterrent affecting targeted testing. If members of a law enforcement agency knew that there was a testing regime that was targeted, it would have an equal deterrent effect. The comparative merits between random and targeted, as for deterrence, I just would not have knowledge about that.

Mr HAYES: I am interested in two areas: resources and the evidentiary aspects of it. In terms of resources, having had a previous association with the set-up of PIC in New South Wales and its officers, and seeing how people were seconded into that with expertise from all around the countryside, is there scope for looking at some consolidated approach, outsourcing or importing resources from other integrity based agencies such as PIC, the CCC and elsewhere for specific operations?

Mr Moss: I think there would be scope for that. It relates to Senator Macdonald's question about whether ACLEI would have the know-how to conduct integrity testing. ACLEI already engages specialists by secondment or temporary transfer to assist it in various ways, such as financial analysis. So I would see this area as being a good opportunity for obtaining the expertise of others, particularly where they have an established track record of good work and good outcomes. It would also be consistent with my view that you would want to avoid, because of cost, the establishment of integrity testing units.

Mr HAYES: Following on from Senator Cameron's questions in respect of the evidentiary quality of results from integrity testing, notwithstanding the fact that it has not sustained any charges out here in the courts, I know there have been a lot of police officers who have been subject to targeted integrity testing and have failed, and as a consequence lost their employment. In respect of the Australian Federal Police, as with every other police jurisdiction, there is the provision of commissioner's confidence, and I think that is probably what is being relied upon here, is that right?

Mr Moss: It would be, yes.

Mr HAYES: Last year we varied the Australian Crime Commission provisions to also provide something very similar in that organisation, being equivalent to commissioner's confidence. That being the case, what about other agencies such as the Australian Customs and Border Protection Service and the National Crime Authority where the same provision does not exist? I think they are probably covered by the Public Service code of conduct. Would we need to look to the integrity provisions there and underpin that with something equivalent to a commissioner's confidence for integrity testing to be useful in those jurisdictions?

Mr Moss: I think that the Public Service Commissioner's submission to this inquiry touches on some of these points very usefully. It is noted in that submission that it is well within the bounds of an employer to set standards for employment in a particular agency. The Public Service Commissioner's submission goes on to say that integrity testing in his view would be one of those conditions of employment that could be applied in an agency in which the staff were employed under the Public Service Act. I note that the commissioner's confidence power is now, as you said, available to the Australian Crime Commission, but also note that that is an agency whose staff are employed under the Public Service Act.

So already we have this distinction between the basis of employment across ACLEI's jurisdiction—that is, the AFP under their own legislation, the Australian Federal Police Act, and then the other two agencies, namely Customs and the ACC coming under the Public Service Act. So I think that the Public Service Commissioner's submission answers the point. Yes, you could have integrity testing as part of the terms and conditions of employment. As to whether you used a commissioner's type confidence power in that context, I think there are other ways you could also deal with issues coming out of integrity tests without necessarily requiring that kind of power.

Senator WRIGHT: I am interesting in understanding a little bit more about the role that you would envisage for ACLEI in this situation and taking into account the concerns that Senator Cameron has raised. An analogy might be an ethics committee at a university. I am also thinking about what the Chair said about New York and the design of a particular procedure being run past the Attorney-General in New York to check that it is within ethical boundaries, so that you perhaps then try to avoid the risk of its going so far that it becomes unethical and perhaps unreliable, even if it is within a legislative framework. Is that the role you might see whereby, rather than actually designing particular tests for particular agencies which presumably will know their own needs better, there could be some system of oversight in that way?

Mr Moss: Indeed. In fact, you have raised the point that there is a balance issue in all of this. In its work, ACLEI already is mindful of privacy issues. Although not coming under the Privacy Act, nevertheless we are very mindful of privacy issues, and also the question of reputation and the need to protect reputation. On the other hand, you have the need to be quite concerted about your determination to detect and combat corrupt conduct because of the extreme consequences for agencies and for the staff of those agencies in which some of their members are found to have engaged in corrupt conduct. So this is the balance issue. I think you are quite right; in terms of an ethical sense, in an application of an integrity testing regime you have to also have in mind this question of balance between an ethical approach and use of it and what you are seeking to prevent—that is, corrupt conduct. With respect to oversight, this committee already oversees the use of my extensive powers. There may be some possibility for that also to be included as it could easily be in your own focus about my work and that of ACLEI.

Senator WRIGHT: Looking at pages five and six of your submission in relation to the benefits or the advantages of integrity testing as opposed to other evidence gathering techniques, it led me to think about some of the flaws in other techniques, such as hearsay evidence. In your submission you are suggesting that properly carried-out integrity testing will be perhaps often fairly conclusive. Maybe I am reading too much into it. But that might be why ultimately it might be a fairer way of trying to establish whether there has been some corrupt conduct as opposed to relying on innuendo, rumour, hearsay and a conglomeration of evidence in that way?

Mr Moss: Indeed. It may be conclusive; it may not be, but it certainly would be another useful measure to have in the range of measures already available. Also in terms of efficiency, if you can cut through by the use of one method and get to a result where otherwise you might take the long way around using other methods, I think this is to be welcomed. The other point I have just been reminded of is that sometimes it is not just a question of detecting corrupt conduct; sometimes it is a question of disruption. You might have an officer or a group of officers who are under suspicion and we just cannot quite get the evidence that they are engaging in corrupt conduct or how they are engaging in corrupt conduct. But integrity tests might reveal something lesser, such as a sound reason for disciplinary procedure, and that would certainly be applied. There is that consideration also in an integrity testing regime.

Senator SINGH: How much work, if any, has ACLEI done into the success, problems and costs of integrity testing programs in other jurisdictions that are already in place as a snapshot of what those problems would be if it were run in a jurisdiction by ACLEI or in Australia? You note in your submission that, in relation to law enforcement agencies, Hong Kong's Independent Commission Against Corruption has the longest running integrity testing program. That may be an area of research to look at, seeing it has been in place a long time. But obviously there are other jurisdictions that could provide this committee with a detailed analysis of how this could work if it were to be in place in a broader sense in the way that we are discussing here today, and answer some of these questions that other members of the committee have asked already.

Mr Moss: ACLEI has kept itself informed as an observer of those agencies which have an integrity testing regime and which use integrity testing. They have a practitioners' forum which meets on a regular basis, and ACLEI has been attending and represented at the forum since ACLEI's establishment. To that extent, we have a feel of how it is going and which agencies are using it and which agencies are using it to best effect. On occasions, that forum has invited overseas representatives to talk about their experience, particularly from the west coast of North America. In terms of the extent to which ACLEI has researched this, I must say, not to a great

degree. There would be a number of places you could go and agencies one could talk with to become better informed. I think at this stage we are at the high-level consideration of integrity testing and just working out what sort of regime we require. So it is more in the general application of it that we are thinking. In terms of more detailed work and analysis, we have not done that. We have not got there. That would be ahead of us should the need arise.

Senator SINGH: So you consider that would be something necessary to do to have a fuller picture before pursuing further avenues, if that was the way you wanted to go?

Mr Moss: In terms of informing this committee, if the committee asked us to do that, we certainly would, or the committee may itself choose to become familiar in a direct sense with what is available elsewhere. If such a regime were to be available to ACLEI and to other agencies, then as I have said earlier, we would certainly seek to take advantage of past experience and to ensure that we started at that point so we could offer the best possible practice.

Senator CAMERON: Do you believe that entrapment is a legitimate process?

Mr Moss: No, I do not. I think it is a wrong approach. It starts on the wrong basis. Therefore I do not adhere to entrapment in any sense.

Senator CAMERON: In *Ridgeway v the Queen*, Justice McHugh laid out a number of tests that he thought should take place. He said that a focus should be on whether the conduct of the authorities induced an accused person to commit an offence. He then goes on to say, 'Whether the authorities had reasonable grounds for suspecting that the accused would commit the offence, and whether prior to the inducement the accused had an intention to commit the offence.' Would the McHugh tests be something you would take into account?

Mr Moss: They certainly are, and I suggest to you I take these issues into account already in terms of when I am notified of a corruption issue or one is referred to me, or when I become aware of one through ACLEI's own work. These issues arise already: how this matter is handled; the protection of a person's reputation; and the question of a person's privacy. All of these issues arise already in terms of ACLEI's work and the decisions I make.

Senator CAMERON: What about the AFP's work? How would ACLEI view an entrapment approach by the AFP? Would that be something that would draw your attention to the AFP?

Mr Moss: Yes, it would. It does not come within corrupt conduct necessarily, but as an approach, I would not be supportive at all, and I would hope that by consultation or the framework that existed whereby I would be notified of a proposed integrity test, that I would have sufficient knowledge to make an input, if necessary, about the framework of a proposed test and whether there was a danger of entrapment or inducement.

Senator CAMERON: The AFP are giving evidence. They are sitting and listening to this now, so I am sure they will be prepared to answer questions on this. Are you saying that if an AFP officer involves themselves in entrapment against a suspect, you have no power to deal with that?

Mr Moss: It would depend whether the matter fell within one of misconduct or corrupt conduct. If it were one of misconduct, then it would not necessarily come within my interest. It might be one for the ombudsman or for the AFP itself.

Senator CAMERON: How do you make the judgment?

Mr Moss: It is on a case-by-case basis. It is a question of understanding all the facts of a situation and deciding on balance whether entrapment or inducement has been an element of the integrity test. I also note that sometimes misconduct is an indicator of corrupt conduct, so therefore, to that extent, I would not necessarily rule out looking at an inducement related misconduct in the framework of integrity testing.

Senator CAMERON: But you are confident if you make a determination that you will investigate, then that is the end of it, is it not?

Mr Moss: Yes, I have that clear discretion as to what is to be done with a corruption issue.

Senator PARRY: I want to go back to random versus targeting. The effect of random is to create a great deterrent. When does targeted or intelligence led integrity testing morph or merge into surveillance? I will give a good example that the US use, where they set up a shop front where they suspect officers that are patrolling may be attending burglaries and stealing at the scene of the burglary. So they set up an integrity testing regime where the whole place is videoed et cetera; they have targeted the officers. There is a false call and the officers attend and they are caught stealing. Where do we draw the line between using surveillance methods that currently exist with the current legislative framework to then going into that style of integrity testing?

Mr Moss: Integrity testing uses other powers. It is not used alone: you would use surveillance as you indicated, you would use telecommunications interception and you would use listening devices as necessary. There is a convergence of powers and measures involved in integrity testing. I would suggest to you that the example you gave is in fact one of targeted testing and intelligence led testing rather than random. Random might be—and you could say this is the case already—where the AFP annually tests each of its members for drug use. That is a random test. It is out there. People know that this is going to happen once a year, and they are subject to it. I would include your example as targeted intelligence led.

Senator PARRY: It is absolutely that, but where do we draw the line? Why do we need integrity testing when we can use existing surveillance methods? If there is an intelligence led reason to conduct an integrity test, why could it not just be by the normal means of investigation and surveillance?

Mr Moss: I think it goes to this question of efficiency where you could follow someone for a very long time and put a lot of resources into that, but an integrity test brings you the focus; it gives you that clear guide at that point. You can use it then to invoke other powers and other resources. Just to have a suspicion—

Senator PARRY: It is a way to truncate an otherwise lengthy process. Therefore, if that happens and that just becomes another tool for catching crooks, catching corrupt officers, then there is no real advantage in having integrity testing apart from that reason only unless we have random based integrity testing to act as a great deterrent. That is the issue, really. If we go to a lot of legislative reform to introduce integrity testing that is only going to be targeted or intelligence based, all we are doing is really shortening the potential investigation, if in fact that is what happens?

Mr Moss: That itself is valid, though. The resources of ACLEI are limited. The resources of these agencies we oversee are limited. If you can put the resource and the focus where it has to be, I think anything that helps you do that is important.

Mr Sellars: I think your question is related to Senator Cameron's questions about entrapment, inducement and fairness. One of the purposes of having an integrity testing program is that due consideration is given to those fairness and entrapment questions. In the scenario you have given, it would be possible, generally speaking, to do that presently without legislation, but whether that would overcome some of the fairness questions as to how the evidence may be used is another matter. While the general scenario you have given is one that you probably could conduct now without specific legislation, there are probably many other types of integrity tests that would be equally useful. The Integrity Commissioner gave one in his opening statement where you would need legislation to protect the officers involved against claims that they themselves committed a crime. I think that is the real purpose. The amount of integrity testing that needs to occur for there to be a deterrent effect I think is an unknowable question.

Senator PARRY: I would like to explore this for a lot longer, but I will leave it there.

CHAIR: I want to thank the witnesses from ACLEI for giving their time today. The committee may of course come back to ACLEI with any further questions during the course of this inquiry as it progresses. So thank you for today.

Mr Moss: Thank you.

CLOSE, Assistance Commissioner Leanne, National Manager, Human Resources, Australian Federal Police

SENGSTOCK, Ms Elsa, Coordinator, Legislation Program, Australian Federal Police

[10.03]

CHAIR: I now welcome representatives from the Australian Federal Police. You have lodged a submission with the committee which we have numbered as submission 10. Would you like to make any amendments or additions to that submission?

Ms Close: No.

CHAIR: I invite you to make an opening statement, at the end of which we will ask questions.

Ms Close: Thank you for the opportunity to appear before the committee as part of its inquiry into integrity testing. The Australian Federal Police places a high priority on safeguarding the integrity of our organisation to ensure that it meets the expectations of government and the community that it serves. AFP appointees are subject to high levels of accountability and scrutiny in relation to both their on-duty and off-duty conduct. The AFP maintains a robust and transparent professional standards framework that is underpinned by three essential pillars: prevention, detection and response. The three pillars recognise that the approach to deterring and combating corruption is multifaceted. The AFP also has a robust relationship with the Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity. Both are important partners in ensuring organisational integrity. No one measure alone can certainly deter corruption. It is important from our perspective that a holistic approach is taken, and that approach includes education and training, early detection, a strong leadership culture and effective guidance to assist AFP appointees to make ethical decisions. These are all measures that are undertaken by the AFP under our professional standards umbrella.

The AFP recognises that integrity testing could be an additional useful tool in our integrity toolbox. The AFP has considered integrity testing for several years as part of its regular ongoing review and refinement of its professional standards framework. In doing so, the AFP has had regard to the current integrity environment within the AFP and the maturity of various aspects of professional standards framework. To date, the AFP has not had a significant problem that has warranted the need for integrity testing to be implemented immediately; however, it is important that the AFP is not complacent. This inquiry therefore provides us a timely opportunity to consider current integrity arrangements and examine in more detail the scope of proposed integrity testing within the AFP and the Commonwealth generally.

CHAIR: The AFP has been considering integrity testing for several years. What consultations has the AFP had with other jurisdictions, other integrity agencies, police forces, that have established integrity testing systems, both overseas and within Australia?

Ms Close: We have certainly worked closely with other state and territory jurisdictions within Australia. Through the Australian New Zealand Policing Advisory Agency—ANZPAA—there is a working group that has been looking at these issues for some time. We have worked with individual states and territories, some of whom already have an integrity testing framework, whether that is within a legislative framework or an administrative framework under their commissioner's powers. We certainly have had negotiations with those agencies to understand the extent and the frameworks that they are operating within. We have undertaken some other more general research internationally to look at some of the models there; that has been more limited. There is also an integrity practitioners committee.

Ms Sengstock: The ANZPAA Integrity Testing Practitioners Committee is the forum in which the states and territories and ourselves participate to discuss those kinds of issues. We are a participant in that, and we have been learning from their experience as they are going through it.

CHAIR: Who are the members of that committee?

Ms Sengstock: It is all the jurisdictions, so it is all of the eight Australian state and territory police services, the AFP and the New Zealand Police Service.

Ms Close: It is basically the heads of their professional standards departments.

CHAIR: Integrity testing regimes in other jurisdictions involve both random and targeted integrity testing. Test issues range from misconduct to serious corruption involving organised crime. What level of behaviour would the AFP consider if integrity testing was introduced?

Ms Close: It would be that broad gamut from misconduct through to serious corruption, whether that is systemic or by an individual. It would be a useful tool for all of those sorts of situations.

CHAIR: What would be the AFP's preferred model of integrity testing?

Ms Close: We would prefer a targeted model to be introduced, if that was something that we would look at through legislation or through the commissioner's administrative powers. The reason for that is that it is quite resource intensive, and we would look at these situations from an intelligence led basis. Random testing is much more generic. It is certainly an option that we have not discounted, but if such a regime is introduced, we would initially prefer the targeted approach, do some analysis of how successful that has been, do a cost-benefit analysis, and then perhaps we would look at a more random approach if that was required.

CHAIR: Do you think that a random approach might be useful if, for example, there is a particular trend occurring in an area? If you do not have any suspicions about particular officers, but there is a trend in a certain police location or a spike of complaints about a group of officers, would you look at that?

Ms Close: Yes, certainly. I think it is probably around the definitions that could be termed a targeted approach as well. The blurring between random and targeted cannot be defined if you do not have a specific individual that you are looking at rather than a function.

Senator IAN MACDONALD: Does the AFP have the right skills to conduct integrity testing? If not, what resources would you need to do that if it were introduced?

Ms Close: Certainly we would have the majority of skills that would be required: we already operate with our surveillance officers, we have telephone interception capabilities, and we have our normal investigative and operational processes. They would all go towards this type of framework. Some more specific training would be required of officers involved in that in terms of the governance around what would be involved and the operation of legislation if that was appropriate. There would need to be some specific training for our officers in that regard.

Ms Sengstock: One of the things that the integrity testing practitioner forum looks at is whether or not there needs to be sort of standardised training across the states and territories and with the Commonwealth so that everyone can learn from each other's experience and build those skills collectively.

Senator IAN MACDONALD: I think I read somewhere in your submission, although I cannot find it now I am looking for it, that to set up an integrity testing capability would cost in the vicinity of \$8 million. Did you say that?

Ms Close: Yes.

Senator IAN MACDONALD: I did not dream that?

Ms Close: No.

Senator IAN MACDONALD: How did you come to that figure? What was the extent of the testing that would reach that figure?

Ms Close: That was looking at probably the worst-case scenario where we would need a lot of resources from the intelligence officers and analysts right through to surveillance operatives and, as I said, perhaps telephone interception or listening device capabilities. Developing the scenarios that would be utilised for the integrity testing, depending how broad they are, would require training for our officers, and there would be a governance framework required. So all of those sorts of costs were taken into consideration.

Senator IAN MACDONALD: Does your current budget allow that sort of additional expenditure? I am sure the answer will be no, but I will ask it just the same.

Ms Close: We have certainly taken the approach that this is not as high a priority as the other work that we are undertaking, particularly, as I said in the opening statement, around our education awareness and ensuring that we have a culture that avoids having situations where we have to then resort to an integrity test perhaps. We feel that the culture of our organisation, right from induction of our new staff through to regular testing and the other processes that we have outlined here this morning, is just as important in ensuring people are not tempted and do not become corrupt. We think that trying to prevent those sorts of activities, making people understand what working within an ethical framework is and giving them tools to be able to make correct judgments is just as important. That is where we have certainly focused our resources at this point.

Senator IAN MACDONALD: I am unaware of what you do at your inductions and the sort of education you are talking about. I have no obvious knowledge of that, but do you think if you said when you were inducting people, 'We have a random integrity testing regime as well, so do not do anything naughty or you are going to be found out', would that help?

Ms Close: It really depends on the individual, I suppose. Also, what we are finding through our investigations that we undertake regularly is that some people fall into these situations for various reasons. It may have a deterrent effect on some people and not others, depending on what circumstances those individuals find themselves in.

