COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Reference: Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006; Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006; Law Enforcement Integrity Commissioner Bill 2006

THURSDAY, 27 APRIL 2006

SYDNEY

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Thursday, 27 April 2006

Members: Senator Payne *(Chair)*, Senator Crossin *(Deputy Chair)*, Senators Bartlett, Kirk, Mason and Scullion

Substitute members: Senator Stott Despoja for Senator Bartlett

Participating members: Senators Abetz, Allison, Barnett, Bartlett, Mark Bishop, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fierravanti-Wells, Heffernan, Hogg, Humphries, Hurley, Johnston, Joyce, Lightfoot, Ludwig, Lundy, Ian Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Parry, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Trood and Watson

Senators in attendance: Senators Ludwig, Mason and Payne

Terms of reference for the inquiry:

Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006, Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 and Law Enforcement Integrity Commissioner Bill 2006

WITNESSES

Committee met at 1.07 pm

BROWN, Dr Alexander Jonathon, Senior Lecturer, Griffith University; Senior Research Fellow, Australian National University

CHAIR (Senator Payne)—This is the hearing for the Senate Legal and Constitutional Legislation Committee's inquiry into the provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006. The inquiry was referred to the committee by the Senate on 30 March 2006 for report by 11 May 2006.

The bills are intended to establish the Australian Commission for Law Enforcement Integrity headed by the Integrity Commissioner to deter and investigate corruption within the Australian Federal Police and the Australian Crime Commission; to equip the Integrity Commissioner with investigatory and inquiry powers to gather information and evidence to perform his or her functions; to modernise the complaints and professional standards regime within the Australian Federal Police; and to align the Ombudsman's administrative review role over the Australian Federal Police more closely with its role in relation to other Commonwealth agencies.

The committee has received eight submissions for this inquiry, all of which have been authorised for publication and are available on the committee's web site. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies of those notes are available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. I would also ask witnesses to remain behind for a few moments at the conclusion of their evidence in the event that Hansard staff need to clarify any terms or references.

After that lengthy introduction, I welcome Dr Brown. You have lodged a submission with the committee, which is numbered 8. Do you need to make any amendments or alterations to that?

Dr Brown—I apologise for a couple of typos that slipped into it.

CHAIR—No problem whatsoever. I invite you to make an opening statement or presentation to the committee. At the end of that, we will go to questions and discussion.

Dr Brown—Thank you very much to the committee for inviting me to come and speak to you about some very important pieces of legislation. What I might do, seeing as the submission was only finished yesterday, is introduce it and walk you through some key elements of it, if I may. All three pieces of legislation are obviously very important, which is why I was very happy to come, and somewhat more important than the number of submissions might indicate. My submission in fact attaches three published works, which have so far been my main comment on the primary issues as I see them relating to this

legislation. What I have done in my submission is give you those three publications even though I am fairly confident that some of the people responsible for drafting some of the legislation have already seen them. Nevertheless, I will have my second bite through the committee.

Those submissions relate primarily only to the Law Enforcement Integrity Commissioner Bill 2006. The submissions I have given you are basically critical, because I am working on the basis that what the committee most needs to know about it are the things that can or should be rectified in the current legislation rather than necessarily hearing about all the things that are good. There are some very good things about the package as a whole.

In my submissions about the AFP bill I guess I am indirectly endorsing the direction that it has taken. Obviously, the modernisation of the disciplinary regime and the complaints investigation regime associated with the AFP is something which appears to have all the hallmarks of good sense. It brings what basically was an old, clunky and extremely difficult to operate system up to date and turns it into something that will be able to more flexible and more appropriate to modern times. There is obviously a long background to that. There was the Fisher review and there has been a great deal of work put into it by both the Commonwealth Ombudsman and the AFP. The new arrangement for the Commonwealth Ombudsman to be the law enforcement Ombudsman for the purposes of that bill is a necessary step for the parliament to take. We can all be confident that that framework will be a firm step in the right direction.

I guess I make those comments partly because part of my own background is having been a senior investigator in the Commonwealth Ombudsman's office—I have dealt with the realities of how these things work in practice. The old legislative regime was effectively something that, when it worked well, was being made to work despite itself most of the time. When you hear evidence to the effect that this will be a better legislative framework to support best practice in terms of the relationship between the AFP, the Ombudsman and any new bodies, that is probably all very sound reasoning.

In terms of my submissions on the Law Enforcement Integrity Commissioner Bill 2006, there are some good things about this bill and the proposed creation of this new body. One is the fact that there is any development at all happening in this area. In some of the publications that I have attached to the submission, I have written that this is in fact the most significant institutional development at a Commonwealth level in the development of the integrity system, if you like, for over 20 years. Whatever shape it might take, it is the first new statutory body to be created as part of that system for over 20 years. Consequently, it was going to be important whatever shape it took and whatever functions it was given. It is going to be a new institutional player and therefore by definition very important.

The fact that the government and the parliament are proposing to make any significant additional investment in terms of resources in mechanisms for detecting, investigating and prosecuting corruption in Commonwealth administration in whatever form is a fundamentally welcome development, and is one of the reasons why this is a much more important development than perhaps any lack of public debate about it may indicate.

There are also some important features of the bill that I think it is worth the committee being aware of, which, if necessary, the committee should be defending in the face of any other attack. One is the definition of corruption that is used in this bill. Obviously the primary focus of the bill and the proposed new body, the proposed new integrity commissioner, is the detection, prevention, investigation and rectification of corruption. The definition of corruption that is provided for in the bill is very broad. In my view that is sensibly and defensively so. There has been an unfortunate trend around Australia in many jurisdictions for definitions of corrupt conduct or improper conduct to become more technical, more convoluted, more narrow and more difficult to administer and to then be used to hamper the jurisdiction of the bodies involved, which leads to more litigation and more administrative review challenges, as to whether or not people are covered et cetera.

The definition that is provided for in clause 5 of the bill basically focuses squarely on the fact that official corruption can really take the form of any kind of abuse of official office or public trust. That is a very sound basis for the framing of that definition and for any bill like this to proceed, irrespective of the fact that some people may feel that that is too broad in some respects. My advice to the committee is that it is a far better definition than definitions that are too narrow and that you would be well placed to endorse that kind of definitional approach.

Part of the framework embedded in the bill provides for differentiating between different types of corruption. The definitions provided for serious corruption, systemic corruption, significant corruption—which is either systemic or serious corruption or such corruption that may be identified as significant in a relationship between the new commissioner and the agencies involved—are, again, something that may appear to be too wide open and too imprecise. In fact, they provide a sensible framework for the parties that will have to administer this system to define corruption in a sensible way and to exercise sensible discretions for what should or should not be investigated as they go along. So I think with respect to this the Commonwealth is in a position to once again leapfrog the existing state legislative standards for the definition of corruption after having been in a position for some years of having no definition of corruption in any of its legislation. I think that is a strength of the proposed bill.

Those are the main positive things I want to say about the bill. Most of my submission involves a range of criticisms, which I am happy to make quite strongly. I have previously written on this. I have been involved in research in this area for quite some years, along with colleagues, some of whom are known to members of the committee. I have been a part of large teams of investigators funded by the Australian Research Council specifically for the stocktaking of integrity systems, integrity agencies and integrity bodies around the country over the last three years. It is all the research and experience on top of my own personal experience which has led us to the recommendations in one of the major publications I have referred you to, which relate directly to what this agency could and should be and what its functions could be.

The main support for the advice I give the committee can be found in the report of what we called the National Integrity Systems Assessment. I have given you, as attachment C, an extract from that report. The report is called *Chaos or coherence? Strengths, opportunities*

and challenges for Australia's integrity system. It was a major multi-party collaborative research project funded by the Australian Research Council involving Transparency International Australia, which reported in December 2005, so very recently. The report was actually launched in this building by John McMillan, the Commonwealth Ombudsman. The other publications really provide some of the background to the recommendations in the report that relate to this particular issue before the committee and other opinions and my own opinions published along the way, which are basically all part of the rationale for the recommendations.

The three major issues reflected in those publications and in the submissions relate firstly and most importantly to the jurisdiction of this new organisation or any new organisation. My submissions 1 to 4 and recommendations 1 to 5 in my document all relate primarily to the major issue of the jurisdiction: what should be the jurisdiction of this agency or any new agency created by the Commonwealth to investigate, detect and prevent corruption?

The second group of submissions—5, 6 and 7—relate to various aspects of the functions of the commission. The major issue there is how the legislation can or should realise its object of being proactive in dealing with the detection and the prevention of corruption rather than just with the investigation of corruption. Those are very difficult issues. In those submissions, I raise some other more technical issues with the bill, which we may not have time to go through but which are also quite important.