Ms Sengstock: I think our experience is that if you let people know that you have a zero tolerance policy towards misconduct and that you have a full suite of measures that you use which are appropriate to the individual circumstances, that sends a very clear message about the culture of the organisation and the standards that are expected of those officers. So the integrity testing regime, whether it is random or targeted, would be another element of that framework, and obviously individuals would need to take that into account as to whether or not they would find that personally deterring. We certainly hope it would be.

Mr SIMPKINS: Thank you for your submission. With regard to the committee of jurisdictional representatives, is their approach to this to establish their standalone units, and what expectations have been talked about regarding the federal government?

Ms Close: Certainly at the moment it is based on standalone units and sharing with each other lessons learnt. The reason that it is standalone, I guess, is that it is separate legislative frameworks within each of the state jurisdictions or some of them are using administrative powers by virtue of their commissioner's powers. That is why it is separate and standalone.

Ms Sengstock: I think it is in terms of their existing professional standards units. So, like the AFP has a standalone professional standards unit, integrity testing is part of that unit's practices, just the same way that if we had a regime, whether or not we did it fully in-house or outsourced part of it, it would form part of that portfolio's responsibilities.

Mr SIMPKINS: But you still have to use the expertise of squads like surveillance teams around the country that are not part of the standalone?

Ms Close: That is correct. We already have agreements in place for current activities, whether it is a criminal investigation or a professional standards internal investigation, where we have arrangements and agreements that will assist each other where necessary.

Mr SIMPKINS: With respect to the expectations, what does everyone want from their local state or the federal government?

Ms Close: That is a difficult question to answer, because I am not party to that forum. I think they are just utilising the resources and the legislation that they have available to them to undertake that and trying to work as a team to share resourcing where it is necessary.

Ms Sengstock: My understanding is that forum is about information sharing so they can start to develop some best practice techniques and talk about their experiences, and also build those cooperative relationships so that there can be a sharing of resources, skills and capabilities between jurisdictions.

Mr SIMPKINS: One point of clarification: would not this be a good forum for firing up recommendations for legislation at either state or Commonwealth level beyond the interactions, the joint capacities and experts' recommendations to government as to what could be better?

Ms Close: It can be utilised for that process as well. We are looking at this from a federal police perspective and our legislative frameworks. We would utilise and review what is happening with the legislation in other jurisdictions and, as I said, use their experiences of what has worked within their legislation, lessons learnt, and then put that forward.

Mr HAYES: The Wood Royal Commission in New South Wales essentially gave rise to a lot of things in terms of police integrity, but also the development of the Police Integrity Commission itself, which has now used for many years a targeted testing regime. Much of that came about because of public pressures on policing agencies where the parliaments—in that case, the New South Wales parliament—increased the powers of police. Police came under greater pressure to ensure that they were corruption free. Could you tell us a little bit about the similar public pressures to ensure that every effort is taken to ensure that the AFP is corruption free?

Ms Close: Certainly. We have talked briefly already about the culture that we have in the AFP and our zero tolerance for corruption. So our education awareness program, right from induction of new police recruits, new

protective service officers or our unsworn staff, are all exposed to what it means to be a member of the AFP and the fact that we do not tolerate corruption or misconduct. As well as that, we have several support mechanisms within the agency to ensure people feel free and comfortable and supported to be able to come forward and report. We have a confidant network that operates very strongly within the AFP. We have put in other systems and processes for anonymous reporting. We also encourage people if they feel that they have not been adequately heard within our organisation to go to the Commonwealth Ombudsman. We have a range of different integrity programs such as our drug testing program. We will alcohol test people as well where circumstances arise that we need to. All of these things are regularly communicated to our staff as well through ongoing training programs, as well as our investigative teams who are actually investigating matters of this nature.

Mr HAYES: There are a number of distinguishing things about police officers to other employees. In fact, police officers are not and cannot be seen as employees at common law. I think police officers have their fingerprints taken. I am not sure about the AFP, but I think you also have their DNA taken as well?

Ms Close: No, not at this point in time. We have certainly been exploring that option, but we have not introduced that yet.

Mr HAYES: Also, common across most police jurisdictions is that the police are subject to further engagement subject to maintaining the commissioner's confidence, and that is something that you clearly have?

Ms Close: Yes.

Mr HAYES: In respect of sworn police officers, they are not employees because they hold the office of constable. What about the non-sworn employees of the AFP who, unlike other public servants, are not engaged under the Public Service Act but are actually employed under the AFP Act itself?

Ms Close: That is right. That is why they are subject to the same disciplinary process and professional standards framework within which we operate. They are given the same training and awareness and information that our police officers and protective service officers are provided with.

Mr HAYES: So it would be your expectation that they would be subject to an integrity testing regime as well?

Ms Close: Yes.

Mr HAYES: Presumably many of your non-sworn police would also have access to a significant amount of confidential information that might be valuable in certain quarters?

Ms Close: That is right, and that is why they are subject to the same provisions.

Senator SINGH: In the AFP's submission, you mention that in order to properly examine the development and implementation of an integrity testing regime that you undertook a desktop benchmarking exercise. Can you elaborate on what that exactly was and when that was taken?

Ms Sengstock: That was conducted several years ago, and it examined some of the academic references that we have referred to in the submission. So it was very much a preliminary research exercise to look at some of the pros and cons of integrity testing and also the different models for integrity testing. Again, I think as we mentioned at the outset, we have looked at integrity testing a number of times, but at each stage had not gone in depth into it because it was not the right time to pursue it.

Senator SINGH: What were the outcomes of that exercise?

Ms Sengstock: I think the outcomes were that it gave us a sense that we had a preference for targeted testing, just because it seemed to offer more benefits for the resources that are involved rather than a random program that would be very resource intense and could have some negative effects on the morale of staff involved. Again, it was just our preliminary views having looked at those resources.

Senator SINGH: What kind of sample was that exercise based on? What was the breadth of it?

Ms Sengstock: My understanding is it was not particularly broad or deep. I was not there at the time when it was conducted.

Ms Close: We certainly looked at the Victorian police model. I was party to a senior leadership group meeting with assistant commissioners, deputy commissioners and the commissioner. We had presentations from the Victoria Police about their experience, the length of time it took to establish their integrity testing framework and regime, and also talking about the resourcing and other implications from a legislative versus administrative framework.

Senator PARRY: I will go to a couple of examples and ask you to comment on random versus targeted. If you had a police station with say 50 employees and there was theft from personal lockers and you could not work

out who was conducting the theft, would you then use a targeted approach? Would you set up a surveillance operation or would you set up some form of random integrity testing? How would you define what is what? I am trying to determine whether we need random, whether we need targeted, or whether we need both?

Ms Close: The way we would deal with that issue at this point in time is through surveillance—whether we set up some cameras or other sorts of processes like that.

Senator PARRY: Assuming the personnel would understand, because you would have police personnel understanding that that is a possibility, so surveillance may be thwarted through knowledge?

Ms Close: That is true, but we already have that in existence with our professional standards investigations that we undertake currently. There are methods that we utilise for criminal investigations or for internal investigations where we try not to alert those people to the investigation that is underway.

Senator PARRY: Would you then move to a model of targeting and then using some form of entrapment, an agent provocateur by using an unknown identity to that particular locality?

Ms Close: We certainly do not have a legislative basis to be allowed to do that at this point in time.

Senator PARRY: Let us just imagine that we have done this and you do have that, is that where you would need that sort of legislative framework? Is that where you would need that type of integrity testing?

Ms Close: We do not subscribe to entrapment in this case. However, integrity testing in that scenario would allow us to place items in a certain locality, have some sort of forensic ability to track that item, and identify who has perhaps stolen that. So, integrity testing in that example would allow us that opportunity to undertake that scenario.

Senator PARRY: Okay. So this is really all targeted. It is either targeted or, as I indicated to the previous witnesses, it is verging on just a normal surveillance or normal operation of detecting an offence. Let us have the same police station, the same number of personnel and you had no evidence of this: would you think you would need to then leave money around, leave a locker open with a few hundred dollars in it? Would you do that? That would then be random. Is that something that the AFP would like or need?

Ms Close: No, we do not believe that we need that within the AFP. We feel that the culture that we have generated over many years, the education, the awareness of the ethical framework in which we operate, the strength of the investigations area that we undertake from an internal investigations perspective, would not require that within our organisation.

Senator PARRY: What about further up the scale? What if we look at property stores and secure locations; would you feel it possible that you would need some form of random testing for property stores? I suppose it does not really apply to the AFP as much as state jurisdictions, but where you have secure property, valued property, in particular, seized drugs?

Ms Close: We already do have those sorts of stores or property housing areas within the organisation. From our perspective, having strong governance, having checks and balances in place already, doing regular auditing of those functions, both internal auditing and with external auditors as well coming in, that is where we are trying to avoid having to do some sort of random integrity testing to test people whether they will or will not steal something at a particular point in time.

Senator PARRY: Basically you are indicating that you do not see a need, or the AFP does not see a need for random integrity testing per se within the organisation?

Ms Close: Not at this point in time. We would certainly explore that in the future, but our preference would be to introduce targeted integrity testing based on the intelligence risk profile, whether it is an individual or a particular function. Then assessing the suitability, the success and analysing the outcomes of that, we could then explore whether random was required.

Senator PARRY: I know you were present in the room when I asked the Integrity Commissioner the question about the need for legislative reform to have particular targeted integrity testing legislation when the legislation currently will enable police to survey, collect evidence and prosecute eventually. Can you give me some examples of where integrity testing or the added legislative provision for integrity testing would aid the AFP?

Ms Close: It would certainly be an additional tool if we did not have the threshold of evidence to warrant undertaking a controlled operation, for example, or mount a criminal prosecution against a person or a group of people. As you have indicated in some of the examples, if we have a suspicion through some intelligence that there is a particular problem in an area but we cannot actually identify who that might be, integrity testing would certainly provide us an additional tool to be able to investigate that.

Senator PARRY: The advantage is that you end up truncating a lengthy process of targeting individuals when you can target an entire area by setting up some integrity test?

Ms Close: Yes, perhaps.

Senator CAMERON: Thanks, Assistant Commissioner. It is a complex area. I think you have said in your submission that it is complex. One of the issues you raised in your verbal submission was the example in response to questions from Senator Parry about some object being left somewhere and then tracked. Is that not entrapment?

Ms Close: It probably depends on the definition of entrapment and how the scope of the legislative provisions would be. It really depends on the scenario on how you establish where you leave that item, who is then attracted to take the item and that sort of thing. It could be considered that.

Senator CAMERON: What if it is an unwary innocent as the Americans describe it? Are you aware of that?

Ms Close: Yes.

Senator CAMERON: Tough luck for the unwary innocent.

Ms Close: No. Integrity testing would not be the end of or the sum of our investigation either. That would just be one part of an investigation, including all of the other intelligence that we have gathered, utilising all of the investigative techniques that we currently utilise as well, as well as providing the sufficient evidence, whether it is for an internal disciplinary matter or for a criminal prosecution. We still have to meet those thresholds.

Senator CAMERON: So it is basically a sting, is it not?

Ms Close: It could be.

Senator CAMERON: Yes, a deceptive operation to catch a person committing a crime—that is the definition, is it not?

Ms Close: Yes, that is exactly right.

Senator CAMERON: You say you formed this internal working group to consider the complex legal, financial and human impact of the various models, and you have consulted with the police association on that?

Ms Close: Yes.

Senator CAMERON: In clause 19 on page six you say with respect to the issue of the 1996 study by KPMG into the New York City Police Department's random integrity testing program that it is not really cost effective. Is that the basis of why you argue that you would rather have targeted than random?

Ms Close: It is not just on that basis. It is very resource intensive to undertake integrity testing scenarios—again depending on the complexity of the behaviour that we are targeting. Cost does come into it, but it is not the ultimate deciding factor of why we have not gone there. Really, it is a complex legislative or procedural process that we would have to undergo to research and implement effectively.

Senator CAMERON: I do not know whether it is just pure coincidence, but *Ridgeway v the Queen* was in about 1995 and the New York Police KPMG study was 1996; it seems to me there was a lot of activity around the mid-1990s in relation to integrity testing. Was there a reason for that?

Ms Close: I think it resulted in a lot of outcomes from various royal commissions and commissions of inquiry across the world. There was certainly a cultural shift in organisations across the world as well in looking at what is integrity and what is corruption, and policing services were obviously at the forefront of some of the negative aspects of all of that.

Senator CAMERON: I have a number of questions but we are running out of time so I might just put some questions on notice, if that is okay. You say on page eight at clause 31 that the suite of tools available for integrity testing is limited. Is there any chance you could give us a supplementary submission or an answer to this question about what is the limit that you see here? You make the statement, but there is no detail. I would like to get some detail.

Ms Sengstock: Certainly. I will give you a short answer now but we will follow up with something more comprehensive. The existing suite of covert policing tools like controlled operations or telecommunications interception sets certain threshold requirements. Obviously in many cases if you had the evidence to meet that threshold, you would have been doing a criminal investigation into the behaviour. With an integrity testing regime, if you have some intelligence to suggest that there is something there that you want to look into further, you may not have enough to meet those threshold tests. So that is why at the moment, yes, we could within our means do an undercover operation to a limited extent, but we would not be able to do it to the full extent that we would if it was criminal.

Senator CAMERON: So if you were seeking legislation from parliament to authorise your integrity testing regime, do you believe that parliament should set down the thresholds?

Ms Sengstock: I think that is an important safeguard to have. We are certainly keen that the parameters and scope of what we could do on an integrity testing regime are very clear and endorsed by parliament. It gives us very clear guidance to work towards and allows us to structure our internal governance mechanisms beneath that. The question of whether or not thresholds for covert policing powers should be altered in any way to allow for integrity testing is another big set of policy issues that needs to be considered separately.

Senator CAMERON: You raise the point of an authorisation process for conducting integrity tests. Could you give us some detailed consideration on what that process could look like? On the oversight, do you have a preference for either the Commonwealth Ombudsman or ACLEI, and not just because you like one or the other, but is there any legislative or administrative issues that would lead you to say one would be better than the other?

Ms Close: As to the first part of the question in relation to the governance framework that we would envisage being in place, for us it would be very similar to the way that we manage controlled operations activities currently. It is just not a case of the officers thinking that the scenario they are going to run is a good idea. Internally within the AFP we have several steps in the process of sign off before a controlled operation is approved. The investigators put the information together, that goes through to an independent committee of superintendents and a commander, and then there is a final assistant-commissioner-level person who reviews all of that material and signs off the controlled operation. That is the sort of governance that we put in place for controlled operations. We would envisage something of a similar nature. For this type of activity, it would probably be a higher level that we would have these operations running, and obviously professional standards would have a significant role to play in that.

In terms of a preference, we do not have a preference. The law enforcement integrity commissioner has some limited powers in respect of looking at corruption related matters. As we spoke earlier, if we are looking at the gamut from serious misconduct or misconduct through to corruption, there may be some limitations about the oversight that that would entail. That is why we do not really have a preference at this point in time, recognising some of those aspects of the law.

CHAIR: You have noted in your submission the potential role of ACLEI in integrity testing, either as having an oversight role or as potentially being involved in preparatory stages of an integrity test, or jointly or by itself conducting integrity tests. Do you have any more specific ideas on what you would like ACLEI to do?

Ms Close: No, we do not have any strong views at this point in time. We have certainly explored some of those options, but without actually sitting down and talking to each of the relevant agencies and looking at the complete framework of how we would see this operating, and doing some more of that in-depth research, we do not have a preference at this point in time.

CHAIR: If the AFP were to introduce an integrity testing regime, would you establish an integrity testing team within professional standards, or would it just be a general part of professional standards?

Ms Close: Yes, I would envisage a specific team. The management of the scenarios, the coordination, the governance that needs to be in place, would require a team to actually manage this new type of capability.

CHAIR: Would you envisage seeking legal advice prior to each scenario being carried out, like the New York Police Department consulting the DA's office before it carries out a targeted test?

Ms Close: Yes, that would certainly be a consideration that we would have.

CHAIR: I guess you already have established relationships with them?

Ms Close: We have a strong and a good relationship already via the nature of what we do with our internal investigations and more generally in our operations in the AFP. We have a strong legal team that supports and provides advice to us.

CHAIR: The suggestion from New York was that you would have to have a relationship with particular people within the prosecution office rather than with the prosecution office in general because, of course, those people also have a relationship with other police officers. This is in order to ensure that information was not going out too widely.

Ms Close: That is correct. We do that as well now, and we also have good relationships with certain people within the Attorney-General's Department and the Australian Government Solicitor's office. Again, we could work through those sorts of options to be able to have the best advice, but also bear in mind the sensitive and private nature of these types of investigations.

CHAIR: Just to return to this issue of random and targeted in which we are all very interested, the New York Police Department Internal Affairs Bureau said they could not imagine having an integrity testing regime without including the option of random testing. In fact, they said that 25 per cent of their testing is targeted and 75 per cent is random. They referred to an example in the early days of setting up their integrity testing regime that they would have the wallet being handed in a scenario. They said they have not actually used that for a number of years, but the majority of police still believe that they are carrying out those tests. They said it is very beneficial to have every police officer believing that any given scenario could be an integrity test. They were very adamant about the deterrent effect of random testing. We have also heard other evidence and in submissions about the potential impact on morale if there were to be such a random testing possibility. What is your thought on that? Do you think there would be that terrible downside?

Ms Close: There could be a downside to it with morale, but it is the same with any other new initiative in this integrity framework where we have introduced, for example, drug testing. It comes with a lot of awareness, marketing and education for the workforce to explain the reasons and what the process is, and a period of settling in time once people are aware of how this operates. If we were looking at a legislative framework, I would certainly suggest that we would not want to limit it to targeted only within the framework, but that random does offer us some other opportunities. It would then just depend on the actual scenario that we were dealing with at that particular point in time as to which option the agency is able to utilise in that circumstance.

CHAIR: So you would like to have the option of doing either?

Ms Close: I think that is the appropriate way to go if we are looking at this approach. However, as I said at the outset, in establishing such a regime, we would look at some targeted approaches first and do that analysis based on intelligence and the threat and risk at that point.

Senator WRIGHT: I have been looking at the integrity testing model table that you have provided us with. I note that there is only one of those, which is the high-cost model, which includes test authorisation. What is the distinction between test authorisation and final approval? At what point might you have potentially an independent agency or an independent viewpoint on what is being proposed, taking into account the concerns about potential entrapment? What is the difference in the design of the exercise?

Ms Sengstock: In terms of test authorisation, there might be a senior officer who is responsible for initially authorising the test on the application of less senior officers, and the final approval stage would be more likely at your higher level AP executive. The consultation with, say, the Integrity Commissioner, would probably come in between those two stages. I think as the Integrity Commissioner mentioned in his evidence, it is useful then to make sure that you are not overlapping on investigation, but also because that acts as an additional safeguard in terms of making sure you are avoiding entrapment type issues.

Senator WRIGHT: Would you envisage that that would be an additional significant cost in the process, to have that, because I do not think it is in this table?

Ms Sengstock: No. This table is sort of based on what kind of generic capabilities you would need. It does not really factor in how you would engage other agencies into it. But, certainly we could factor that in. I think the real costs come from the test development and the test execution stage, because a lot of resources have to go into actually doing a feasibility assessment, doing a risk assessment—not only operational risk but the legal risks that are involved—actually designing a robust test that will not only achieve the outcomes you are looking for but also avoid those entrapment issues.

The approval and the consultation stage is probably quite straightforward and less resource intensive. The test itself, depending on the kind of test, could involve anything from a short one-day test with some limited surveillance to a very long period of surveillance using all different sorts of teams and measures. They are the ends where the costs are. Engagement with oversight bodies is, I guess, just part of the normal practice of approval processes.