The final group—submissions 9 and 10 and recommendations 9 and 10—relate to the third issue of how this new agency will fit within the integrity system as a whole and are relatively straightforward.

I will focus initially on the first group of submissions, which relate to the jurisdiction of the commission. I point out to the committee, in case it is not already aware, that our research has shown very strongly that, when one boils down the history of proposals to create a new integrity or anticorruption commission of any kind at a Commonwealth level, the case for such a commission is really a case for a commission of general jurisdiction over Commonwealth administration and is not restricted to just law enforcement agencies. That is where our research led us for a variety reasons, which I am happy to outline in more detail.

The attempt that is embedded in the bill to create an organisation which can effectively supervise and deal with corruption in relation to law enforcement by the Commonwealth is likely to prove fairly dysfunctional in dealing with many of the major corruption issues that the Commonwealth is likely to need to deal with. Even though it has a logic of its own, on a wider canvas that logic falls over in various respects.

Also most importantly, which I guess has to be of relevance to the committee and to the Attorney-General, the proposal to create a body which is restricted to law enforcement agencies does not actually deliver on the spirit and the logic of what the government thought it was announcing when it announced the proposal to create this body in June 2004. As a researcher, I get the privilege of tracking these things from the moment they pop onto the horizon to the moment they fall into legislation. Although that might then become uncomfortable for some, it puts me in the invidious position of pointing out where it appears that simple mistakes of fact or interpretation have been made or inconsistencies have arisen. I

think the committee needs to be aware—and, if necessary, help the government to be more conscious if it is not already conscious—of the fact that the announcement in June 2004to create a new body of this kind was quite clearly policy on the run. The announcement was made within four days of a *Four Corners* program in which the Commonwealth was specifically criticised for having an anticorruption regime identical to Victoria's and that, from the media releases involved, the Commonwealth's decision was very clearly and explicitly intended to put the Commonwealth on a path—a welcome path—to establishing an anticorruption regime which was different from Victoria's.

Submission 1 is intended to try and explain to the committee—and perhaps through the committee to the government—that where the Commonwealth will end up as a result of creating the body that is proposed in this bill will still be the same as Victoria's. The policy objective was to create a more robust anticorruption regime based on what the Attorney-General and the Minister for Justice and Customs called a 'properly-formulated independent Commission'. The media release states:

> If Victoria was to raise a properly-formulated independent Commission—similar to those in WA, New South Wales and Queensland ...

That is not what this bill will achieve, because it will not establish an anticorruption regime that is similar to those in those states. It will have caught up with what Victoria has done since June 2004 and establish itself as a similar model still to Victoria. Figure 1 on page 2 of the submission is intended to try and help make that point clear by providing some institutional comparison between the different jurisdictions in Australia as they stand at the moment on these issues of core integrity or anticorruption institutions.

That is probably enough for an opening statement, other than to say that the path that the Commonwealth is going down at the moment—if the parliament proceeds to create a body of a limited jurisdiction of this kind—on the one hand I would classify as largely an opportunity lost. However, I would classify it as being a temporary opportunity lost because inevitably in the end the Commonwealth will either come back to extending the jurisdiction of this body to be one of general jurisdiction over the Commonwealth administration or have to create a new body and possibly roll this body into it. That would be a prediction that I would make with a great deal of confidence. To a certain extent it is an opportunity that has simply been lost now but put off until another day. Perhaps that is a defensible strategy to take, but my argument would be—and our research led us to this conclusion—that the much more sensible approach to take would be for the Commonwealth to bite the bullet and create a body of general jurisdiction now rather than stuff around with these things and create likely technical problems with how this body will operate.

The result of all that is simply to conclude that the Commonwealth would be better proceeding with a body of this kind than not, and there have been many recommendations in the past to that effect. That is especially so in the context of public expectations about corruption at the moment, where we have under way a royal commission into corruption allegations involving a former Commonwealth authority, which would not be able to be investigated by this new body. The Commonwealth has had recent experience with establishing other inquiries or specifically empowering and resourcing the Ombudsman to take on other inquiries into serious misconduct. Those inquiries have been into matters that

would fit within the definition of 'corruption' in many cases, but they would not be covered by this new body. The public expectation of any government at this time would be to establish an anticorruption commission able to carry the full load of anticorruption investigation work that the Commonwealth appears to in reality be dealing with on an annual or biannual basis at the moment. But this body will not be in a legislative position to undertake that work for the Commonwealth—in which case what has the Commonwealth done by avoiding the opportunity to set up the sort of body that it appears to need on a more full-time basis?

CHAIR—Thanks very much, Dr Brown. Thank you for the documents that you have provided to the committee by way of submission, both the substantive submission and the attachments. I have not had a chance to examine those closely, so I probably will not ask you a lot of questions today, but I may take up where you ended. It seems to me that if you extrapolated across Australia the theory that you are enunciating then you would roll the PIC in New South Wales into the ICAC, the Ombudsman into the ICAC and the Auditor-General into the ICAC so you had one single body. Is that the position?

Dr Brown—No, not necessarily. Certainly the history of the PIC in New South Wales is not that you would roll it into the ICAC, although that may happen again at some point—it came out of the ICAC—

CHAIR—I know. We are having some chicken-and-egg issues here.

Dr Brown—The New South Wales comparison shows us that New South Wales established an anticorruption commission of general jurisdiction. Then through the Wood royal commission it established that it also needed a specialist police integrity body. Of course it did not cease to have the anticorruption commission of general jurisdiction. So it has both. It has simply enhanced its capacity by taking that step.

CHAIR—So the issue at the Commonwealth level for you is that there is no standing anticorruption body. You think that there should be one and so the government's introduction of a bill to establish a law enforcement anticorruption body, to use the vernacular, is in your view missing the opportunity to have a broader anticorruption operation at the Commonwealth level.

Dr Brown—That is correct.

CHAIR—Given that the committee is, by and large, curtailed by the bills in front of it and the brief given to us by the Senate—essentially our brief is to look at this legislation and these bills, and you have said that there are some good things about this which we should not throw out with the bathwater, if we are minded to throw the bathwater out, and those features include the definition of corruption and a number of other things—I think that we are actually starting from a good premise here, because we have a bill in front of us dealing with law enforcement integrity which pertains to the AFP and the ACC, both organs of Commonwealth responsibility, and this is a good thing to be doing. Am I wrong?

Dr Brown—No, some of my opening comments were intended to establish that. It would be better to have this than to have nothing, but this is going to be more problematic and cause more problems for the parliament and the government than, I think, its architects comprehend, for a variety of reasons to do with those larger issues.

Senator MASON—You are damning the executive with very faint praise, Dr Brown.

CHAIR—I will open it up to my colleagues and we will have some questions about that. I am not sure that we are starting from the same point, Dr Brown, but I think that the points that you make in your submissions and in some of the papers that I have just flicked through here briefly are very important. I am not dismissing them at all, just trying to put it in the context of these legislative inquiries at the moment.

Senator MASON—Powers generally then, Dr Brown, of a standing royal commission? Are those the sorts of powers that you want available across all fields of federal government administration? So, for example, the current inquiry into AWB would be undertaken by this body that you are proposing?

Dr Brown—It could be if the parliament and the government were so minded. That would be a very straightforward thing to achieve.

Senator MASON—Taking examples throughout the world, is it commonplace for a government to have as an ultimate integrity measure a broad based anticorruption body with the powers of a standing royal commission available to investigate all aspects of government administration?

Dr Brown—Yes.

Senator MASON—In the United States?

Dr Brown—It is increasingly common, especially in developing countries but increasingly also in European countries, economies in transition that have been in the process of constitutional renewal of various sorts.

Senator MASON—What about the West? What about in the United Kingdom and the United States—the English-speaking democracies? Do they have this in Canada and in Great Britain?

Dr Brown—The role of special council in the US created after the Nixon tapes, Watergate et cetera has—

Senator MASON—But even that had a chequered history, Dr Brown, the special council.

Dr Brown—It does. I always prefer to look to our own experience rather than necessarily looking at comparative experience—

Senator MASON—I was looking for some precedent of a broad-ranging inquiry into government corruption. I was wondering whether there are precedents.

Dr Brown—The key precedents which the government referred to specifically when it announced the creation of this body were the frameworks in place in Queensland, Western Australia and New South Wales. If they are the model that the government is looking at, then there are precedents for anticorruption commissions of general jurisdiction right across government administration.

Senator MASON—But you cannot give any worthwhile international examples?

Dr Brown—The key historical example which was a precedent for the New South Wales ICAC was the Hong Kong ICAC, which is well known as being of that structure and also as

being a body empowered to investigate any corruption in the private sector as well as in the government sector. It has been generally well regarded on that basis, having those powers.