CHAIR: I want to thank our witnesses for taking the time to give evidence today. Since we are just at the beginning of our inquiry, we may well need to come back to you with further questions.

Ms Close: Certainly.

CHAIR: But thank you for your time today.

Ms Close: Thank you.

Proceedings suspended from 10:46 to 11:01

AU, Mr Ben, Assistant Director, Law Enforcement Liaison Section, Attorney-General's Department

CHIDGEY, Ms Sarah, Assistant Secretary, Criminal Law and Law Enforcement Branch, Attorney-General's Department

CHAIR: I now welcome representatives from the Attorney-General's Department. You have lodged a public submission with the committee which we have numbered as submission No. 5. Would you care to make any amendments or additions to that submission?

Ms Chidgey: No.

CHAIR: I invite you to make an opening statement, at the conclusion of which we will ask questions.

Ms Chidgey: Thank you to the committee for the opportunity to appear. I will just say a few brief words. The department considers it appropriate for agencies to identify whether there is a need to conduct targeted testing within their organisation, the manner in which those tests should be conducted, and who should be responsible for conducting them and overseeing them. In that context, we note the AFP's submission that a properly prepared integrity test requires extensive research, planning and operational delivery and that the costs need to be commensurate with the expected benefits. We note that there is currently no general legislative impediment to integrity testing, although in practice integrity testing should be conducted fairly free of inducement and be subject to adequate oversight mechanisms. We consider it possible that an integrity testing regime could be implemented under existing legislation, but depending on the specific integrity testing model to be considered, some legislative changes may need to be considered by government.

CHAIR: Just following up on that, what kinds of scenarios would you envisage would require a change in the legislation?

Ms Chidgey: I guess there is quite a wide range of things that could fit within the term 'integrity testing', focusing particularly on targeted integrity testing which might be appropriate for the use of more significant law enforcement powers like the ones we outlined in our submission—controlled operations, telecommunications interception and surveillance powers. These obviously have thresholds for the exercise of those powers at this time, both requirements for a reasonable suspicion of criminality as well as particular thresholds for maximum penalties of the offences that are covered. Depending on the particular information that the agency had, it may be that those thresholds would mean you could not, for example, at the moment use a controlled operation where there was just suspicion of misconduct and no criminal activity. I guess there is definitely a question as to whether it would ever be appropriate to approve a controlled operation which gives permission to actually commit criminal offences by law enforcement in order to investigate conduct that was below a criminal threshold itself. There would be a question about proportionality. So, the powers that we have looked at clearly set some thresholds and government may need to consider whether to adjust them, and whether that would be appropriate.

CHAIR: What is the department's position on the issue of random testing?

Ms Chidgey: We do not have a position. We would defer to agencies' views on the appropriateness of that testing, noting those obvious issues about workplace morale and other issues that random testing can create. Random testing for us in terms of the legislative powers that we have responsibility for, we consider those would be inappropriate for random testing. In a situation where you had no information to suspect an individual and you are using significant law enforcement powers like controlled operations or telecommunications interception or surveillance devices, I think it would be hard to justify the intrusion into privacy and personal liberty where it was for random testing without any suspicion of criminality.

CHAIR: So there would need to be legislation if that was to be considered?

Ms Chidgey: That is right, and some real questions as to whether that would be appropriate for government to consider.

CHAIR: Okay. Can you explain to the committee how an integrity test would have to be designed in order to avoid complaints of inducement?

Ms Chidgey: I guess the definition of inducement generally, the one used in our controlled operation provisions, is that those powers either should not be used where it would induce a person to commit an offence that they would not otherwise have intended to commit. Clearly determining when that is the case depends on all the circumstances in the particular matter. But things that would then need to be avoided in general would be

excessive temptation threats, for example, or exploitation of personal weaknesses where there was no indication that the person was going to have gone on to commit criminal activity, other than for the inducement that formed the test. I think one of the fundamental principles of integrity testing is that it should give a target an equal chance to pass or fail that test. It should not be loading the dice in favour of failure.

CHAIR: Would you consider it necessary if targeted testing was to be carried out that there be prior consultation with, say, the DPP or the Crown Solicitor's Office or the Attorney-General's Department for legal advice?

Ms Chidgey: We would say that is a judgment for the agency, and agencies like the AFP have a very substantial legal area who could assist in providing legal advice as well. Depending on the circumstance, it may be appropriate to consult the DPP who do offer advice about evidence gathering in particular circumstances if it was envisaged that a prosecution might ensue from the results of the integrity test.

Senator IAN MACDONALD: This is going back in history and, I suspect, well before you were involved with the Attorney-General's Department, but our attention has been drawn to the case of *Ridgeway v the Queen* (1995 184 CLR 19). The library briefing note on it, which is dated 1995, says, "The government has announced that it intends to introduce legislation to "ensure the AFP and other law enforcement agencies are able to effectively investigate crime and pursue criminals, including drug importers," et cetera. It says there would have to be a long debate. With respect to some of the acts you have mentioned in your submission, are they the government's response to that particular case? Can you say that, if the case came before the High Court now using the principles they adopted at the time, would the decision have been the same? It is hard to ask you to replace the minds of three or five learned High Court judges, but has the legislated law changed that might have given a different outcome to that, or would it have reinforced the outcome?"

Ms Chidgey: I can say that the current controlled operations regime that we have in the Crimes Act was the legislative response to *Ridgeway*. There were issues of inducement or entrapment but *Ridgeway* also involved law enforcement officers themselves committing criminal actions, as they do if they are allowing drugs to pass through, or they might be involved in transporting them to let a criminal act run, to see where that ends up. That involves those officers themselves committing criminal acts. As I understand it, that was the main basis in *Ridgeway* for evidence being excluded, that the officers themselves had engaged in criminal activity in gathering that evidence. The controlled operations regime gives express statutory immunity from criminal liability and civil liability for law enforcement officers who were properly approved to undertake criminal activity in accordance with a controlled operations authorisation. It was designed to address the issue in *Ridgeway*. So we would anticipate that if it was a properly approved controlled operation in accordance with the Crimes Act, the outcome would be that evidence would not be excluded.

Senator IAN MACDONALD: I notice the dictum of one of the minority judges, but with whom everyone seemed to agree on this point when he said:

In a society predicated on respect for the dignity of rights of individuals, noble ends cannot justify ignoble means ... No government in a democratic state has an unlimited right to test the virtue of its citizens. Testing of the integrity of citizens can quickly become a tool of political oppression, an instrument for creating a police state mentality.

With the controlled operations, of course, it is no longer necessarily illegal, but the outcomes are the same. Would you have any comment on that?

Ms Chidgey: Yes. In those provisions, you cannot approve a controlled operation if it would induce an individual to commit an offence they would not otherwise have committed. That exclusion from controlled operations is expressly directed at that situation, so you cannot offer someone who would never have otherwise contemplated undertaking criminal activity an opportunity that induces them to do something that they would not otherwise have done. Otherwise officers will lose their immunity from criminal liability and civil liability because the authorisation would be invalid.

Senator IAN MACDONALD: So in this case *Ridgeway* actually arranged the drug import. The offence of the police and customs was in letting it through the borders knowing that it was going through, and you are saying that under the controlled operations, that would not now be illegal to allow it through?

Ms Chidgey: That is right. I think obviously the line between inducement and a proper controlled operation would depend on all the circumstances of the case and what you knew about the target's ultimate intentions. Part of the thresholds for controlled operations is that you have to have a reasonable suspicion that an individual is likely to commit a criminal offence.

Senator IAN MACDONALD: In this case he had done the drug deal in Malaysia, and he performed that intention without inducement as I understand it.

Ms Chidgey: Yes.

Senator IAN MACDONALD: The fault was allowing it through; it was an illegal act and it was not covered by the controlled provisions in those days.

Ms Chidgey: That is right, and in that instance, the individual had organised the drug deal already and police were just involved in allowing those drugs to transit through the border so they could often identify more senior individuals and other parties to the criminal act, and that would be the type of activity that controlled operations are designed to authorise and permit.

Senator SINGH: I am interested in the Attorney-General's Department's view on the kind of reporting arrangements of various integrity testing programs that would exist and which you would see fit to be used?

Ms Chidgey: This is a broad question and the answer depends on the type of integrity testing. Our focus and expertise would be largely on the targeted end and integrity testing that might use some of existing police powers. What I can say is that there are already significant reporting regimes about the use of those powers. In considering what additional reporting might be appropriate, consideration would have to be given to the extensive reporting regimes that already exist for controlled operations and telecommunications interception, for example, to make sure that any further reporting was compatible with those arrangements. I think it is already recognised that where you use those particular powers, reporting and accountability arrangements are quite important.

Senator PARRY: Just a simple question: do you see the need for a new act of parliament rather than amendments to existing provisions, if we went ahead with integrity testing?

Ms Chidgey: Not at this point. It is a difficult question to answer in the abstract, because integrity testing can encompass such a wide range of circumstances, from random through to targeted, misconduct through to criminality. Particularly in terms of targeted integrity testing where there is a suspicion of criminality, we think there are sets of powers that deal with that. We do not see a need for legislation unless there is a requirement to make lawful activity that would otherwise be unlawful. There may be a need to reconsider some of the thresholds for those powers, but we would not want to see them replicated again in an integrity testing specific act.

Senator CAMERON: Would you be able to provide us a brief on the development of the law leading up to *Ridgeway v the Queen* and whether there have been any developments since *Ridgeway v the Queen*?

Ms Chidgey: As I said before, the controlled operations regime is the development that addresses *Ridgeway v the Queen*.

Senator CAMERON: That is fine, but I am asking if there have been any legal challenges to that aspect of the law? Have there been any cases since then?

Ms Chidgey: No, there have been no significant cases that have challenged the use of controlled operations.

Senator CAMERON: Controlled operations provides indemnity for a police officer conducting an illegal act, is that correct?

Ms Chidgey: That is correct, immunity from criminal liability and civil liability.

Senator CAMERON: Are you aware of the US legislation about the unwary innocent?

Ms Chidgey: No.

Senator CAMERON: Could you have a look at that and gives us the Attorney-General's Department's view on why we do not have protection in our law for unwary innocents?

Ms Chidgey: I guess I would say that we do. As I explained before, the controlled operations provisions do not permit someone who would not otherwise have committed an offence to be induced to commit that offence. There is also a provision in the Evidence Act that gives a court discretion to exclude improperly obtained evidence which may include evidence obtained through inducement or entrapment.

Senator CAMERON: Does that mean you make value judgments as distinct from legal judgments?

Ms Chidgey: No, they would very much be legal judgments, and evidence could be thrown out by a court if the court determined that someone had been induced to commit an offence they would not otherwise have intended to commit, and that would be judged on the facts before the court.

Senator CAMERON: I suppose if there were some young kid that is caught up innocently in an operation that you are conducting that means there are half a dozen iPads lying around, and a kid goes, 'I'll have one of them', where does that leave that person?

Ms Chidgey: For the use of the powers I am talking about, they need to be approved in advance, so you need to approve the entire operation.

Senator CAMERON: I am not asking about the approval; I am asking about an unwary innocent coming along and lifting an iPad that was there to test the integrity of a police officer or something. What happens then?

Ms Chidgey: In the ordinary circumstances, if someone takes goods that do not belong to them, that constitutes theft.

Senator CAMERON: Even though they would not have done it if your sting operation was not in place? They would not have had the opportunity to do that. That is the basis of the law overseas that stops this happening.

Ms Chidgey: Evidence can be excluded if it is obtained through inducement, so if there was reason to believe that that individual had been particularly induced to commit an offence that they would not otherwise have committed, then a court would have a discretion in all the circumstances to exclude that evidence. They could then be prosecuted for theft, but some of that evidence may be excluded and the prosecution could fail, depending on the circumstances of the particular case.

Senator CAMERON: I am not saying it is right for somebody to pick up an iPad and walk away with it, but given what has happened in London, it seems to me that there are plenty of kids who will do that sort of thing. If there is an opportunity for that type of behaviour, but that opportunity is only there as a result of a Federal Police or a Crime Commission sting, what is the legal situation for that individual? In some jurisdictions you would not be able to indict because that opportunity would not have been there other than for the police sting.

Ms Chidgey: I think in all circumstances, the prosecution could be commenced, although all DPPs, including the Commonwealth Director of Public Prosecutions, are subject to a prosecution policy that also includes a test of public interest as well as reasonable prospects of success. The key consideration would be the provision in the Evidence Act, which is reflected in many of the state evidence acts as well, where a court has discretion to exclude evidence if it was obtained through inducement. As to whether the particular circumstances meant that that theft was brought about through inducement, that would require a court to give consideration to those particular facts.

Senator CAMERON: Does your department monitor developments in this area around the world, like what is best practice, what is the emerging and developing law?

Ms Chidgey: In integrity testing?

Senator CAMERON: Yes?

Ms Chidgey: No.

Senator CAMERON: Why not?

Ms Chidgey: We will give consideration to it when the issue arises, but as I mentioned in my opening statement, we consider a matter for Commonwealth law enforcement agencies to consider first whether there would be sufficient benefit from integrity testing, and what type of integrity testing might be appropriate for their agency in the particular circumstances to meet an identified need. It would be then, if they asked us to, that we could give consideration to particular legislation that might be required to meet the desired type of integrity testing that they wished to implement.

Senator CAMERON: That lost me half-way through, but anyway, has the issue arisen now?

Ms Chidgey: Yes, we gave you a submission, so we obviously have considered it.

Senator CAMERON: Yes, you gave us a submission, but I am asking about a specific area to inform the committee. Would it be possible for you, so we do not have to depend on Wikipedia, to provide us an overview of the law in relation to this in comparative jurisdictions overseas?

Ms Chidgey: Yes, we can look at that.

Senator CAMERON: Is that yes, or you will look at it; I am not sure?

Ms Chidgey: We will look to see what overseas legislation there is and provide some advice to the committee.

Senator CAMERON: That is good, thanks.

Senator WRIGHT: I found your definition of an integrity test providing an equal chance for someone to pass or fail to be quite helpful for me in formulating what the purpose of the test is and what pitfalls to try to avoid. You said not to have a loaded die. I have been grappling with what it means to have inducement; what does this mean? I started to formulate a view that perhaps it is a difference between active encouragement as opposed to creating an opportunity where someone can pass or fail in that situation, yet I heard you use the word 'opportunity' a bit earlier on. I have been thinking of the simple scenario of leaving a wallet on a table in a shared kitchen facility at a workplace which creates an opportunity, but it does not induce, it does not actively encourage anyone

to take the wallet knowing it is not theirs. I would have taken the view that that would not be inducement; that would just be creating a situation where someone could actually respond one way or the other, and it would be a way of testing their integrity. Would you comment on that?

Ms Chidgey: I think that is likely to be correct. The examples of inducement we have are excessive temptation, exploitation of personal weaknesses or threats, which suggest something more than just sort of open-ended opportunity for someone to choose to commit a criminal offence themselves. I would say that in the circumstances of some of the powers that they are looking at, you would need to go further than that before you could use those, because you need reasonable suspicion that someone intended some particular criminality.

Senator WRIGHT: Are you referring specifically to the controlled operations?

Ms Chidgey: Yes, controlled operations and telecommunication interception. If you are going to accompany any kind of testing with the use of those powers, that might sort of shift what you would need as a threshold.

Senator WRIGHT: That is right. I am actually thinking more, I suppose, about the distinction between perhaps the potential for random as opposed to targeted integrity testing, in which case if it was totally random, you might not even have a suspicion that there has been some kind of illegal activity or theft going on in a workplace; you might just want to test. So, that is something obviously the committee needs to think about. Then I start to think is the phrase 'excessive temptation' actually some kind of soliciting or encouragement or is it just that it would be an extremely large amount of money that was sitting on the table? Would that then be excessive temptation in the sense that it would be very hard for someone perhaps to resist that, whereas they may be able to resist taking a \$5 note, or maybe it is the converse. I guess I am just fleshing out what some of the things are that we would have to be considering about what inducement means.

Ms Chidgey: Yes, I agree. The line between what is appropriate and what constitutes inducement in some ways is not necessarily easy to identify in the abstract, because in particular cases it involves looking at all the circumstances to determine whether someone was induced.

Senator WRIGHT: So it has to be carefully thought through, and I suppose that is another reason I am of the view perhaps that at some point, if there is going to be some kind of integrity test set up, input from different perspectives probably is useful in working out whether it is actually ethical or whether it does amount to inducement and entrapment perhaps in an unfair way, because these are quite difficult distinctions to make and to define?

Ms Chidgey: Yes.

Senator WRIGHT: I was just going to pick up on what Senator Cameron was raising. It seemed to me that the scenario that he was concerned about was creating an opportunity that might tempt, for instance, the young kid with the iPads. I am thinking the purpose of the kind of integrity testing that we are considering is to target people who are actually working, not young kids on the street but in fact people who are working within trusted organisations where it is of great significance that their integrity is unimpeachable. I can see that someone else potentially could be caught up in that test, an innocent or someone whom the test is not designed to catch could be caught, and that would then raise issues about what legitimacy there was to any prosecution that occurred to them. That got me thinking that if we were to end up having legislation which allowed for integrity testing of people in certain agencies, do you think it would be an inevitable consequence that that would actually change the common law or the sense of what is appropriate in terms of evidence that is obtained by those sorts of scenarios? Or, would it be possible perhaps, if the definition of what is acceptable is to be expanded as opposed to perhaps what the High Court found, to confine that to particular types of tests that occur in particular types of situations? Do you follow what I am asking?

Ms Chidgey: Yes. The situation at the moment is that there is no general impediment to integrity testing. The department's view is that you only legislate where there is a need to make something lawful or change the law. In that sense we would not necessarily see a need for general legislation on integrity testing. Powers like controlled operations are specifically designed to deal with those situations where it would involve officers in the commission of criminal offences. If there is no illegality occurring on the part of agency officers who were organising it, it is not clear to us that there would in fact be a need for legislation, unless you wanted to set up a particular mandatory oversight or reporting regime or something like that. As we mentioned before, there is a question about whether thresholds for those powers would be changed. That example of leaving a wallet or some money on a table does not require legislation to enable that to be done. Obviously it would be appropriate for agencies to have very clear guidelines on how they conducted their integrity testing, but legislation is not necessary.

Senator WRIGHT: I might be wrong, but I had gained the impression that the agencies felt perhaps something clearer than guidelines might have been useful given the decisions in Ridgeway.

Ms Chidgey: The controlled operations are there to deal with Ridgeway. My understanding is that the agencies had questioned the threshold, which is reasonable grounds to suspect an offence has been or is likely to be committed, and that offence has to be an offence that carries a maximum penalty of imprisonment of at least three years. So, there is a question about that threshold. The department's view is that if you are going to conduct an integrity test that involves the officers who are setting up the test engaging in criminal activity or incurring civil liability, the controlled operations regime is the appropriate way to do that. A lot of thought has been put into the authorisation arrangements and thresholds and safeguards in that regime. We think it would be more appropriate to consider whether some adjustments needed to be made to that regime in those circumstances. Leaving \$20 or a wallet on a table does not require the use of a controlled operation, and does not require legislation.

CHAIR: Just to follow up on that, what about if it is being videotaped covertly?

Ms Chidgey: It depends on the circumstances. Generally speaking we have surveillance powers because of trespass issues. Some states, like New South Wales, have workplace surveillance laws that affect the legality of certain actions. In general, the owner or occupier of a building has the ability to put cameras and other things in that building without needing further legislative approval. It is perfectly acceptable to put a camera in a public place. It depends on the circumstances. In many circumstances, if an agency was conducting a test in the workplace, no, they probably would not need further legislative approval. If they were going to put a camera in a person's home or some other private building, then yes, because they would need the authorisation to trespass to go in and put that camera or a recording device there.