Senator MASON—I was looking at the project you mentioned before and I noticed that the team leader was Professor Samford. I have spoken to him about this in another capacity. Do you think that what you are proposing, a body with broader jurisdiction, would improve government administration? Or would the government grind to a halt because of an overarching Big Brother and people would be too scared to act? Do you think this would actually help government administration?

Dr Brown—Yes.

Senator MASON—Why?

Dr Brown—Because our research led us to the conclusion that, in relation to the Commonwealth, there are aspects of Commonwealth administration—things that go wrong on a routine basis—which fall within the type and definition of corruption that is proposed here, which is appropriate: noncriminal forms of corruption that currently simply do not get appropriately detected and rectified in a variety of ways. That is the result of various aspects to do with the structure of Commonwealth fraud policy and the reliance on the AFP as a primary corruption investigator. The AFP is restricted to its primary brief of criminal investigation, which then does not cover those grey areas of the noncriminal areas of corruption. There is in fact a gap in Commonwealth administration that would be strengthened. For the same reasons that you would create it in relation to law enforcement agencies, that same gap exists in relation to other agencies. The experience where governments have got to this point, the same point of whether Commonwealth is now at, of saying, 'This is the appropriate way to deal with corruption,' has a long history of us having learnt through hard experience at a Commonwealth level that corruption is different to maladministration, as dealt with by the ombudsman. Corruption is not always clear 'body on the floor' type criminal action of the sort where we would send the AFP in to investigate; corruption does exist in these different forms—

Senator MASON—The allegations with respect to AWB are not a bad example, are they? It is murky—even the allegations, with respect to whether they are true or not.

Dr Brown—And, similarly, with other forms of serious misconduct. As a way of emphasising this point but also as getting back to what might be your core business in relation to the definition of law enforcement functions that is embedded in the bill, in preparing my third submission I really wanted to come to grips with the question of how well this bill will work in practice in terms of both trying to achieve the aim of enhancing integrity in relation to law enforcement functions and these other larger issues about jurisdiction and other Commonwealth agencies. One of the strengths of the bill compared to the original proposal, which was in fact just to make this agency cover the Australian Federal Police and the Australian Crime Commission, is that the bill does allow, through regulation, other Commonwealth agencies with law enforcement functions to be brought within the jurisdiction of the act. I do not know at what point that proposal came forward. Academics like to think that they write something and that sometimes people read it and that sometimes then the bill

might get adjusted, so I do not know what the exact trigger was for that particular idea. That idea has some logic, but if you follow the logic through—

Senator MASON—You say it is political, don't you? Or the decision of the Commonwealth has the potential to look political.

Dr Brown—Firstly, it does not solve the government's problem of trying not to look political in terms of who this body investigates. If you look to state experience, one of the best ways that governments can use these bodies is by saying, 'It's being independently investigated. The complaint's been received, the body's investigating it and the government has not had to make any political decision as to whether or not this should be investigated.' That is one problem. But it will have to make that decision in relation to whether it extends the jurisdiction of this agency. More importantly, there is the question: how do you define what is a law enforcement function of an agency whose functions are not solely law enforcement? What sort of arguments are agencies going to make—

Senator MASON—Customs or whatever.

Dr Brown—The two examples I have dot pointed at the bottom of page 3 of the submission are the Australian Taxation Office and the department of immigration. Would fraud or corruption in relation to taxpayer audits being undertaken by the ATO be classified as a law enforcement function if in fact there was evidence of corruption in that area and that is an area of high corruption risk that the ATO already—

Senator LUDWIG—Take Operation Wickenby as a case in point.

Dr Brown—Undoubtedly you know more about this case than I do, Senator.

Senator LUDWIG—It started off as a tax investigation and now the ACC are dealing with it. It is a live investigation, so there is very limited material we can talk about. It was a tax investigation about, I suspect, fraud which has now developed into a significant Australian Crime Commission investigation.

Dr Brown—There may or may not be any official corruption involvement in that; I do not know.

Senator LUDWIG—No, there is not—I make that clear; there is no suggestion of that. But it is a question of where you start and stop, if there was.

Dr Brown—Yes. In fact, in that case, if it is a question of taxpayer audits, I think if it went to court and the Federal Court was asked to interpret the act and provide a definition in order to resolve any ambiguity, then I would think it would say, 'Yes, that is a law enforcement function.'

What about the Nick Petroulias case, the issuing of binding rulings on taxpayers' obligations or entitlements? In that case there was a prosecution brought by the Commonwealth against what was by then a former assistant commissioner, or some such, of the Australian Taxation Office who had been receiving consideration from private individuals for issuing binding rulings that were to their benefit. Is that a law enforcement function? It is an area of now quite clearly known, identified, proven corruption risk, but is it a law enforcement function? If I was a judge on the Federal Court asked to interpret that I would have to think many times and call a lot of argument and possibly conclude in the negative:

'That doesn't sound like a law enforcement function to me.' Therefore, the government would not have the option of asking this agency to investigate that allegation of corruption, even though the path that was sought to investigate it, which was the criminal investigation path using the AFP, proved to be the inappropriate path to really prosecuting that as a case of corruption.

Senator MASON—I will pass on to Senator Ludwig, because I know he has a few questions, but I just want to mention an issue that is perhaps for another time but that this has touched on, and that is how education may buttress these legislative initiatives. No doubt you could probably be a consultant on that area—but we will pass on education for now.

Senator LUDWIG—I assume we are dealing with the proposal that is currently before us; I understand what your proposal is but that is not currently before us. Do you have a view, though, as to whether the current width of the law enforcement agencies is wide enough or should it include Customs, ASIC and others that also take a law enforcement or quasi law enforcement role?

Dr Brown—It would certainly be an improvement on the current arrangement in the bill to identify a broader range of agencies? What that range of agencies would be would obviously need to be open to more debate. But I think there is more than enough case for identifying a broader range of agencies, including, as you say, the Australians Customs Service, ASIC and the ATO—those that we can identify right here and now as having major law enforcement functions. If it is the only organisation that the parliament is inclined to create, then the logical thing would be to include those organisations now in the jurisdiction of this agency.

It would also be the logical thing to do to not attempt to bifurcate between law enforcement functions and non law enforcement functions in relation to any agencies, because all that will do is create a wig fest. It will create the opportunity for agencies to mount legal arguments that the particular conduct or the particular activity which is under investigation is not a law enforcement function, it is some other type of function being pursued by the agencies, or for individuals who are under investigation to allege that. Even if agencies are inclined to say to this new investigative body: 'Yes, come in and investigate this; we want you to help us clean out this person or these people,' that person or those persons are fully entitled to go off to the Federal Court and argue that the matters in relation to which corruption has been alleged are not law enforcement functions of those agencies. The Petroulias example at the ATO would be a case in point.

So I would urge the committee, even if you were not of a mind to raise any issues to do with the need for a body of wider jurisdiction than law enforcement, to at least ensure that all the obvious law enforcement related agencies are included and to not attempt to create artificial legal distinctions between which types of functions they perform that may or may not be covered by the agency, because you would be just creating a rod for the Commonwealth's own back.

Senator LUDWIG—In fact, it could reduce the ability of the independent commission to examine these matters fully to ensure that the—

Dr Brown—That would be my prediction. It would not only reduce but make it more expensive. Who will carry the legal cost of mounting the counterargument that in fact it is a

law enforcement function? If it is the commission itself then you can see half the commission's budget going immediately on the defensive court action et cetera.

Senator LUDWIG—Did you have an opportunity to look at the Fisher report?

Dr Brown—Not in any detail. As far as I am concerned, the principles behind the Fisher report and the directions that the Commonwealth is taking in relation to the AFP—the repeal of the complaints, the Australian Federal Police Act and the AFP bill—are not things on which I would make any submissions, as per my opening comments.

CHAIR—There are other witnesses who will.

Senator LUDWIG—Yes. I take it that you would not make any submissions in respect of the Law Enforcement (AFP Professional Standards and Related Measures) Bill—

Dr Brown—That is the bill to which I am referring.

Senator LUDWIG—It is across the board, in other words, in respect of that. That is what I meant.

Dr Brown—Yes.

Senator LUDWIG—Notwithstanding your earlier comments, do you see whether or not the commission has sufficient power to be able to focus on what it can do? Can it focus all its powers on being able to do what the legislation requires him or her to do?

Dr Brown—Your question really relates to what I have presented as submissions 5, 6, 7 and 8 in my document. In terms of investigative powers broadly—

Senator LUDWIG—Particularly own motion investigations, ability to be able to—

Dr Brown—The bill looks strong in relation to those issues, by and large, in terms of the mechanics of investigation powers. The qualification I would make on that—and I hope it will be useful to committee, irrespective of the other larger issues—is that in submission 6 I point out that the commission appears to lack a sufficiently strong discretion not to investigate corruption matters; that the police should not be investigated. It is not so much where they come from agency heads, because there is quite a structured framework for that, but where they come from other persons—that is, read 'members of the public', including public complaints.