Senator WRIGHT: I do not know if you have had the opportunity to read the ACLEI submission, but it actually states on page 8 that:

Some integrity testing scenarios could presently be conducted under present legislation, and that other tests could be constructed that would not require legislation at all.

I gave a fairly simple example of the wallet on the table just to tease out the idea of opportunity versus what I would consider to be more active encouragement. The ACLEI submission states:

However, it may be that fairness issues are best addressed in legislation to put jurisdictional issues, powers and accountability arrangements beyond doubt.

Because of perhaps the ambiguity or the concerns that were raised by the High Court in Ridgeway, and because it is a grey area in some ways as to what is inducement and what is not, I gained the impression that they would prefer clarity on that, perhaps just for certain scenarios that do not meet the requirements for controlled operations, for which there is not the degree of likelihood or certainty about a criminal offence having been committed.

Ms Chidgey: I am not sure exactly what sits behind that. As I mentioned, if you wanted a regime where there were mandatory requirements for reporting to parliament or producing annual reports, you would need to legislate to make that requirement mandatory. That would be one example of where you might want legislation. In other ways, we think controlled operations and other powers are quite clear. We think the existing test is already there for what is inducement, and that is quite appropriate. Other issues we think you can equally well address through clear agency guidance that could be made public and we see no need for that to be put in a legislative form unless legislation is actually required.

CHAIR: Further following up on the issue of intrusive information gathering, with respect to assumed identities, is that where you use an identity for an official purpose or an undercover person as part of an integrity test pretends to be a member of the public and goes into a police station and hands in the found wallet? So it is the testing of the police officers in that station to see whether they carry out their procedures properly. Would that require legislation to do that, or could an undercover police officer just walk into a police station and pretend to be a member of the public?

Ms Chidgey: There is an assumed identities regime, but putting that to one side for the moment, there would be nothing stopping a police officer or, indeed, any individual just going in and saying, 'I am Joe Blow and I am handing in a wallet.' The particular issues arise, and the issues that the assumed identities regime are intended to address, are where an officer—and it covers both intelligence agencies and law enforcement agencies, and is probably a broader power in terms of the threshold to use it because it can be used just for intelligence gathering rather than where there is suspicion of specific criminality. That regime is designed to enable officers to have access to official identification documents, if they need to get a birth certificate or a passport in a false name.

There are compatible regimes at Commonwealth and state and territory levels where we assist each other with that identification documentation, but just giving a name that is not your name would not require the use of that regime. It is designed to enable someone to have all the indicia of an identity and gather documents in that name.

CHAIR: The Police Federation of Australia has made a submission expressing concern about the impact of any Commonwealth integrity testing scheme on state and territory police officers, in particular, state and territory police officers who may be seconded to or act as a special member of the Australian Federal Police or where a state or territory police officer is implicated as a direct result of integrity testing of an AFP officer or a Commonwealth official. The federation has suggested there needs to be adequate regulation guidelines on these matters.

Ms Chidgey: I think those issues would need to be considered. My view is that it would be quite possible to address those by memoranda of understanding or other arrangements between agencies.

Senator WRIGHT: Just following up again, I would also draw your attention to paragraph 26 of the Australian Federal Police submission where they make the case on page 7 that they think a legislative framework for integrity testing is desirable and acknowledge that it may be possible to have a regime without a legislative basis, but state:

Endorsement of an integrity testing regime by the Parliament, through legislation, would enhance public confidence that integrity testing would be carried out in a consistent, accountable and transparent manner. A legislative framework for integrity testing would be consistent with the way in which invasive measures, such as covert policing powers and the drug and alcohol testing of AFP appointees, is dealt with.

They further state:

In the absence of a legislative basis for integrity testing, the regime could be open to individual legal challenges about the legality of tests that are conducted.

Again I would like your views about that?

Ms Chidgey: I think it is obviously a matter for government to consider. My view would still be the same. The department's clearer laws principles that are published on our website quite clearly say that we work to the principle that you legislate only where legislation is needed. Issues about public confidence could be dealt with in a set of publicly published guidelines that set out the requirements and approach that an agency is taking to integrity testing. I do not think that legislation is the only way to provide clear guidance and public confidence. That said, mandatory reporting and accountability requirements are other things where, if government decided it wanted to set up a particular mandatory framework around some of those things, legislation may be appropriate in those circumstances.

Mr ZAPPIA: I want to go back to this issue of excessive inducement. First, can you tell me whether the term 'excessive inducement' arose because of a court ruling, or was it already in the legislation, and therefore it was part of the parliamentary process in creating the law in the first place?

Ms Chidgey: Legislation does not use the term 'excessive inducement'; just 'inducement' is enough. I think the Evidence Act provisions had been in force before Ridgeway and probably reflected at common law as well in terms of a court's power to exclude evidence that was obtained through inducement. That has been a longstanding principle. Since the High Court decision in Ridgeway, the government has enacted legislation to specifically authorise some of the circumstances that caused difficulties in the Ridgeway situation. As I mentioned, that legislation regime has a specific test to exclude the use of controlled operations where a person would be induced to commit an offence they would not otherwise have committed.

Mr ZAPPIA: You said earlier that the existing test is adequate. In saying that, are you basing your comments on recent court determinations in respect of the term 'inducement'?

Ms Chidgey: The controlled operations legislation has been in place and used I think since 1996. It has been used in a significant number of criminal investigations since that time without that being an issue. That test has been in the Commonwealth controlled operations legislation since 1996.

Mr ZAPPIA: Lastly, can you tell me in any of those examples or cases that you are aware of whether the use of inducement was found to be inappropriate by the courts? I am not referring to the Ridgeway case, because I do not quite see that that was the only issue there.

Ms Chidgey: Not that I am aware of, but we would need to see whether there have been any cases where inducement was an issue in terms of the use of controlled operations.

CHAIR: I would like to thank the representatives from the Attorney-General's Department for taking the time to give evidence today.

Ms Chidgey: Thank you.

BAILEY, Ms Jane, Executive Director, People, Business Support and Stakeholder Relations, Australian Crime Commission

GRACE, Mr Peter, Manager, Integrity and Security, Australian Crime Commission

SCHEETZ, Ms Carolyn, National Manager, People, Standards and Integrity

[11.43]

CHAIR: I welcome representatives from the Australian Crime Commission. You have lodged a public submission with the committee which we have numbered as submission No. 11. Would you like to make any amendments or additions to that submission?

Ms Bailey: No thank you, Madam Chair.

CHAIR: I invite you to make an opening statement after which the committee will ask questions.

Ms Bailey: Thank you. I would just like to thank the committee for the opportunity. Mr Lawler passes on his apologies. He would have been here today, but he had a prior engagement in Victoria. We submitted our submission to you on 17 August. I guess our position is that we are a rather unique agency, combining public service and law enforcement in the one agency in the fight against serious and organised crime.

Our focus on integrity has always been across the broad spectrum of our employees and staff working with us. We think we have a robust integrity regime in place but we recognise the opportunities and threats and risks that come from the world we work in. We are always interested in understanding about how there is a better way to ensure integrity in our organisation and to take forward mitigation strategies around the risks that we see emerging.

CHAIR: Have you had the opportunity to gauge whether staff members of the ACC would be supportive of a move towards integrity testing?

Ms Bailey: We talk about integrity testing in our annual employee survey and get feedback from staff about how they feel about the integrity and their confidence that they feel in working for the agency. We noticed this time in our staff survey there is a particular increase in people feeling that working for the ACC was a particularly good thing, and that they liked it, they appreciated it, and they respected the agency. I think that is a strong indicator. We have quite an active integrity regime where we engage our staff constantly in it. We have a CEO who has a very direct view about integrity and conveying that to the staff on most occasions. The CEO actually put our submission out to the staff last week and said that we were appearing before the committee, and that this was our position. The feedback has not been direct, but I think I could speak for the staff in saying that, with the value they place on working for the ACC and the work we do, they would feel particularly betrayed by any lapse in integrity in our agency at a personal level. I think one of our best protections for our agency against failures of integrity is the personal commitment our staff have to that agency and the work we do. But, we have not polled them specifically on that yet.

CHAIR: I note that your agency supports the introduction of a targeted integrity testing for ACC. Have you formed a specific belief that random integrity testing would not be appropriate, or just that you have only really considered the targeted testing?

Ms Bailey: As I said, we would always be interested in better ways to ensure integrity, and we recognise that we work in a risky environment, that we ask our people to be particularly opportunistic and risk taking in their work. To do the work we do requires that. I would never rule anything out. In looking at what I say about the agency and what we as an executive see, and what the staff tell us, there is a high level of commitment to the purpose, which is to disrupt serious and organised crime. Therefore, I think the idea that you could randomly test people may have some appeal, but I think actually for us the issue is how we better understand if there is any particular issue or person in the agency who has, through human frailty or corruption, damaged the agency and its reputation by their actions. While I would not rule it out, I just think it is probably more suitable to the size of our agency to view it for the targeted lens initially.

CHAIR: Given that misconduct could be a precursor to corruption, would you support testing across a range of behaviours like misconduct through to serious corruption?

Ms Bailey: I think we already have a number of tools, being an APS agency and having the dismissal powers now for the CEO. Our approach usually is if we identify misconduct, to understand what are the facts of the matter and what are the rights of reply or basis of the allegations and are they true or otherwise. If there is misconduct, we have a range of sanctions under the Public Service Act that we would apply. That could go from anything from a reprimand to a fine to termination of their employment. Misconduct in those areas can be dealt with, and we have a very significant focus on doing that. I think for us a targeted regime in terms of integrity testing would be where we had formed a belief that a person who worked for us had become a target of an investigation. So they had actually crossed the line into being part of the investigation that we were conducting. I would think targeted would be in that sense where we came to form a view that this was not misconduct but actually their activities had now taken them into the sphere of potentially being a target in an investigation by us or another law enforcement agency. That is where I would see the targeted integrity testing being of value, should that ever happen in our agency.

Mr HAYES: Just following on from that, I gather that if the person becomes a target of an ongoing investigation subject to possible criminal charges that would go beyond three years, you could actually use your controlled powers?

Ms Bailey: The controlled operations powers, yes.

Mr HAYES: I suppose your organisation probably enjoys significant powers, amongst law enforcement agencies generally, as do your officers, through controlled operations and through being a coercive jurisdiction. Can you see that there is a move for the public to at least have the surety that the ACC and its officers are above reproach?

Ms Bailey: I think it would be fundamental to our continued existence that people would have confidence in us. I think we have quite a strong regime. Obviously we have our legislative requirements. We have a board, as you know, who determines where we can use our coercive powers, and I think that is quite an important thing for the public to understand. It is not just at our whim; we have to meet the board's threshold. We have ACLEI, from their integrity position; we have our parliamentary joint committee; we have the intergovernmental committee that oversees what we do and has rights of veto and others on our determinations. We have the Ombudsman. We report at least quarterly or half-yearly on our telephone interceptions, listening devices, surveillance devices and controlled operations. I agree there is probably almost never too much oversight, but I guess my point would be: if that is not enough to give people confidence and having a good record in that, and people and the government think there is more we could do, certainly we would consider it. I do think we have quite an extensive framework around how we exercise our exceptional powers.

Mr HAYES: Now that the CEO of the organisation shares similar powers as the police commissioners of state and territory police forces in terms of commissioner's confidence provisions and the right of dismissal, that also bolsters that power, I imagine?

Ms Bailey: Absolutely. That was a specific dilemma that we faced. Necessarily, if you terminate people's employment through the industrial lens, which is true and correct, people at the review point in that can sometimes form a view about the seriousness of people's conduct because they might not always see the risk through the same lens as we do of serious and organised crime. If the CEO has lost confidence and they are dismissed after a code of conduct investigation, the process for review would be different from the process for the review for other public servants. It is just to identify that, unfortunately in our world, I suppose the potential for someone to more seriously compromise Australia is higher than many other public servants.

Mr HAYES: Therefore the CEO can actually dismiss a person for lack of confidence in that respect. What about with respect to personnel who are seconded from state and territory police forces to the Australian Crime Commission? If he had similar concerns there, presumably he cannot exercise a dismissal power, but does he terminate their secondment?

Ms Bailey: The arrangements we have with the police commissioners on our board is that before any police officer is seconded to the ACC, the commissioner warrants their integrity. If an incident occurs while they are with the ACC, the position is that they are returned and dealt with by their home force professional standards integrity regime.

Mr HAYES: In terms of a concern by the CEO and he chose to use the targeted integrity testing, would that apply also to seconded police in the temporary employ of the ACC?

Ms Bailey: There is some degree of complexity, so I would want to be able to support this with further information on notice. The definition of who is a member of staff of the ACC is quite complex in our act, so it contemplates public servants as CEO examiners, but people who participate in our determinations also become

members of staff of the ACC. There is a little bit of individual case by case decision making as to whether they are covered by our act. I think with seconded police who are clearly seconded under a particular section, there is an arrangement for what happens in an integrity regime. I would be speculating, but I would have thought if it was a serious enough issue, it would be a discussion between the CEO and the police commissioner of the jurisdiction, and the decision would be made as to which was the appropriate way to deal with it. I suppose if it was, heaven forbid, a composite view of ACC staff and a seconded officer involved in some allegations, and there was a decision about any integrity test, I imagine that might have to be held jointly by the CEO and the commissioner to understand how that integrity test would play out. I think it would have to be a decision in terms of the coverage and the case by case circumstances. I would not exclude them, but I think it would have to be negotiated.

Mr HAYES: So that would be negotiated on the basis of the gravity of suspicion against a person?

Ms Bailey: Yes. I imagine in most cases if there was a reasonable suspicion that a seconded police officer was in some way involved in criminal activity, the issue would be that that would be a conversation between the CEO and their commissioner of police, and that person would be returned to their home force and dealt with by their commissioner, because they are still exercising their state police powers when they are seconded to us. I think that is what the agreement would come to. The only area we would have to talk about on a case by case basis would be if there was a composite of ACC staff and seconded police, as I said, and how some integrity testing was to be managed to get the most effective outcome.

Mr HAYES: I just wonder about the efficacy of that with the CEO of the ACC making a unilateral decision to source out a commissioner of a state or territory police force to discuss a concern about what could be seen to be technically a seconded employee of the ACC.

Ms Bailey: I guess there is a degree of nuance that would have to be undertaken. The simple fact now is that if an allegation is made about anybody who is working with us, or in fact just a member of another law enforcement agency, and that information comes to the Crime Commission's attention, we would disseminate that to the police commissioner involved. We do not form a view about whether that would be true or not, but in the interests of all of us maintaining the integrity of our agencies, that is standard procedure from us.

Mr HAYES: I note from your submission that you are attracted to targeted as opposed to random integrity testing, and you would also see that where it was exercised by the ACC, it be done in cooperation or overseen by the ACLEI commissioner himself?

Ms Bailey: That is right. I think the ACLEI commissioner and the commission have been very useful for us in terms of driving forward the integrity regime in the ACC. I think having that independent integrity commissioner there with the powers that he has, working with us but having the power to refer issues to them, works very well. I think it is always useful to have that external oversight. He is the Integrity Commissioner. He may refer it back to us and suggest we do it, but I would certainly see that the commissioner would have the first view about the issue we are dealing with.

Mr HAYES: I suppose from the ACC's point of view, it is probably considered a no-brainer; you have the ability to conduct controlled operations with authority on designated targets, and this ensures that you also have the ability to apply similar sorts of techniques to investigating internal issues of corruption?

Ms Bailey: I think it would be about being significant, in terms of what Ms Chidgey said about meeting the threshold of controlled operations certificates. There is quite a high threshold about how we can undertake those activities. This suspicion would have to be of the same level. What I am saying, colloquially, is you now had reason to suspect a member of your staff had become a target of your investigation or another law enforcement jurisdiction's investigation. That is how I see the targeted one. Below that, I think you would deal with it through the tools we have now, such as the dismissal powers, the code of conduct investigation, or the return of allegations to state police forces, but my previous comments relate to if you formed a view that you had a serious integrity breach in your agency.

Mr HAYES: In terms of your existing regimes applying through the ACC, do you get to look at or assess any of your employees' financial status?

Ms Bailey: Yes. In the pre-screening of our employees, we collect financial information, and we make a view just about whether there are any risks for us. Our approach is about risk mitigation; understanding our risks and what we are doing to mitigate them. We do pre-employment screening before people apply for their security clearance as a way of understanding any connections with criminals that we might want to deal with in the first instance, or just to understand ourselves about how much we know about our people and whether there are any

risks with their lifestyle, finances or associations that we just need to be aware of. We do not judge people on those things. They have an obligation to update us about changes in their affairs.

Mr HAYES: That is at the point of engagement?

Ms Bailey: That is the point of engagement. Now that security clearance is moved to the defence agency, we do that as a pre-employment screening process.

Mr HAYES: I am sure ICAC did the same thing, but some of those things change, I guess.

Ms Bailey: Yes, and I guess it is ever vigilant. We now employ an organisational psychologist to help us with the pre-employment screening of our staff. Certainly in our agency you have to be aware that there would be people trying to infiltrate us or people whose characteristics are not an ideal fit for our world. We are building sort of a front door where we can satisfy ourselves. Then I think it is really about managing our staff once they are in our agency in a lifetime sense about an open environment to disclose changes, to speak of their associations or to reveal things that change in their life. We encourage people not to tolerate failures of standards or integrity. The best defence that I see for our agency is the 617 people who work there today and if one of them was corrupt, that would be a terrible blow to the 616 people in our agency. We have all the rules and policies, but in the end we have to ask our people to live to the highest standards and encourage that open disclosure and that environment where people feel they can.

Mr HAYES: Thank you.

Senator PARRY: The commissioner wrote on page 3 at item 18, in the first dot point, that if any integrity testing was going to take place, it would be in consultation. If ACLEI decided to conduct an investigation, it would take place with ACC's knowledge and involvement. What happens if the suspicion relates to senior management?

Ms Bailey: I would probably have to leave the CEO out of this, but even then, I could imagine a way around, but let me just assume I am leaving the CEO out of this. I think that could be managed. We deal with very sensitive internal matters now, and they are quarantined and cut off from people. The number of people who know about most of the issues in this agency would be sitting at this table. So, quarantining them I think is doable. You can quarantine it in our agency, especially in our world. While we all take responsibility for the standards and the behaviour of our people, we also do not cross the lines. If I am dealing with integrity issues, that is not a matter that is discussed other than with the CEO and myself generally in the agency. I imagine if it was about me, he would have that conversation. I think you can quarantine it. We have a culture already of having a small group and maintaining a lot of privacy. Because of our staff, the whole spectrum from allegations made that are unfounded to the serious corruption issues are things that require respect and privacy to deal with them appropriately.

Senator PARRY: I accept what you say. But, if we are talking about an integrity test that ACLEI decides, and if ACLEI becomes the lead agency to do this, and that is how Mr Lawler has indicated, and he has 'I recommend', so that is a recommendation that he strongly has, would ACC accept the fact that there may be an occasion where ACLEI might want to conduct an integrity test without the knowledge of ACC management?

Ms Bailey: Yes. I think they have that jurisdiction, and they would do it. They would make that decision based on the seriousness and the reach of the allegation. I expect that is exactly what they would do. I understand that there have been cases in the past referred to ACLEI, although not by us, and that is a matter for them to investigate and take action on. If we identified the integrity issue and forwarded it to ACLEI, the general process is that we then continue to have a dialogue about what will happen.

Senator PARRY: That would make sense, if it is internally generated.

Ms Bailey: Yes, but again, they do not have to report it. If it was referred from another third party, we do not get told about that.