In fact, the legislative best practice in relation to any agency like this would involve an ability for the commission to devote its resources strategically to the important cases by having a clear discretion not to be able to not investigate a range of matters for a range of criteria. To me, those provisions do not appear to clearly appear anywhere in this bill, which is potentially a problem for the commission that I think is relatively easily rectified if one looks to comparable provisions in the Ombudsman Act or other areas. That is just a technical functional thing that could be relatively easily rectified.

Submissions 7 and 8 are also relatively small but very important. Submission 7 relates to the fact that there is a qualification on the matters that can be brought forward—this is in clause 22(2)(c) of the bill—that agencies are relieved of bringing forward any types of corruption matters, including insignificant ones, if it believes that they are not made in good faith.

I currently lead another major national research project, in which the Commonwealth Ombudsman and the Australian Public Service Commissioner are formal participants, into the management of whistleblowing and whistleblower legislation around the country. I want to strongly make the point to the committee that that is a particular paragraph that the Commonwealth can afford to do away with completely, as being something that can act only as a disincentive to many would-be whistleblowers within these or any other agencies to come forward and bring information about corruption to the commission. My rationale for that is set out in the submission. I would strongly urge the committee to consider that because it is a mistake that is easily made. It is a clause that is easily put in in ignorance of how whistleblowing actually works in practice.

More directly answering your question, Senator, in terms of the major problems with investigative powers I think there is an insufficiently wide and flexible power in the commissioner to be able to report in a public fashion when and as he or she sees fit. That is submission No. 8 amongst my submissions. In fact, if one compares the reporting avenues that are available to this commission to, for example, the existing reporting avenues of the Commonwealth Ombudsman under section 35A of the Ombudsman Act, then this commissioner may well find himself or herself slightly more hamstrung than anybody would desire in terms of the hoops that they would have to go through before they could make any public statement, public report, interim report or report in the public interest about a matter of burning importance. I think the proven precedent in section 35A of the Ombudsman Act is something that the committee could easily pick up and suggest an amendment on. It would alleviate public concern on those issues.

The only other major submission in respect of the functions of the commission is that there is an inconsistency in the bill between the objects of the act and the functions of the commissioner in relation to proactive detection and corruption prevention or corruption resistance building functions. That is something that I think the government and the parliament can address but that requires some further deliberation. That is something that the committee should consider: how to articulate and specify how those objects can be spelt out in a way that will achieve the objects of the act, which currently are not reflected in the commission's functions. The question is: why include them in the objects of the act if in fact you are not attempting to achieve them through the body of the legislation?

CHAIR—We have been able to spend a very comprehensive period of time with you and your submissions, Dr Brown. The committee has a slightly luxurious time frame, compared to our usual experience, in which to report on this bill. We table our report, of course, on 11 May. In the course of our discussions, Dr Brown, there may be some issues we would like to come back to you on. If you would be agreeable to assisting the committee with further inquiries by way of questions on notice then we would be very grateful.

Dr Brown—I would be more than happy.

CHAIR—Thank you. And thank you for all the information you have provided to the committee and for your attendance here today.

Dr Brown—Thank you to the committee.

[1.53 pm]

KEARNEY, Mr Allan Geoffrey, Director, Intelligence and Executive Services, Police Integrity Commission

CHAIR—I welcome our next witness, Mr Allan Kearney, from the Police Integrity Commission, New South Wales. The Police Integrity Commission has lodged a submission with the committee, which we have numbered 2. Do you wish to make any amendments or alterations to that submission?

Mr Kearney—Yes, I do. I would also like to make an opening statement, if I could.

CHAIR—Yes, definitely. I was about to invite you to make an opening statement.

Mr Kearney—Perhaps I could address those issues as I go through.

CHAIR—By all means.

Mr Kearney—First of all I would like to pass on the apologies of the commissioner. He would have liked to have been here himself but is otherwise detained operationally at the moment. I note that, while I have had some input into these submissions, it has been somewhat limited, and my understanding of what is quite a comprehensive bill is not as detailed as I would have liked before appearing here today. I am happy to assist where I can, of course. Where I cannot I would be happy to take questions on notice and get back to you in correspondence afterwards.