Senator PARRY: Just moving to a different area, if integrity testing were to become a part of the day to day life of ACC as well as other agencies, information would have to be one of your biggest areas that you would have to guard against. Have you thought about or discussed internally some of the models or integrity tests that you may wish to conduct if it did happen?

Ms Bailey: We have had some preliminary discussions. We have not really discussed it through an integrity lens. We have discussed it through a risk lens. We recognise that probably the most valuable commodity we hold is the intelligence we hold about serious and organised crime. In our risk framework and in our risk committee at the executive level, we talk a lot about that. One of our constant high risks is how we maintain the integrity of our information, both from infiltration from outside, accidental disclosure or, in the worst of cases, deliberate

disclosure of information. We talk about it through the risk lens. In terms of integrity testing, we have covered that issue, but not specifically through it. We are now ramping up our whole view of how do we more holistically audit the activities across the agency in relation to the data that we hold, where it goes, how often it is accessed and those sorts of things. In the past we have had sort of more auditing processes, but we are considering both from a security perspective and from an integrity perspective and now, I guess, more holistic auditing across our data holdings.

Senator PARRY: There has been no role play or discussion as to any fixed type of integrity test?

Ms Bailey: No, not at this point.

Senator PARRY: I am curious to know how you would get around information technology in particular and information without using any form of entrapment. You would have to be an outsider making contact with an insider on the pretext of and offering I suppose some form of inducement for information to be passed. This is one of the more difficult areas that I am trying to work out as to how you would do that form of integrity testing around your particular agency.

Ms Bailey: I think that is true. I think also because our act contains such strict provisions about the secrecy provisions, everybody who works for us understands that our business is not business you discuss anywhere outside the ACC. There is already a high expectation because of the secrecy provisions in our act that the custodianship of the information is highly guarded. There is that expectation that you are not talking about your work anywhere outside, and you do not respond to anyone asking for information unless it is through the process. Our legal team describes our act as the doors are shut, and if you want to open the door to let information out of this agency, there is a process. The dissemination process is quite detailed. It has to be approved by an SES officer. There is quite a detailed process to protect the secrecy of our information and to open the door. So, allowing for failures of common sense or of human frailty, mostly I am satisfied that there are checks and balances in place. But you are right; cyber does present a challenge to us in terms of all that it brings with it.

Senator PARRY: I will leave it there, with the added question: if you do think of a way or an integrity test that we may be interested in hearing or understanding, could you provide that on notice?

Ms Bailey: We will indeed.

Senator PARRY: Thank you.

Senator SINGH: In the ACC's report, you refer to ACLEI's 2009 *Resistance to corruption* report and you outlined quite a proactive integrity framework that ACC already has in place. How do you see integrity testing fitting with that existing framework? Would any of that framework drop off as a result of having integrity testing? Is the view of ACC that targeted integrity testing is the way to go, as opposed to random and targeting, a result of the integrity framework already having a number of random audit components in it? If not, how do you come to this decision that random integrity testing is not necessary? We have become aware that there are other jurisdictions that see the value of both random and targeted integrity testing. I am interested to know how integrity testing fits with that framework, and whether some of your framework would not remain, and how you came to the decision of not wanting to include random integrity testing?

Ms Bailey: I think our view of integrity testing is the whole framework. We are about the integrity of our people, our systems, and our processes. This framework that we have put in place already is designed to put the right boundaries around the way our people work and the way we exchange information and the custodianship we have of that information. To do that properly, you have to have some random elements, such as the SES random audits of police diaries or car vehicle logs. We are not saying a random approach is not useful, but if asked in the construct of what we do already, and for the size of our agency, I think to do more than this in a random way, it would have to be quite a significant step up. Obviously you could not do random controlled operations. That would be thoroughly against the law. If this is not enough—and I am always open to the 'this is not enough'—and you had someone who came to your attention as being potentially corrupt, the targeted integrity testing I think is the tool that you would use to determine their criminality.

This is about understanding that everybody who works in the organisation understands there is oversight and audit, both random and planned, and that we take steps in our agency, for example, not holding exhibits of drugs or weapons on our premises, and only very minor amounts of cash. We do not hold things on our premises that could be at risk. We try to minimise risk. While there is always a place for some random auditing, my view is to have a whole random integrity regime—and maybe I am just imagining that to be bigger than what you are, so that might be a disconnect—would be quite a big thing to do on an agency of 600 people. I think this is quite good at working out where our pressure points and risks are. I see the integrity testing that is being contemplated here as just dealing with those real outlier risks where people become targets of an investigation, as I said, where they

have crossed the line and are now conducting criminal activities themselves. There may be a more general view of integrity testing on top of this, but I see that as why I think targeted as opposed to random.

Senator SINGH: Do I understand your answer to mean that there is a resourcing issue but there is also an extensive framework in place already that is creating that culture of random audits?

Ms Bailey: And planned, both planned and random audits.

Senator SINGH: To create a culture of good?

Ms Bailey: We try to focus on seeing the threats and the risks in our world, both in the world we deal with and in our agency. We look at what is the risk; what is the likelihood of this happening, and what might be the things we do about it? Through the lens of the risk of compromise of our integrity, that is a very high risk if it happened to the agency, but do we think these strategies are demonstrating that we have enough controls in place? My view is at this point, yes, but I can never rule out human frailty or corruption. That would be where I think, if you had something else to add to this, it would be a targeted integrity testing capacity.

Senator SINGH: Targeted integrity testing would therefore be a fairly minimal part of your overall integrity framework?

Ms Bailey: My take on that, as I said, is when we had enough evidence to suggest that a staff member was now involved in criminal activities, probably in an operation that we and one of our partners were doing, and we needed to prove that criminality of what they were doing.

CHAIR: Just to follow up on that, if you had a suspicion about someone but not enough under the current laws in order to carry out a controlled operation, would you see that as a situation in which you would like to be able to do targeted testing?

Ms Bailey: In the first instance, if we had that suspicion, we would refer that to the Integrity Commissioner. The act requires if we suspect there is significant corruption or a breach of integrity, we would have to refer it to the ACLEI commissioner, and then he has a range of tools he could use to investigate that matter for us. If he came back and said—which I do not think he would—that he could not investigate that, and we perceived the risk to our agency to be too significant, that is the time I could see that we would want to work with them on an integrity testing regime. In the first instance, if I had that suspicion about a person, that would definitely go to the Integrity Commissioner as 'this appears to be a problem', and then they would take it from there. Mostly, if it was a serious allegation, they would deal with it. If it was a lesser threshold allegation, they do sometimes return them to us saying, 'You investigate it and tell us what you find and we will decide what to do.' Nothing would change in that, except that they might want to say to us, 'We want you to run this integrity test using controlled operations or telephone interception for this purpose' and I guess that is where you would want to be able to do it if they asked you to do it in that case.

Senator WRIGHT: I think you were in the room and you probably heard the exchange with the Attorney-General's Department representative about the need for additional legislation?

Ms Bailey: Yes.

Senator WRIGHT: I see that the submission from the ACC indicates some scenarios where the view is that the existing law would not cover what was needed. What is your view about that?

Ms Bailey: I think we made two points. We do not have a unilateral right to investigate any sort of crime. We are constrained by what our board authorises us to deal with. If it did not fall within the remit of those areas, we would not be able to exercise our powers at all. Secondly, we just comment from our experience in litigation that the conduct of investigators can be quite a contentious thing in trying to pursue a case. You just need to be sure that you were designing integrity tests in a way that would stand up to the rightful scrutiny of the courts. Beyond that, the law is really a matter for Attorney-General's, and that is fine, but we just comment that you would have to be very mindful of that because of that. So, the two things that operate for us are: if it is not a board approved area of involvement, we cannot do it; and secondly, a controlled operation is an important tool in law enforcement's ability to deal with serious and organised crime. They are highly regulated in use, but they are risky because of how you do them. If it was not well designed, you could find yourself in a whole lot of litigation.

Senator WRIGHT: Can I take it from that that you are saying what would be important would be clarity, to give you those clear indications and parameters, as well as the design of testing?

Ms Bailey: It is true today that if we did a controlled operation, we would have to have a lot of internal governance and very clear purpose for what purpose we are seeking that power. It is very targeted. I do not want to give too much away, but it is quite specific. It is not just, 'I think'. You would have to be sure that you had that level of detail and parameters.

Senator WRIGHT: But in a sense I imagine that is supported by the fact that the legislation is so specific?

Ms Bailey: Yes.

Senator CAMERON: If there was to be an integrity change within the commission for testing—I am not saying there is any change in your integrity; I think your integrity is fine.

Ms Bailey: I will only get better, I assure you.

Senator CAMERON: How long would it take to implement?

Ms Bailey: We are very agile and adaptive. I guess if it was the government's view that we should do that, we would work with ACLEI and our partners to do what was required. It is hard for me to estimate that, except to say we have a team already who are dedicated to integrity assurance in our agency. We do all this work. Whatever the regime was given to us, we could all talk about whether we would have enough resources and all those things, but leaving that aside, if that was the decision, the agency would do what it has to do to meet the requirements.

Senator CAMERON: What process would you use with your employees prior to implementation?

Ms Bailey: The way we work now with our employees is, pre-employment with the ACC, we are very keen for people to join us, but they need to think about whether they are the right fit for our organisation for a whole range of reasons. Some people do find us a little bit too intrusive in their lives. We necessarily are quite intrusive in financial affairs, their associations, their other life, and everyone has families and lives and connections, that is not a problem. It is just that we are intrusive in understanding that. We are probably one of the few public service agencies I suspect that has a secrecy provision that has a criminal kind of consequence. You will know a lot of quite sensitive information that some people do not feel comfortable having access to.

I can say that most of the people who work here understand the risks of our world, and what we are trying to do for Australia requires everybody to be highly focused and put the organisation before themselves. That is genuinely how I think people feel in our agency. They would say, I think—and I should not verbal the staff—that we do not want one bad person to ever work in this place. So whatever it takes to understand that is what it wants. But, I am also highly of the view that you set the policies, you set the procedures, you be the role model, but you actually set the standards of asking everyone to be the best person they possibly can in the agency. We cannot just live by rules. That was the point of ACLEI's view of our integrity regime. They said: you need to continue the journey from a rules based environment to one of values. People do this because that is their personal view of how to behave, and they do not tolerate people who do not behave that way. In an organisation that is always a journey. I would want to reassure our staff that the only reason we would be doing integrity testing, if it was to be random, was to satisfy ourselves that no one is going to compromise their good work.

Senator CAMERON: We have had submissions that say culture is not sufficient. What I was asking you was just a practical question: if you did implement integrity testing, would you tell your employees, would you train your employees in integrity testing, because you are not a huge organisation. Just how would you go about it?

Ms Bailey: If there was an integrity regime introduced we would definitely tell our staff what it was, what our obligations were and what we thought would be done. The teams that Peter and Carolyn lead spend a lot of the year going around working with our staff saying, 'This is how we are seeing integrity, these are the issues.' We would not walk away from that. When we introduced the dismissal powers, it was the same; we talked to the staff about why we needed to do this. It is not a commentary on our staff; it is a protection for them. I think you can only be open and honest. I agree that you can never say culture is enough, but I also think that rules are never enough so you have got to find some way of making both things work together. You have got to have the rules and the policies in place that say if people do not do it, you have a place to go back and say, 'That is why your behaviour is not appropriate.' But, you also have to have a view that we cannot be everywhere and that the people we hire and the people who do our work are highly engaged in a risky world. They have got to have a sense of how they—

Senator CAMERON: I suppose Rupert Murdoch said that when he hired some people, that the culture was fine and everything was good.

Ms Bailey: I would not comment on Mr Murdoch's position.

Senator CAMERON: I am not asking you to. It was just a comment, a throwaway line.

Ms Bailey: The nature of our work is investigating serious and organised crime and not much of that work actually involves the kind of day-to-day activities that most other public servants do. It is a different workforce and I think we have got to make sure that we have got the right people with the right risk understanding, who understand the culture and can understand the organisation. Again, you have got to understand, and I understand

more than anyone else, that there is human frailty, there is corruption and wherever in the world we live in there is potential. So, you have got to understand the risk.

Senator CAMERON: Thank you.

CHAIR: I would like to thank representatives from the Australian Crime Commission for taking the time to speak to us today.

Ms Bailey: Thank you, Madam Chair.

CHAIR: During the course of our inquiry, which has only just begun, we may have further questions and so come back to you later.

Ms Bailey: Certainly, we would be happy to answer them.

PEZZULLO, Mr Michael, Chief Operating Officer, Australian Customs and Border Protection Service

STOREN, Ms Donna, National Manager, Integrity and Professional Standards, Australian Customs and Border Protection Service

[12:24]

CHAIR: Thank you. I now welcome representatives from the Australian Customs and Border Protection Service. I thank you for your patience. I would like to pass on the thanks from this committee and from the law enforcement committee regarding the visit to the Sydney customs port and airport facilities on 29 July. In relation to this hearing, I invite you to make an opening statement and then the committee will ask questions.

Mr Pezzullo: Chair, I do not have a formal opening statement other than to inform the committee, not that it probably needs too much by way of briefing, that of course we are eight months into a process of bedding in our relationship with the Australian Commission for Law Enforcement Integrity, where of course we have come under their supervision and oversight. Ms Storen's branch has got a very close relationship, as I think this committee is well aware. In the context of that relationship building exercise, we have of course engaged in a number of referrals already. We had, if you like, an initial stock of referrals that were made when the legislation took effect and the new scheme of oversight came into effect on 1 January. Since then of course we have provided further referrals.

In the context of the matters that are of interest to this committee in terms of its inquiry into integrity testing, the view that the CEO and the senior management have taken is that we are very much a follower in this area. We very much look forward to the ultimate findings and recommendations that this committee is no doubt going to make. As part of the interagency governmental response process, where we work through a response to your recommendations, we will take a final and definitive position on integrity testing. Noting that in the end, we cannot really easily contemplate a situation where if a matter was of such serious dimensions in terms of potential criminality involving one of our officers and a referral had been made to ACLEI, our position is that it would be ACLEI's final judgment as to whether integrity testing was a valued and positive tool that they would employ as part of furthering an investigation in relation to those matters. In a similar way to the crime commission's position that was just put to you in evidence before, if ACLEI then referred a matter back to us because it did not meet relevant thresholds of interest or concern to them, it would then be a separate matter as to whether we needed some kind of organic capability potentially to employ integrity testing as a way of resolving that matter. But, our thinking on this is very much at a formative stage and we very much look forward to the committee handing down its report. Thank you.

CHAIR: Thank you for that statement. I accept what you are saying about the agency being a follower in this matter. Have you given any thought to the type of integrity testing that you think would be appropriate?

Mr Pezzullo: We have done this very much only in the preliminary sense given the invitation from this committee to give consideration and some contemplation to these matters. When we received the invitation, as you could imagine, we would have consulted with our colleagues in the Attorney-General's Department, the federal police, and ACLEI of course. We are very much in a formative stage of reflecting on the submissions that we know that they have provided to you. I have listened with great interest all through the morning to the evidence being given. I would not characterise our thinking in this area as being anything other than very much at a formative stage.

CHAIR: Thank you.

Senator IAN MACDONALD: Not directly on the inquiry, but could you just tell me of the referrals that have been made to ACLEI; what percentage of referrals has resulted in further action and what has been found to be without any substance?

Mr Pezzullo: I will ask Ms Storen to speak to the detail of that and there might be some sensitivities and a concession that we may wish to avoid going to. In terms of the coverage that came into effect on 1 January, as I indicated in my opening remarks there was, if you like, a stock of allegations or matters that we felt had met the test. They were referred and since then there has been almost a monthly marginal addition to those referrals. I will ask Ms Storen to address this. I cannot recall off the top of my head whether ACLEI has brought any matter to a single conclusion such that an officer has been charged and is currently before the courts. There are a number of matters on foot but I might ask Ms Storen to address that.

Ms Storen: From 4 January to 1 August this year, we have referred 22 matters to ACLEI. Of those matters at this stage I would not be able to provide you with an analysis of all the acceptance because we are still waiting for a number of matters to come back from ACLEI as decisions of whether they are going to accept them as being notifiable. I can inform you that we have referred 22 matters from 4 January to 1 August this year.

Senator IAN MACDONALD: As I say, it is not directly relevant to this particular inquiry but it is relevant to the issue of whether it was right to bring Customs within the purview of ACLEI. Or, it may be that none of the things you referred have any issues of concern at all, in which case perhaps we have overdone it by bringing you in. That was the nature of the question. I appreciate there would be some sensitivity in the response.

Mr Pezzullo: Just on the point of the value of the coverage, it is probably too early to tell whether, over the course of time, the parliament's legislation in this area had the desired effect in an empirical sense to say, 'This number of referrals occurred, this many prosecutions then resulted, and this many officers were charged.' I think there is a different way to frame a perspective on that; it has had a very immediate effect in terms of a demonstrated commitment on the part of the leadership of the agency and through to its workforce that we take matters of fraud, corruption, and integrity very seriously. We have engaged in a very comprehensive series of staff engagement activities where the staff has been briefed, notwithstanding the fact that a lot of them have been in the agency for a long time and this was in no way a reflection on our part of a lack of trust. We said that in this modern era, where criminality is becoming in some senses somewhat more pervasive and certainly more dangerous and where the techniques and capabilities available to the criminal elements are becoming more sophisticated, their ability to penetrate and infiltrate is becoming much more subtle. It has enabled us to send a very strong signal to our staff that that oversight is actually something that we welcome. It does mean that their behaviour and their conduct has to be, if you like, even more exemplary than it used to be. It is really about taking on the challenges of working in this environment given the trends and the phenomena that we are seeing in evolving criminality.

Senator IAN MACDONALD: I agree with that all and I think the committee and the government were wise in involving you. The points you have made have been well made at the two visits we have had to your organisation, for which I repeat the Chair's thanks for hosting us and showing us what is a very good organisation

Mr Pezzullo: Thank you.

Senator IAN MACDONALD: Again, hoping I am not asking questions which give the wrong impression in the answer, but since the initial block, you say you have referred some issues. Can you quantify them? Is it one a month, two a month or three every six months?

Ms Storen: I do not have that data available to me at the moment.

Senator IAN MACDONALD: No, but what is your feel? In fact I probably do not want the data but is it a few every month, a couple?

Ms Storen: It is probably on average about two a month. We did refer on 4 January a number of matters that we were holding and currently investigating at that time.

Senator IAN MACDONALD: I appreciate that.

Ms Storen: That would have been the largest number of matters that we referred to ACLEI, and that was in January. It has decreased, but as the chief operating officer has just stated, we are presenting more widely throughout the organisation and providing better education, training and awareness on how to report through to integrity and professional standards. I think some of you were also issued with our Z-cards over the last couple of months on how to report issues through to integrity and professional standards. As we are educating our staff more widely, we are getting people who are referring, but then we are assessing whether or not they fall within the definition of notifiable under the LEIC Act. We are seeing a decrease in the numbers that we are referring through to ACLEI.

Senator IAN MACDONALD: I think we have learned before that it is actually your unit, area, Ms Storen, that deals with these issues?

Mr Pezzullo: That is right.

Senator IAN MACDONALD: Again, this is a bit hypothetical, but if integrity testing was going to become something that the Australian Customs and Border Protection Service did, would again that go to your area? I suppose it is a bit hypothetical, is it not?

Mr Pezzullo: I think I can answer it based on our existing governance framework. I might just take a minute or so to lay that out because I think it will in fact answer the question. Over the last several years, we have been building capability in this area moving from a very strict internal affairs approach which was obviously somewhat

reactive to allegations being put. Both in the internal affairs unit era and also the more recent integrity and professional standards branch which Ms Storen heads up—which we created about 18 months ago to broaden the lens beyond reactive investigations, to bring in corruption prevention, fraud prevention and the like—there has been very close partnering with our internal audit unit who help with, for example, financial assurance, financial checking of people misusing say credit cards and the like. We have built that practice out from a very strict internal affairs focus to a more preventative and a more risk management savvy approach, if I can use that term.

The one difference we have though relative to some of the other agencies that have appeared, and this is an important difference to draw out for the committee's benefit, is that officers of our service are Australian Public Service employees within the meaning of the Australian Public Service Act. They of course are employed to implement and enforce the Customs Act but in and of itself those two acts, even in combination, do not create any special head of investigative or indeed coercive powers. We have got some limited investigative powers strictly related to the pursuit of infringements or breaches against the Customs Act and associated acts which gives us a degree of limited investigative powers in relation to general citizens who might be breaching the Customs Act, say, in terms of importation. Even there, where, if you like, serious investigative firepower has to be brought to bear such as warrants, listening devices and the like, we work in partnership with police forces, predominantly the Federal Police but others as well. Where relevant, we partner with the Crime Commission in the sorts of matters that Ms Bailey was referring to in her evidence. We actually start from a different starting point. We are in effect public servants and the only investigative powers we have are the general administrative inquiry powers that any public servant has pursuant to a delegation from the agency head, in our case, the CEO of the Australian Customs and Border Protection Service.

When Ms Storen's area does receive an allegation or, through their proactive work, comes to a view that there might be some suspicious or worrying activity, they can, to a certain extent, commence an investigation in their own right using those general administrative inquiry powers. Under the ACLEI scheme of notification, we also make an assessment about whether the notification thresholds have been triggered.

Frankly, in most serious cases I cannot imagine a circumstance where the commissioner and his staff over at ACLEI would not in fact take a very active interest in pursuing it. In those circumstances, as I intimated in my opening remarks, were a general integrity testing regime to come into effect across the Commonwealth, I would think that ACLEI either directly, organically or through some kind of outsourced model, would apply that integrity testing scheme as a specific tool to pursue a serious matter of potential corruption or criminality. We may not even be advised of this. He, of course has got his own motion powers. Generally speaking our experience has been one of very close engagement and collaboration, a high level of awareness by the executive of the matters that he and his officers are choosing to take forward. That then really leaves one I think relatively minor class of cases which would be matters that are then referred back to us. They might be serious but they do not meet the relevant thresholds that the commissioner and his staff apply.

The question for us would be, and we will have to give this some thought as the government's response to your committee's report is developed, as to whether we would then need either organic or outsourced powers to pursue particular matters that have been referred back to us using an integrity testing tool. As I said in a previous answer to the Chair's question, we are very much in our formative stages of thinking about those two levels of integrity testing.

Senator IAN MACDONALD: Thank you very much.

Mr HAYES: Of the matters that have been referred to ACLEI, without going into detail, are they issues of possible integrity or suspected corruption?

Mr Pezzullo: It is probably a combination of both. I am going to be fairly general in my characterisation for reasons you would well understand. In most cases the most worrying issues relate to external linkages, as I would describe them, as to serious and organised crime elements, pertaining to the passage of information that then facilitates those elements pursuing their criminal agenda. Yes, integrity is involved because it obviously goes to the heart of our professional reputation and our professional standards to have an officer behaving in that way. Yes, it is an integrity issue, but it is also a corrupt practice. In that example that I posit, that is a corrupt and indeed in some cases a criminal practice of the unauthorised disclosure of information. Depending on the nature of the crime that is being facilitated or assisted, it is a straight out criminal matter too because you are potentially part of a conspiracy to conduct criminal acts against either the Commonwealth and or state statutes. I guess it is a combination, and in one action it might be a breach of integrity, a corrupt matter being undertaken as well as a straight out criminal matter as well.

Mr HAYES: Up until recently, when the act was varied to come under the oversight of ACLEI, in that respect would the matters that have been referred to it now have been referred to the Australian Federal Police?

Mr Pezzullo: Yes, in most instances at the higher end where serious criminal matters were involved. Most typically, as you can imagine given the nature of the work that we do and the sort of access to information that our officers have, it would be related to facilitation of crime at the border, by and large, but not exclusively so. The most worrying thing is our officers potentially working in collaboration with outside criminals to penetrate the border, principally drug importation but other matters as well. Yes, the function currently undertaken by Ms Storen's branch, and in previous manifestations by various internal affairs units and the like, would have applied those general administrative inquiry powers to which I earlier referred. They would have undertaken inquiries to the extent that they could and then it would have been a matter for judgement then as to whether to refer it to the crime commission or its predecessors the federal police or its predecessors or some combination thereof.

Mr HAYES: If it was the federal police I imagine they would have had power then under their own right to conduct surveillance operations within a Commonwealth facility? That is not exactly integrity testing but it is conducting a criminal investigation. Would that be in consultation or with the knowledge of Ms Storen's outfit, for instance, or did the police do that unilaterally?

Mr Pezzullo: You are referring to the period before 1 January?

Mr HAYES: Yes.

Mr Pezzullo: I might ask Ms Storen to answer that.

Ms Storen: There would be some matters that we would have referred through to the AFP so we would have knowledge of that. There would be some matters that AFP probably would have had carriage of and of which we would not have knowledge. In most cases my understanding would be that we would liaise with the AFP to assist them on their inquiries.

Mr Pezzullo: It is hard to give a historically definitive answer that extends back past our tenures. I think the practice over the years has been for the general practice to be consultation and engagement and for the exception to the practice to be unilateral activity by any law enforcement agency without the knowledge of the commissioner or the CEO of the day.

Mr HAYES: Have we deferred the call now by referring matters to ACLEI for their oversight or would you still make the call in terms of engaging the federal police in terms of suspected matters of corruption?

Mr Pezzullo: The short answer is that a three-way and indeed four-way conversation tends to occur involving the federal police, the crime commission and ACLEI. In some cases ACLEI might decide that the appropriate course would be a joint Customs and federal police investigation or a Customs and ACC investigation. I might ask Ms Storen to quickly detail those consultative processes. The decision making, of course, in relation to actions under the ACLEI act still remain with the commissioner but he and his staff engage in a process of consultation and engagement. I might ask Ms Storen to flesh that out.

Ms Storen: In relation to allegations that are referred directly to my branch, we would liaise with the AFP and ACLEI on those matters. This is done obviously with regards to privacy and also our section 16 of disclosure, but we would liaise with both agencies. With corruption issues, it depends too what environment that involves. If it has to do with Commonwealth, with the sharing of the intelligence it is very important that the AFP understands and has knowledge of that information and intelligence as well.

Mr HAYES: If it was to pass and we did move down to the road of integrity testing, for instance targeted integrity testing, presumably that would be something you would discuss with your staff?

Mr Pezzullo: Most certainly; I cannot imagine a circumstance in which it would be just sprung upon them without their knowledge.

Mr HAYES: Given that, have you any views about the impact it would have on your employees to know that they could be subject to targeted integrity testing?

Mr Pezzullo: Given it is not something that we have actively pursued, I guess I would be speculating in terms of the sense I have of workplace attitudes to such matters. My answer to the question is the same answer that the federal police gave you. I think a random regime probably would have to be explained very, very carefully because I think just intuitively and almost viscerally, a random regime might be a bit of a hit on morale. The implication is that, 'We are not really sure who the bad apples are across a wide range of the workforce so we are going to undertake some random checks.' I think that would need to be very carefully managed from the point of view of morale and the staff self-perception of how they are perceived by their management. I think a targeted regime is probably in a sense an easier sell because it could be, through staff engagement, very carefully explained as an additional tool under ACLEI oversight that has been made available that can be deployed on essentially an intelligence led basis, where all the key risks are identified in terms of using that tool and very

careful control arrangements are then put in place. This is not to say that careful control arrangements would not be put in place for random testing, but I just think the staff perception of the two tools would be quite markedly different.

Mr HAYES: Again assuming that it was introduced, your organisation, in terms of customs and border control, would be in a vastly different position to the Australian Crime Commission and the Australian Federal Police in terms of the powers of either the CEO or the Commissioner of Police. You are still fundamentally using public service powers to oversee and employ public servants?

Mr Pezzullo: Yes, but they are quite different legal constructs across the three agencies.

Mr HAYES: If integrity testing was to be introduced, would you see that it may necessitate similar powers being granted to the head of customs as what the AFP and the Australian Crime Commission have?

Mr Pezzullo: That would not be necessarily so. I am very reluctant to speculate on what legal advice ultimately might have to go to government on this in terms of legislative amendments. As a matter of record, the Public Service Act under which we work has no specific regime of investigative powers that is granted to public servants other than the general administrative inquiry powers, to which I have already referred, that every agency has to look at misconduct and issues of that nature in their agencies. It would be a question for government and I would look to my colleagues in the Attorney-General's Department of course to lead on the provision of advice to this point. I do not know what the advice would be, but it would be a matter for government to consider whether some special investigative regime would be important under the Public Service Act just for the purposes of our service. That would seem to me to be one technical possibility but it could be seen to be fraught for a whole range of reasons. Or, as I intimated earlier to Senator Macdonald, it might well be that integrity testing powers do not need to be made organic to our agency because they are managed under a more general Commonwealth scheme, in which case there would be no question then of the need to vary powers under the Customs Act or the Public Service Act.

Mr HAYES: The outcome of integrity testing in your instances would have to sustain a charge whereas that may not be the case in the instance of the AFP or the ACC, where it could be commissioner's confidence?

Mr Pezzullo: Indeed, there is the parallel regime under the Public Service Act of the code of conduct, which, as Ms Bailey from the crime commission said, is also applicable in their instance. We do not have the want of confidence power because we do not have specific legislation that goes to the creation of an employment stream. There is of course the Customs Act but it does not create, as is the case in the crime commission or the federal police, an employment class; we are employees of the public service. It is possible, and this is currently available to us whether or not integrity testing is employed. It is open to us, perhaps with a view to suspending it pending criminal proceedings, to commence a code of conduct inquiry. The penalties that would arise if someone was to be found in breach of the code of conduct through a code of conduct process which can have regard to a criminal outcome, might be quite separate from any criminal penalties, being loss of rank, financial penalties, dismissal and the like. There already are provisions under the code of conduct mechanisms to go down a path that could, in some cases, result in termination.

Mr HAYES: Thank you, Chair.

CHAIR: I will ask one question. You mentioned the fact that your perception of random integrity testing is that it is about finding bad apples. From what I have been reading and hearing about, it seems to me that targeted integrity testing would be more about catching bad apples, or people, at least, about whom there is a suspicion, whereas the value of random testing seems to be in the general deterrence, the fact that any staff member can feel that any given scenario could be an integrity test. I have just been speaking with the New York Police Department who said that the vast majority of officers passed those tests. They see that as a great vote of confidence in their internal professional standards program. If you look at it in that light, it could also be a morale booster rather than undermining confidence in the integrity of the system.

Mr Pezzullo: I can see that argument. I have had some exposure through the submissions made to this committee to the New York model and it is something that we will certainly want to look at more closely as we work with other agencies to work on the government's response. In the end, governments will make decisions about the scope and extent of this regime, should there be such a regime introduced. I can certainly see that argument, yes, indeed.

CHAIR: There are no further questions. I thank representatives from the Customs and Border Protection Service for taking the time to speak with us today.

Mr Pezzullo: Thank you, Chair.

Proceedings suspended from 12:52 to 13:35

ASHER, Mr Allan, Commonwealth Ombudsman

Evidence was taken via teleconference—

[13.35]

CHAIR: I now welcome representatives from the Commonwealth Ombudsman's office. Thank you very much for your public submission which has been lodged with the committee and we have numbered it as submission 1. Would you like to make any amendments or additions to that submission?

Mr Asher: No thank you, Chair.

CHAIR: I invite you to make an opening statement and then we will ask questions.

Mr Asher: Thank you again and thank you also for the opportunity to appear before the committee today. Just a short note to cover off the key issues in the submission. The first point is just that while this inquiry is about corruption and we think it is an institutional issue, I would just like to emphasise that, in our view, the critical roles for ACLEI should not really be about catching the odd bad apple in the barrel, but rather, as is their general focus already, it should be about institutional issues. If I could just summarise that point I am then happy to take any questions. We ourselves do not have a specific anticorruption mandate, but nevertheless a significant part of fighting corruption is working to ensure that agencies have good internal systems, good complaints handling systems and good practices for investigation and audit. It is through those same devices that one can be reasonably confident that the scope for institutional corruption is reduced. Really, it is about robust accountability. The sort of secretiveness in decision making and all of those characteristics are ones that are higher risks for corruption. The current practices of ACLEI in attacking those are, we think, just the best way in which that can be done.

From our own point of view, we use complaints and investigations to look for misconduct and maladministration and we have our own notion as to how to investigate and expose these sorts of systemic things. The whole goal is to strengthen administrative systems and in that way have a confidence that one can give assurances to agency heads and ministers that that is the situation.

I might also mention that the parliament is soon to consider new public interest disclosure laws. In that context, as it is presently suggested, our agency will have the national coordinating role for those public interest disclosure rules. I see that as somewhat linked to the nature of corruption allegations that might come forward. That will cover maladministration, misconduct, and corruption. The UN, which we see as probably giving us the best guidance in these things, covers all of those but the overall goal that they set is prevention of corruption and the institution of preventative strategies. A scheme such as this one, I fear, looks like it comes a bit late in the process and it seems to treat corruption as a problem about individuals rather than a systemic one.

I would say there is a very, very long history of integrity testing. Of course, that is about providing a response from a targeted police member to see what happens. I observe that the best application for that, and this goes right back to the New York Police and others, is where it is actually inside the institution, where these things are part of an overall accepted employment framework. In the Australian context, I would suggest that that should mean that the police forces and other agencies subject to this supervision should themselves negotiate with their workforce to have these schemes there rather than it being something that is imposed from an external agency.

Of course it does provide a good deterrent where it is used in that integrated way in the organisations, but not so much where it is done from outside. I think you could say it tackles symptoms rather than the problems and that, at best, it is going to be deterring individuals rather than systemic opportunities or temptations that can arise more broadly. If that is the case then I think I would just assert that corruption problems are essentially institutional and you cannot fix institutional problems by punishing individuals.

Integrity testing is an important feature but what is more important is the culture that is resistant to corruption. For an agency, integrity testing by an oversight agency does not provide that sort of cultural imperative from inside; indeed, it might actually force some elements of organisations to join together to resist what they would see as external intrusion. Integrity testing by an external agency is going to encourage something of a closing of ranks. It might make the culture more rather than less resistant to oversight.

I would also have a slight worry that integrity testing, regardless of whether it is conducted by police or an oversight agency, is likely to encourage behaviour that minimises the chances of being caught by such a program but is not likely to encourage longer term or permanent changes in behaviour. If corruption is to be effectively prevented then there are a range of activities, and I have listed those in the submission. It is probably more work that ACLEI can realistically undertake but it is work that will have a long-term effect and help to drive cultural

change. To take ACLEI away from that work, even if it does secure media attention when a police officer is caught, just might not be the best use of the resource. From my perspective as the law enforcement ombudsman taking complaints about law enforcement agencies, oversight in conduct management and undertaking compliance audits, there is much work to be done at the institutional level to fight corruption.

A final comment is that we also need to recognise that one does not need to identify corruption to fight it. It exists at the end of a continuum that starts with maladministration and moves to misconduct and then to corruption. If you can identify where there is serious maladministration and misconduct, then it is quite likely that in tackling those, you remove many of the opportunities for corruption to take root. If you can identify corruption, it is probably too late; fighting corruption really does need to be about prevention. To be successful, it is not just about a few bad apples. In saying that, if I could just emphasise that I believe that is the general trajectory that ACLEI has taken and so this is not in any sense a criticism of that but just a concern that it might become a bit of a diversion to ACLEI in future. Those are my opening comments.

CHAIR: Thank you very much, Mr Asher, for those comments.

Senator PARRY: Thank you, Mr Asher. I want to test the integrity of your statements if I could put it this way. I just want to challenge your view in relation to the culture within and not having ACLEI being the oversight agency. I do support the notion that it is best to have the culture internally in the organisation change but I do not see that as correlating directly with an outside agency having supervision or control or oversight of the integrity testing regime. Would you like to comment?

Mr Asher: I think there is a role for an external agency but it seems to me that it would be more that once there is an identified suspicion, perhaps an allegation or some evidence, then it would be entirely appropriate for an organisation like ACLEI perhaps to engage in even a controlled operation or something of that sort. That does not mean that the external agency should not have that role. I am just saying that as a routine part of random testing across the board, I think without that suspicion or without identifying some targets the dual risks are (1) diversion of effort and (2) it would be, as I say, more likely to see members of the agency close ranks in relation to the external scrutiny.

Senator PARRY: What about the practical ability of an agency, and let us use the Australian Federal Police as a case in point which has some 5,000 sworn officers? Would the agency itself have difficulty in developing integrity testing models that involve some covert operations, especially if it is something a little bit more widespread where you might find difficulty in getting officers or operatives who are unknown to the areas of suspicion? That is one practical aspect. The other aspect is if an outside agency comes in, it comes in without any prejudice, without any alignment, which I think is good. The ACLEI model at the moment I think works exceptionally well in relation to standard investigation of corruption. ACLEI can, as you have said and as you are aware, refer matters back to the agency if it feels the agency has the capability of handling it. Equally, it has the right to completely take over any investigation. Would you not see that being applicable for the integrity testing aspect as well?

Mr Asher: I think that there is some potential there but the very scale of the Australian Federal Police as you describe it is such that the capacity of ACLEI to have a meaningful role would be severely challenged without them having to divert significant resources from the very useful systemic work done now. I think you would need a much larger organisation to be able to do that. Secondly, and I would just go back to my point about the internal culture, it might be that initially there would be difficulty in an industrial sense, but based on the evidence as I understand it from overseas forces who do this, eventually it is the workforce itself that agrees to these regimes because they see it as a way of controlling those with a propensity to corruption and it also enables them to have a higher degree of individual integrity. It is something that then grows organically within the organisation rather than it being seen as being imposed from without.

Senator PARRY: Thank you for that. In relation to the types of integrity testing—and you have probably been alluding in your comments to us so far to random integrity testing—do you have a view about random versus targeted or do you see a value in having both in an organisation? In your answer could you address one of the critical aspects being the benefits of having random integrity testing as a deterrent for corrupt behaviour?

Mr Asher: Yes indeed, and I think the goal of random is so that the ability to be predicted is much more difficult. It also has the ability to reach all different parts of an organisation at different times without any risks through internal collusion that programs are exposed. It does have a role there, although I would say that the key to success in such a plan is where there is some evidence of an area of a force where there is suspect conduct or where there might be some evidence, although insufficient to bring charges or even arrange an investigation. Tests of that sort can then be much more effective.

Senator PARRY: Thank you, Mr Asher, I will leave it there. I appreciate your comments.

Mr Asher: Thank you.

Senator WRIGHT: I have one question for Mr Asher. In relation to your submission, you expressed concern about closed cultures in law enforcement agencies. This is a big question but, briefly, how big a problem do you think this is and what measures would you propose to counter that?

Mr Asher: Not so much from the corruption point of view but I will say something that I had observed from our own law enforcement ombudsman role. The parliament has legislated in part 5 of the police conduct and discipline area to give us a role. We find that when police are investigating complaints, they typically set a rather high threshold to establish wrongdoing amongst members. In fact, we have often likened this to them establishing something of a criminal level of onus even before finding an administrative fault. That comes partly as a result of culture, partly because of the sworn uniform nature of the service and in part also, it has to be said, because the consequences can be more significant in the police force than say a finding of administrative fault in an ordinary government department. All of those things though do contribute somewhat to a culture which is more closed than comparable public government agencies.

Senator WRIGHT: Measures to counter that?

Mr Asher: In my view, some of the key measures to overcome that all starts with the tone at the top; to have a commissioner and senior officers who themselves model a much more open behaviour, where the organisation not only has a formal legal commitment to openness, a preparedness to give reasons for decisions and a preparedness to take complaints from outside but where you would expect to see that evidenced in a certain number of complaints per thousand upheld. That is something that can be benchmarked across forces. Where you find a force with very low establishment rates, resistance to complaints and long delays in dealing with them, I think that those are indicators where you are more likely to find problems than not. As I said earlier, it is really a continuum from individual administrative indiscretions on a spectrum that goes right to corrupt behaviour.

Senator WRIGHT: Thank you.

CHAIR: Thank you, Mr Asher. How do you see ACLEI's role in the event that an integrity testing sort of system is established, say within the AFP and other agencies; would you see ACLEI as having an oversight role? I know you expressed a view that it should certainly not be carrying out the testing itself.

Mr Asher: I think that is a good point, that even if this were to be instituted and essentially managed by the force themselves, it would still be important for ACLEI to have some link to it, perhaps to be aware of overall strategies and things. In a way, I know that ACLEI often describes itself as being in partnership with the agency. I would think this to be a logical area that if this went ahead, that similar strategic partnership would apply.

CHAIR: Do you think that would extend to things like planning scenarios or would it be more in the role of giving advice about what was a good scenario, an appropriate scenario, and what was not?

Mr Asher: I think it would happen at a couple of different levels: firstly, perhaps in terms of looking at areas of potential vulnerability, so spotting potential areas where integrity testing was used; and secondly, where there are adverse outcomes, of course in taking those forward at an investigation level.

CHAIR: Would you see any role for ACLEI being involved in joint integrity testing with the agencies?

Mr Asher: Consistent with my earlier comments, I think that that would somewhat take away from the force's ownership and leadership of that. I think that consultation about goals and even areas is one thing, but actual involvement in it would just go back to my point that it could probably actually send some rather negative signals and might actually compromise the efficiency of such an approach.

CHAIR: The AFP has suggested a range of models and they have indicated that they would prefer a partially outsourced model, which I guess could include state police forces. How would that impact upon the ability to oversight that?

Mr Asher: I do not think it would so much affect the oversight problem because cooperation arrangements exist in many areas and that could be another one, although I would question whether the greatest internal cultural value could be obtained if the force did contract that out. I am not minimising the difficulty in negotiating such an arrangement or even getting acceptance at the industrial management level, but those forces, where that is an integrated one, probably have a much greater sense of owning it and making it work.

CHAIR: You referred to ACLEI's work as having been mainly involved in catching bad apples. Certainly ACLEI itself has conceded in its most recent annual report that its focus to date has been on detection and investigation and not so much on education and prevention, but that it would prefer and wish to have a greater role in that area as indeed it is mandated to do. Did you have any comment about that?

Mr Asher: I was not meaning to say that they are overly focused on catching bad apples because I think in all of the corporate plans and things they do spell it in that broader way. It makes my point somewhat that doing both is a very, very labour intensive and expensive thing to do and it can lead to diversion of management time. I guess I would be saying that you could choose a model of overall education and prevention and looking for indications at an intelligence led level of where there might be problems, or you can become closely involved in what you might call transactional issues or looking for individual breaches. I think the problem is you probably cannot do both.

CHAIR: Thank you for that. Finally, following on from Senator Parry talking about random integrity testing, which of course has the capacity to provide a great general deterrence; do you think that has a place, some place if not the sole place?

Mr Asher: Yes, indeed I do, and I think in some of the classical models that is a very important place because it sends a signal throughout the whole organisation. However, you would have to say, it does have to be at a credible level and it has to be based on I guess some statistically significant work and things like that, which will involve quite a considerable commitment of time and resource. Also, it should not be done to the exclusion of the more strategic work where there is special risk or where there is some circumstantial or allegations made that need to be tested.

CHAIR: My understanding is that in some places where random testing is carried out, like the New York Police Department, the vast majority of officers pass the tests and that is indeed regarded as a sort of morale booster within the force?

Mr Asher: Yes, indeed, and I guess that is part of my point. Where the force makes that part of the expected contract with their officers, the officers do have a sense of ownership of that and can take pride themselves that their force is seen through these objective measures that they apply themselves to be above reproach.

CHAIR: Thank you, Mr Asher. I would like to thank you particularly for your comments about the importance of robust accountability and that our primary focus in these matters is strengthening the culture of integrity and resistance to corruption.

Mr Asher: Thank you again for the opportunity of appearing by phone.

HUNT-SHARMAN, Mr Jonathan, National President, Australian Federal Police Association

TORR, Mr Jim, Chief Executive Officer, Australian Federal Police Association

BURGESS, Mr Mark, Chief Executive Officer, Police Federal of Australia

SKINNER, Mr Angus, Project Officer, Police Federation of Australia

[14.02]

CHAIR: I now welcome representatives from the Australian Federal Police Association and the Police Federation of Australia. You have lodged public submissions with this committee which we have numbered as submissions 6 and 7. Would you like to make any amendments or additions to those submissions?

Mr Jim Torr: No, thank you.

Mr Mark Burgess: No, thank you.

CHAIR: I invite you to make opening statements and then the committee will ask questions.

Mr Torr: Thank you very much to the committee for taking the time to hear us and our colleagues in the Police Federation of Australia. We have worked with some of you before and we have had a really constructive relationship so we are looking forward to being able to give our views today. The whole question of integrity testing is a broad issue, which has the significance to have great impact on how a police force functions, how effectively it works, how much trust exists within it and how effectively the force is kept free of corrupt behaviour.

From the outset I would say that one of our values in the Federal Police Association is that our members should be able to work free of the risk of compromise by the corrupt conduct of others. We were active in the formation of ACLEI and we supported its development and we have had a very good working relationship with the commissioner, Mr Moss, and his team since then. We are also alert to the fact that every new idea or notion in relation to scouring police for fault and searching for failure is heaped on police in the first instance before anyone else. There are many other professions which we would argue are just as accountable and just as subject to compromise by corrupt conduct as police forces, and yet police in the first instance always seem to attract these sorts of intrusions.

These are intrusions which come on top of many, many other accountabilities that our members already face. We were also jointly responsible for developing security in the AFP context: comprehensive security clearance processes, which actually look at family members and friends, et cetera; initial and regular financial disclosure of assets and debts; random and targeted drug testing of which the AFPA was a joint partner in developing the AFP program; critical incident drug and alcohol testing; loss of superannuation for corruption offences; of course all the criminal sanctions; the obligations to provide information under direction; and there are many other aspects to the accountability we already provide.

Having said all that, we have not seen the argument put in front of us that would now justify another intrusion into the normal process of police business and police accountability. Obviously though, we can see that the committee is interested in the idea and we have some views which we are very pleased to share with you.

Although the AFP is young, it is mature in terms of its professional standards structure. Its members are educated from day 1 by both the AFP and ourselves on the importance of a corruption-free workplace and proper conduct and the importance of obeying of laws, and this applies to all levels. I am old enough to remember a police commissioner going to jail for corruption so every level in the organisation is accountable.

As we are mature in our structures we believe that if the committee does recommend some sort of an integrity testing process, that it be targeted at serious concerns where serious corruption is considered, not a cop getting half price McDonald's. There is already enough in train and enough resources at the scant front line going after the civilian crooks that should the committee go down that path, we would set the target very high.

From the outset we have talked to the ACLEI commissioner, and we would want to see ACLEI have the chief responsibility of approving any sort of integrity test process, being satisfied that the integrity test itself was not a breach of the integrity of the organisation and that would mean an approval process where a degree of suspicion is satisfied. We would see ACLEI taking responsibility that the testing process is reasonable in all the

circumstances, that approval of the process is appropriate. We would expect them to ask questions such as, 'How many times have you targeted Sergeant XYZ? Eight times and you still have not caught him? Is there a bigger picture here?' It would be very much a similar arrangement to a conventional search warrant or telephone intercept application. We would invest our trust in ACLEI as a separate organisation from the AFP to be able to bring that perspective and that impartiality. Of course we would expect that from time to time they do it with AFP assistance. A great deal of investigational expertise rests within the AFP and ACLEI obviously has a big mission and a limited amount of budgetary support. Serious corruption offences therefore should be the focus.

We would also expect, as for the federal controlled operations legislation, that there be a reporting process to parliament on how often these tests are done so that people such as yourselves can keep a watchful eye on the way the organisation and ACLEI itself is doing these tests. Finally, that obviously would have to be underpinned by legislation.

We do not support the notion of an in-house in-AFP idea of the AFP deciding to check Constable Joe Blow. We do not support it in the interests of both the AFP in our view and of course in the interests of our members. That is a summary of what we think on the subject.

CHAIR: Do you want to comment?

Mr Burgess: Yes, thank you, Chair, I will say a few words. Of course the PFA supports the submission made by the Australian Federal Police Association but as we represent all Australian police officers, all 55,000 across all jurisdictions, there are a few areas of concern that we have, particularly about any Commonwealth integrity testing scheme implicating or having impact on state and territory officers. State and territory police officers are already subject to a range of integrity regimes that are deemed to be appropriate by the respective jurisdictions. We believe that is the ideal situation and any scheme that may result from this inquiry should maintain that situation of state and territory officers.

As we also stated in our submission, the integrity testing scheme under consideration should be strictly defined in legislation so as to exclude any operation on state and territory police officers. It should also contain strict guidelines on the consequences for a state and territory police officer who is indirectly implicated in the result of testing.

You will also note in our submission that we sought clarification on several issues, particularly the implications of the Commonwealth integrity testing scheme for state and territory police officers who are seconded to or act as special members of the Australian Federal Police. We also sought clarification on the ability under the ACLEI act to expand investigations to include what would otherwise be state or territory matters under provisions regarding state offences that have a federal aspect and joint investigations between the integrity commissioner and state or territory integrity agencies. We are not sure that the committee is probably in a position to answer those questions today but we would certainly ask that you take those things into consideration in your deliberations. We thank you again for the opportunity to be here and we are happy to answer any questions.

CHAIR: Thank you, Mr Burgess, and just note that the committee did put those questions to the Attorney-General's Department earlier today.

Mr Burgess: Thank you.

Senator IAN MACDONALD: Are you suggesting that simply from a convenience and time point of view of individual officers that they are already subject to quite a lot of scrutiny-type checks? Thank you for listing them; I was not aware of all of those and it is certainly quite a number of regimes already in place. Is that the extent of your concern, that it is just involving the time and the inconvenience to individual police officers?

Mr Torr: It is also the distraction of resources from the fight against more conventional crime, if we want to call it that.

Senator IAN MACDONALD: Of your resources, but if it were being done by ACLEI or something?

Mr Torr: No, the AFP's, the Commonwealth's resources, we have regard to that. Also, we tend to work on an argument based structure and I have never seen the argument put to us that this is needed anywhere. Yes, it is an idea and yes, other police forces have it and other police forces have different things to us. I heard a comment from the previous speaker talking about police in other jurisdictions. The AFP is like no other police jurisdiction in this country, let alone the world, in my studies. At any given time we can have 10 per cent of our people offshore, out of Australia; a third of our workforce is civilian; we have two styles of sworn officer; we have the majority of our workforce performing what you might conventionally call detective roles as federal agents in the investigative arena. So comparisons with a good idea in New York, well New York has been through a very different journey to our young organisation. It sheets back to my earlier comment, 'show us the argument and we

will respond'. We responded very well when the argument was put forward to us about illicit drug use and we were very proactive in working with the organisation in implementing a model.

Mr Hunt-Sharman: I think an important point to make here is that almost half of the AFP now have been cleared up to the level of secret. The AFP intends to clear everyone to secret. As you would all be aware, that is a very extensive process in itself, added to these other integrity measures that are in place. So, we are unique in regards to a law enforcement agency in Australia in that we have this whole range of very effective processes and procedures in place.

There is a big issue in regards to the resourcing side of this issue. Right at this moment we are in negotiations, or they have just been completed, for an enterprise agreement. We are looking at the sum of around 200 police officers moving to the support work pattern and moving away from operations because of the AFP's financial budget. That is a fairly serious issue because this procedure, to be put in place effectively, costs a great deal of money and I am sure you have been looking at the cost factors to this. To be done properly, and I would suggest that New South Wales does it very well, there is a lot of additional resources put in to making it effective, and that is for targeted testing.

In regards to random testing, I really see this as an airy-fairy idea. I think other people have forgotten to mention that the KPMG audit of the random integrity testing of police officers in the City of New York concluded that random testing was ineffective in fighting corruption in the department.

CHAIR: That was some time ago, was it not?

Mr Hunt-Sharman: Yes it was, but you also need to look at the numbers in regards to cost factors. Of the 826 random tests that were conducted involving 1,811 officers, there was only one test failure. As a point of distinction, of the 45 targeted tests involving 65 officers, there were 12 criminal failures. Our point is that if we are going to move down an integrity path then it should be targeted and it should use the resources to assist where there is suspicion that there is corrupt activity and, as my colleague, Jim Torr said, we want it to stay at the high corruption level. It is a costly exercise to do it, we want to fight corruption first. Let us see how it goes at that level before we start moving down to behavioural issues. That is where it could get down to and I think that is a pretty serious issue if it starts to get there.

One of the strong values of the AFP is actually trust. Of course the independent office of constable is very dear to all of us. The problem with creating fiction is it starts to then cause a distrust amongst the organisation; you do not know when something is real and when something is not real in regards to being tested. We would suggest that if anything, it would make investigators even more cautious of doing their jobs. There are enough measures in place now to scrutinise the behaviour of police officers in the Australian Federal Police.

Senator IAN MACDONALD: We are talking about random and targeted integrity testing. You would not say it if it were not true, but I am surprised to see that there is random and targeted drug and alcohol testing up to 100 per cent already in place. You also say here that there is initial and regular financial disclosure of assets and debt. Is that just disclosure or does anyone do a random or targeted assessment of the disclosure? Is it just left to the individual officer to tell you or does someone double check?

Mr Torr: There is an obligation on employees to submit reports in changes of circumstances. I cannot tell you the exact threshold issues of numbers or windfalls, all those sorts of things. In honesty I would say you would be better off to address that question to the AFP in terms of whether they overtly go out and seek updates. The fact is we have just moved into a new headquarters, the Edmund Barton Building, where the AFP has set the standard at secret of any employee who goes through there. That will have resulted in many, many new security clearance processes. To absolutely answer your questions about the proactive side, I am afraid I cannot answer that.

Senator IAN MACDONALD: Do you have a suspicion that they—what you are saying is to get secret classification, someone would be double checking information that individual officers have supplied?

Mr Torr: There is a finite period that a security clearance lasts and when it expires the whole process is recommenced. There is an obligation on the individuals if a significant thing happens within that period that they provide information. There are also the other measures we have in here. For example, let us say someone failed a drug test, apart from whatever sanction, whether it be criminal or internal and whatever risk assessment occurred as a result of that, that would certainly trigger a new security clearance as well. Sometimes these clearances are triggered by events that happen in the day-to-day life of an individual.

Mr Hunt-Sharman: Also as I understand it, certainly with promotion or if you are going to be deployed on the international deployment group, there is a reassessment done as well at that time. As Mr Torr said, if there is a change in your personal circumstances you have got to report it. If there is a change in your work circumstances you tend to have to go through the process again.

Senator IAN MACDONALD: You have got to report it but who checks that you are reporting accurately? I would not want to equate your profession with the profession I am currently in because we are also supposed to report interests, and you will be aware of a high profile incident in the last couple of days where one of our colleagues did not bother to report a change in interest. Again, I come back to the question with you people, is it just you reporting your own or does someone else check it? I think you have probably said you cannot answer it but you suspect that with your security classification that someone might be doing that in any case?

Mr Hunt-Sharman: I would suspect in regards to any professional standards matter, that if there were allegations against you that might relate to your financial status, two things would happen: they would pull out the file of your last financial declaration; and then also start doing some proactive looking at your financial affairs as they stand right at that moment as part of an investigation.

Senator IAN MACDONALD: If a couple of your guys start driving Maseratis that might encourage an investigation somewhere along the line?

Mr Torr: Very much, yes.

Senator IAN MACDONALD: You said, as I recorded it, that in an investigation of Sergeant So and So, how many times has he been investigated and whether they have found anything before raises questions about what that may suggest. To me, that suggests that you are suggesting that perhaps the people conducting the integrity tests need an integrity test themselves?

Mr Torr: The application for an integrity test to an extent is an integrity test. We have had the situation, and I made the point of the former Queensland Police Commissioner, that corruption can occur at any level and it is the most dangerous when it occurs amongst the corruption fighters. The Wood Royal Commission in New South Wales identified some of our senior people who were actually in charge of the internal security function of the AFP at the time in the busy Sydney office as falling short of the mark. Let us suppose that a junior whistleblower was starting to express concerns on that, what a good way to sort him out and send him a few dirty emails, see what he does with them, 'You have failed our internet usage policy, good bye.' Of course it is in the high levels of all organisations that the risk is the greatest. So the focus on the Sergeant So and So—why have you tested him nine times?—is because you are determined to get him. You cannot apply for a search warrant nine times—well you can but you probably understand my point—until you finally get the guy. We have had the conversation with the previous AFP Commissioner: you follow someone through their life 24 hours, seven days a week, you are going to find them do something, whether it is flick a butt out of a car window or giggle at a joke that they probably should not have been giggling at on a Commonwealth computer. Not to trivialise that, but if you follow someone long enough, you are going to get them.

Senator IAN MACDONALD: I understand. Finally from me, Mr Burgess, I was going to ask you the question which I think you have asked us. You are urging that the state and territory police officers do not become subject to any new possible federal integrity thing. Do you have the same thought about state and federal officers who are seconded to the AFP or perhaps even the Crime Commission? Should they not be then subjected, were it the case that there were a regime of Commonwealth integrity testing?

Mr Burgess: I think you are right. There is a difference between a state or territory officer who may be have some involvement in AFP by a joint operation or something like that, as opposed to someone who is actually working in the AFP on a seconded basis or as a special member. There is a difference. All I am saying is that it needs to be clearly clarified as to how you would deal with those people because they are technically employees of another jurisdiction, and I think it would be appropriate to have that clarified in the legislation if there is to be legislation.

Mr HAYES: Mr Torr, I think you are right when you talk about Australian Federal Police being somewhat unique. It is a small jurisdiction but I have got to say it has probably the most power of any other Australian police jurisdiction. I am sure you can understand the argument that when the Commonwealth moves to increase the responsibilities of the police that come under its purview, one of the things in the check and balance that goes with that is ensuring that the organisation is target hardened against corruption.

I note that you have a default position as someone against integrity testing but you do see that if we are to engage in integrity testing it should be targeted, and that is from a resource base as well as a moral base from your perspective. Is it also right to say that if we did go in that direction that you would see this coming under direct purview of ACLEI and then subject to parliamentary oversight?

Mr Torr: You have summed up our request very accurately, Mr Hayes. That is exactly it. It is very important to get authorisation process and the management process out of the hands of the AFP, excepting that AFP investigators might be drawn in by ACLEI; they are a relatively small organisation. One of the reasons that we

argued so long and hard for joint parliamentary oversight of the AFP was that accountability has to work for the credit and, as you acknowledge, the Commonwealth does invest very significant power in the AFP and in the individual investigators. It is very important to us that people in your position as elected representatives have an idea of what is going on and that the obligation rests upon ACLEI, if you go down that path, to provide reports to you.

Mr HAYES: Therefore you do not see any role for integrity testing into the day-to-day disciplinary regime within the AFP?

Mr Torr: The AFP well and truly has all the tools it needs to deal with those sorts of issues.

Mr HAYES: In respect to the PFA, I understand the position in terms of seconded police officers. We put this question a little earlier today to the ACC themselves—I am not sure they have seconded officers there at the moment but they do have the capacity to do that—that should there be a targeted integrity operation, how would you see that applying at the moment? The ACC had to take it on notice. They have not got a view on that just as yet. How would you see that applying?

Mr Burgess: I would probably be the same as the ACC. It would be interesting to try to work through how that would apply. As I said earlier to the senator, if you are seconded or acting as a special member of the AFP, you are in a bit of a different scenario to someone who is actually working for a state police agency or a territory police agency working mainly on a joint operation. We are just conscious to ensure that whatever comes from this inquiry, if it is to be legislation around an integrity testing regime, that it clearly identify how those things would work. We expect that perhaps it would be done in conjunction perhaps with one of the state integrity agencies but we would need to think through how best that would apply.

Mr HAYES: I imagine there has got to be some terms of agreement between jurisdictions when staff is lent or seconded elsewhere? I think what we would need to guard against is a target operation occurring and someone picking up the phone and alerting somebody else's boss in another state that one of their fellows might be under investigation without it ever being concluded. We were trying to actually work out this morning a little bit about that—how you would best go about doing that—to ensure that you protect not only the status of the operation but also the effect on the person concerned because the operation may not necessarily net faults in integrity.

Mr Burgess: I think there is a whole range of issues, not the least of which, but it could be ACLEI, for example, conducting an investigation in one of the states potentially in a property that is not Commonwealth property, for want of a better term. It could even be a state police premises. There is all of those sorts of issues to consider how those sorts of things would apply. I think it really needs some careful consideration.

Mr HAYES: In terms of checking on people, I am not sure at the moment how we are going to do it in ICAC, but one seems to have got through the net there. I have no further questions.

CHAIR: Just before you came to speak to us, we spoke to the Ombudsman by telephone and you may well have heard what he had to say. In his submission, and today orally, in his view integrity testing would not be effective if it was carried out by an outside agency because in that event—if it was ACLEI doing it, for example—the agency, the AFP or whichever agency it is, would close ranks against the outside agency that was carrying out the testing. Could you comment on that?

Mr Torr: I spent many years working with AFP professional standards and now I have spent many years defending or supporting our people who are subject of professional standards investigations and in my experience of investigations of serious matters I have never seen a gram of enthusiasm lacking in the AFP investigators who are investigating complaints against those of their fellow members. As I said before, that is why we invest our confidence in an organisation, namely ACLEI. Obviously, it does not know the ins and outs of every aspect of AFP conduct and for it to be effective, if you really are concerned at serious level corruption, it is hard to see how you could proceed without some of the AFP staff involved in the investigation.

CHAIR: It would be at least a joint operation?

Mr Torr: It is hard to conceive of it not being that; who knows, there could be a scenario. Given the complexity of an organisation like the AFP, you would need people who understand exactly how things work if you actually want to set the trap to catch the person.

CHAIR: In any event, however it ends up occurring, if it does, you would want ACLEI to have close oversight over it?

Mr Torr: Ultimately we would want someone from ACLEI, potentially being called before a parliamentary committee to talk about not necessarily operational details but to account for: the number of tests we have done; why we have done them; why anomalies seem on the face of it to appear, which may well be accounted for. We

would have far more confidence hearing that from ACLEI after integrity tests were done than hearing it from a middle level manager in the AFP.

CHAIR: You would have also heard me talking to the Ombudsman about random testing, and I think it is fair that I put to you what was said earlier. I think you alluded to it in your reference to the situation in New York being quite different to the AFP. I accept that, but can you comment on the notion that random integrity testing leads to a general deterrence? That is, every officer knows that any given situation could be an integrity test and therefore they are inspired by that, so to speak, to not be tempted by any opportunities. As the New York Police Department has said, and as you have said as well, the vast majority of officers pass these tests with flying colours. They have said from that that they believe that it is actually a morale booster rather than a negative. I would like to hear your view on that.

Mr Hunt-Sharman: The reality is we see the limited resources in the AFP and the Commonwealth. If we are going to prioritise, what is more important is actually targeting the people that we suspect are corrupt and dealing with corruption through the other mechanisms that we have. Random integrity testing is more about an educational process; it is about setting up different models and then seeing the reaction and not necessarily dismissing people. It is about a whole program of educating. The difficulty with that is you cannot do the same integrity test twice because everyone will hear about it. I think we have heard about comments of \$50 or \$100 sat on the desk and whether anyone would pick it up.

CHAIR: No.

Mr Hunt-Sharman: No, but then everyone sees a \$100 sitting on the desk and they say, 'Here goes the integrity test again.' You have to keep on changing it and the problem with that is the cost factor, the time and the cost to set up all the different scenarios. The reality is, again on prioritisation grounds, that we do not want to start at the lowest level of behaviour versus dealing with serious corruption. That is where we have got to target first as far as we are concerned. We do have faith in the ACLEI process. It could independently authorise targeted testing or it could utilise one jointly with the AFP, use the resources of the AFP if it wants to, it does that on other operations, or it can use other resources. Really with a limited AFP budget we would see this random integrity testing as way down the path.

Mr Torr: Could I just add something to that? Policing requires trust. The AFP has one of its core values as trust. In the environment out there, the hostile, quick moving environment, trust is everything. You do not really have a lot of time to second guess everything that comes your way before you start making decisions. In an intangible and philosophical sense: how do you reconcile an organisation and a profession that runs on trust where you have established a pretty big structure that says, 'We do not trust you and we are going to test you at every turn because we do not trust you'? It is another side to the issue.

CHAIR: Do you think it is about saying, 'We do not trust you,' or it is about ensuring public confidence in your organisation?

Mr Torr: We would say to the public, 'Be as confident as you can at the moment with what we have got.' We agree with former Commissioner Palmer who spent a lot of time dealing with and thinking of issues like this, and he saw that the negative effects would outweigh any positive outcome of random testing.

Mr Hunt-Sharman: Indeed, all other Australian jurisdiction police forces have considered it and have not done it. They have gone to targeted testing and I think internationally that is the same case, that it is very rare that any western police force has a random model. As far as we see it, we are happy to look at it. Again we go back to this great list of processes we already have in place, one of them being the confidant program. That is where anyone can anonymously report anything to the organisation for it to be investigated. There are lots of areas sitting underneath that list of 10 items. There is another probably 10 or 20 underneath it, all as a matrix which monitors police and their behaviour, but particularly in regards to corruption and organised crime.

CHAIR: What are your views on the relevance of integrity testing to ACT policing versus other AFP roles?

Mr Torr: The AFP is a big family in which there is constantly movement between different operational environments. Many people who are currently performing uniform policing in the ACT have worked in a federal environment, have worked, for example, in the Solomon Islands, have worked in support environments in headquarters. I suppose the point I am trying to make is there is a bit of the AFP in everyone, even if you are today working in the uniform policing environment. Once again, I suppose we go back to our foundation issue that we have read a lot of material but we have not seen the persuasive argument that it is something that should be added on top of everything else that is there.

CHAIR: I would like to ask Police Federation of Australia about your members' experiences of state police integrity testing regimes. I know New South Wales and Western Australia and, I believe, Victoria as well have one.

Mr Burgess: Our understanding is that WA is done under the Corruption and Crime Commission. New South Wales has testing, as you would be aware, under the New South Wales police act. Whilst random testing is not excluded under that legislation, it is not carried out as we understand it. We understand that is because, as my colleague said, if you do the cost-benefit analysis people have deemed it is not worth it. South Australia have targeted testing. It is not in legislation; it is only under general orders, as we understand it. Tasmania has integrity testing targeted only under their Police Service Act. Obviously the Office of Police Integrity has the powers in Victoria but we are not aware that anything takes place in the Northern Territory.

CHAIR: What has been the experience of your officers in relation to those testing regimes?

Mr Burgess: Certainly there have been some negative and some I suppose not so negative comments made. In our essence our position has been it is a state by state issue, and no doubt state governments and state police departments or territory police departments will make decisions based on situations that arise from time to time. I suppose in essence it has not been all negative. There have not been that many horror stories but, like my colleagues beside me, you often consider given what already exists in power to oversight police officers through the various bodies that exist, whether or not overlaying integrity testing is a worthwhile outcome. Certainly as we understand it, in all of the jurisdictions we talk about, anything other than targeted does not appear to be pursued in any way, shape or form.

CHAIR: In Western Australia, you say the Corruption and Crime Commission can do random and targeted?

Mr Burgess: I am not sure if they have the ability to do random and targeted but I certainly know it is done by the Corruption and Crime Commission. The only one that I am aware of that does not even have reference to random testing but it is not excluded in the legislation is in New South Wales.

CHAIR: Are you aware of how the CCC in Western Australia carries out its testing? Does it do it together with the WA Police or does it do it without their knowledge?

Mr Burgess: I do not know but, like my colleagues, I would probably be surprised if they had the capacity perhaps to do it without any involvement from the police. Because at the end of the day I think for the hands on stuff they would require the manpower, for want of a better term, I suspect of the relevant police jurisdiction. I could find that out for you but I do not have that information at hand.

CHAIR: Thank you.

Senator PARRY: I want to talk about random and targeted integrity testing. Can I just give you a scenario and invite you to comment? If you had, say, in a couple of suburbs in Sydney a police officer who is making inappropriate remarks to women, pulling them over in a random breath testing guise or something of that nature and there has been no clear identification of that officer, would it not be in the interests of the officers to have that officer exposed if this is happening? If the only way to do that is through some form of integrity test, that covers a fairly wide portion of the service. That blurs between a random and a targeted test; you are targeting an event but you are really having a random integrity test within the whole jurisdiction to catch who is doing that. I will just give you that scenario first if you would like to make a comment on that?

Mr Burgess: If you wanted to talk about somewhere in western Sydney, I would actually see it as more a targeted test because it would be—

Senator PARRY: But it does have an incredible random aspect attached to it?

Mr Burgess: Probably a play on words, Senator, but in reality if it was in a specific area such as western Sydney, then you would be refining it to a specific area. So, yes, whilst it might have some random nature about it, it would be specifically targeted at that area. For example, it might be a traffic scenario where it may be a highway patrol officer who has a more roaming brief across western Sydney, then it would be targeted, you would expect, at highway patrol officers in that area. So, it would have a targeted aspect. I am not aware of that sort of issue being one that has been subject to a test but I do still think that it would be certainly refining your search area to a small geographic location.

Senator PARRY: I suppose the clean definition of random is when you have got no incident to which to conduct an integrity test about. That is probably the clean definition. If we do take the scenario where maybe a quarter of a police jurisdiction is subjected to 'random' integrity testing because of an incident, then surely there could not be an objection if every now and then there is a random test? I will give you an example that I think the Chair used this morning where a wallet is placed on the charge counter in a police station or is handed in my

someone anonymous saying it is full of \$100 notes and they found this; maybe it had no identification in it. Then that is a test to see whether the officer does the right thing and processes that wallet accordingly. Now that only has to happen once in every blue moon, it does not have to happen every week. So is infrequent random integrity testing a real issue?

Mr Torr: I would use the parallel—should it be that you want to give that to police; why do we not offer a bribe to a judge randomly? These are pretty important stakes.

Senator PARRY: That is a good parallel, a good analogy.

CHAIR: What about a politician?

Mr Torr: I was going to say that but I was counselled not to before we came in here.

Senator PARRY: That is a very fair analogy to raise.

Senator IAN MACDONALD: Not that we have any power to do anything, I might say.

Senator PARRY: No. Referring to the statement that you have quoted under item 6, the issue of former Commissioner Palmer who had some very strong words in that quote, how deep is the feeling within the service about random integrity testing?

Mr Torr: I think most of our members are so focused on just getting on with the job that they tend to invest a bit of trust in us to really formulate and gather their thoughts, which we have done via our national council process. We have their endorsement in what we are saying. Our members are so familiar with all the processes that are there at the moment that it is not something that they are urgently turning their mind to. With respect to the resources issue, the AFP have had the power to randomly test for alcohol consumption during operational hours. Apart from a critical incident, a vehicle issue or a firearms event or something of that nature, I am not aware of them ever having decided to see if Jim was at lunch today and had a few glasses of wine or those sorts of things. Our members do not probably feel that they are currently exposed to this in a great way. In terms of gauging their full angst on this subject, there are difficulties in that.

Mr Hunt-Sharman: There has certainly been discussion in the past about targeted integrity testing. The views through a survey we did from the membership was that they would only be supportive of it if it was approved and coordinated and over sighted by an independent body. The second question we asked them was whether we should have a parliamentary joint committee as an oversight of the AFP. The third question was whether we should have an integrity commission that oversees the AFP. The answers were yes, yes, yes. Now we have got two of them and you are discussing the third.

I think our members have been very supportive of proper oversight and transparency in what occurs. The danger of not having it legislated and not having it very clear with an independent body is the risk—and what we are afraid of—of a corrupt element within the police force, at whatever level, that could actually attack honest, straight cops and that would be the problem. It has not happened in the AFP to our knowledge but certainly there has been history of that as organisations have grown and so forth.

I go back to the point that there have probably been more cases where targeted integrity testing based on true suspicion could have ended up with a good result. Where you have got clever criminals such as ex-narcotic bureau personnel that have been caught up in various commissions, they were the customs narcotic bureau, there was suspicion all the time but they were clever and we have seen the outcome of that in recent times where we have used other operational techniques. Again, if we have got limited resources, that is where we would like to see it, at the corruption level, where we can really make it hurt against organised crime and corrupt police officers rather than behavioural issues of whether you have been rude to someone.

Senator PARRY: My final theme of question is just in relation to Mr Asher's comments, and the Chair touched upon that earlier. I did question and challenge Mr Asher's views. He said it should be internal. You have indicated you think it should by far be external. Do you see any internal role whatsoever, apart from secondment of AFP officers for the investigative capability to the ACLEI jurisdiction, in relation to any form of integrity testing that the AFP itself could have or any state jurisdiction could have?

Mr Hunt-Sharman: Certainly it is very hard to get information on targeted integrity testing, as you are probably well aware, because it obviously has to be kept very close to the chest for all the different organisations. As I understand, on various matters they will use other police officers from other jurisdictions, undercover operatives from other jurisdictions for that purpose, and I would imagine that if ACLEI had this oversight and direction, they could use AFP personnel but they could also use other agencies that are available to them for that purpose. Normal investigations at the high level involving corruption with ACLEI do often use our professional standards people to work with them on those processes.

Senator PARRY: I think the short answer would probably be no?

Mr Hunt-Sharman: Yes.

Senator PARRY: He was more talking about the cultural aspect and he was indicating that if you have an external agency running integrity testing it would not be the culturally correct thing to do internally, but I cannot see a role that you could play that would build that up from the bottom back up to ACLEI?

Mr Torr: In trying to answer your first question, in our view or on the basis of our submission should you adopt it or part of it, I cannot see that there would be no role for an AFP investigator in integrity testing of any form unless it was an ACLEI sanctioned event and it had been authorised.

Senator PARRY: Operating under that jurisdiction? Okay.

Senator WRIGHT: I just wanted to follow up one thing. You said a couple of times that we need to focus on the high end corruption and not the behavioural or the half-price Macca's end, and I know that you were saying that in the context of the integrity testing scenario. I understand you are saying that rather than random, look at targeting those high end things. I just wanted to take you back to one of the fundamental points that the Ombudsman was making, that you probably heard when you were in here. He said that essentially corruption is on a continuum and that by the time you get to it, arguably it is a bit late. He says that it is actually about preventative measures and that if you actually look at targeting the culture of that kind of slippery slope, then you start to question, in the Macca's example, why is the proprietor offering half-price Macca's and what kind of expectation is there in that relationship that is building up. So, it is not strictly on point in a sense because I understand you were talking about the integrity testing being random or targeted, but do you have views about what he was saying about trying to get ethics and that culture in right from the start, so you are trying to stop the corruption gradually happening?

Mr Hunt-Sharman: We in the AFP have continual training on professional standards matters and scenario and I would say nearly every course that is run has some element reminding people of the processes. We are a very educated workforce and a very professional workforce so what you find is that that probably does not need to be taught to us again; it is constantly there. The fact of any issue of any discount of any type is basically banned. I think McDonald's may be the only one that may or may not exist now but anything else you will have to report it. You would have to report it if someone else did it. There are a lot of mechanisms there. There an offence for you not to tell the organisation if you see something that you suspect is incorrect or improper. So you have got those measures all in place for the person that does do the wrong thing but I would say that it is really not necessary at that level. I think we have all been trained through that process, but we go back to that higher level issue.

Mr Torr: I think we are a bit cautious of the slippery slope argument. Police are confronted with ethical dilemmas all the time from day one but they get out there. The police officer who one day makes a poor judgment is not necessarily destined to be the drug trafficking corrupt senior police officer of tomorrow. In a fulsome and active police career, there are many different ways you can decide on a different set of scenarios and they are not all necessarily wrong. I do not think the slippery slope argument justifies retreating from us targeting this where we need to target it.

Senator WRIGHT: Thank you for that. I just wanted to explore that because my experience is only recent but there was a recent controversy in Queensland, you might remember, where there was a discussion about this very thing and there was a suggestion, reported in the media, that on the Gold Coast there were going to be some changes to the culture that had developed there and there was apparently quite a lot of push back. That is why I was really exploring it because that seemed to fit in with what the Ombudsman was saying about that and obviously that is something that you are already doing or looking at.

Mr Burgess: In part of my previous life in the New South Wales Police I worked in a department in New South Wales called the Royal Commission Implementation Unit which was a unit that was established to look at all of the reforms that came out of the Wood Royal Commission. A lot of people talked about the different issues that arose from the New South Wales Royal Commission. The key issue from our perspective that specifically came out of that was the need for institutional and cultural change, and I think that is what Mr Asher was saying in his evidence before you today. One of the things that was quite evident to us is that the Royal Commission was talking about particularly changing the culture in the organisation by not just having a punishment culture for every time somebody made an honest mistake but also looking at the way we use managerial regimes to actually correct behaviour before it gets to the point of needing some other form of correction. I think those findings of the Wood Royal Commission are as appropriate then as they are today for every jurisdiction, not only probably in Australia but around the world and I think Wood was far reaching in those issues.

I think it was a pretty interesting message to New South Wales that for too many years they had operated on a regime where people were at often times afraid to tell the truth for fear of what might happen to their colleague, et cetera, and so inadvertently they would cover up and do a whole range of things that they would not otherwise do. Yet if we treated these things in a managerial sense and recognised that people do make honest mistakes from time to time and treated them accordingly, then we would be able to, as I think the previous speaker Mr Asher was saying, correct a lot of behaviour in policing before it gets too bad.

Mr Hunt-Sharman: That is actually a very good point, if you do not mind me saying. What Mark has just mentioned is important in that New South Wales has then moved to that model after the Wood Royal Commission. The AFP then brought in Judge Fisher to review our integrity regime and we have adopted the New South Wales one and have had it in place since about 2003. It is about that cultural change but it has been in play. I think the comments made by the Ombudsman, with respect, are probably somewhat out of touch with where the organisations have got to with their own managerial processes to educate and train and so forth.

CHAIR: I thank the representatives from the Australian Federal Police Association and the Police Federation of Australia for taking the time to come and talk to us today. It was very helpful. That concludes today's hearing. Thank you to all witnesses who appeared. The committee stands adjourned.

Committee adjourned at 14:58