CHAIR—Thank you.

Mr Kearney—I would also like to preface my comments by noting that, given the short time frames involved for the commission to have a look at the legislation and other more pressing requirements back at the office, our assessment of the legislation has been somewhat superficial. The comments have been made on that basis. There are one or two amendments, as I have mentioned, and if I could make those as we go I would appreciate the opportunity.

The first point that we raised concerned sections 29 and 30 of the bill. The bill requires notification, subject to investigative exigencies, to state agencies only where an allegation of corruption relates to a state officer seconded to a federal law enforcement agency. It makes no similar provision for notification where a state officer is otherwise involved in corruption with staff members of such an agency or where no Commonwealth officer is involved at all. It would appear that these officers are being dealt with inconsistently within the bill—that is, a seconded officer versus an unseconded officer. For a seconded officer, there is an obligation on the proposed commission where information comes to hand; for an unseconded officer, there is no such obligation. The key issue here for the commission is the potential for investigative opportunities for the Commission of the New South Wales Police to be missed.

Another issue relates to potential duplication of effort. For example, ACLEI may receive a complaint that an unseconded New South Wales police officer is acting corruptly with a Commonwealth officer. The Police Integrity Commission may have already investigated the possible involvement of the New South Wales police officer and have information which would assist—or, alternatively, evidence which discounts the allegation entirely. Unless

ACLEI advises the commission of its interest in the officer, subject to operational exigencies, the commission will not be in a position to provide the advice necessary and ACLEI would duplicate the investigations already undertaken.

Senator LUDWIG—They could also potentially run parallel or one could be investigating and the other one choose not to.

Mr Kearney—Yes.

Senator LUDWIG—And it could be the reverse: it could be ACLEI investigating a state matter.

Mr Kearney—Yes, it can get quite complicated.

Senator LUDWIG—Yes. There are a number of iterations that could develop.

Mr Kearney—Yes. The way these things work out in practical terms is that there are cooperative arrangements between the existing agencies not necessarily based on legislative powers or prescribed in any way.

Senator LUDWIG—I think that is clear—who might have the capacity at that particular time or the relevant experience or the necessary proximity.

Mr Kearney—Indeed. My next comments concern sections 142, 146 and 148. The bill provides for the communication of evidence or information probative of the commission of state or territory offences to relevant police forces or persons capable of initiating such proceedings. There are two issues here. Firstly, neither the commission nor any other anticorruption agency has been included here, potentially limiting what ACLEI may desire to do in terms of communicating this information. Secondly, there does not appear to be scope for communicating less probative information. I am thinking of 'intelligence', information concerning inappropriate relationships between an officer and a criminal where no specific misconduct is disclosed. Intelligence concerning these relationships can lead to quite significant investigations and has done so in the past with significant results.

As we have noted in our submission, section 207 should be 208. As drafted, it does not seem to be helpful. Section 205 likewise. There is no general catchall provision for the dissemination of information where it is considered appropriate by ACLEI.

There also appears to be no capacity for information that might be relevant to managerial or disciplinary action by state police officers to be communicated. It is possible that this may be caught up in clause 208, but that is not entirely clear. I will give you an example. ACLEI becomes aware of a procedural failure by an officer. Procedural failures can be indicative of more significant problems. For example, a failure to record a contact with an informant, which is a procedural failure, may be indicative of an inappropriate relationship or misconduct involving that informant.

The notification obligations in clause 19 propose an unqualified obligation on Commonwealth law enforcement agencies to notify ACLEI of relevant matters, regardless of the source of the information or intelligence or the manner in which it was obtained. The concern here is that the information provided to the Commonwealth law enforcement agency as a result of the sharing of resources in joint investigations or the intelligence communicated by a body such as the commission for specified purposes would be passed on to another

agency without regard to its views as to whether disclosure was appropriate at that point in time. The concern relates to the potential prejudicing of an ongoing investigation. An example—and this is not an example that has specifically occurred but is one that might—would be that the commission is investigating a New South Wales police officer who has just been transferred to the ACC. An AFP officer becomes aware of commission interest in this officer, and therefore the existence of a complaint of misconduct, when assisting with a forensic examination of a computer disk that the commission may have seized. The AFP process commences, supervisors are informed, records are made, internal complaints handling procedures kick in, and other AFP officers and, potentially, ACC officers are advised, potentially compromising the commission's investigation.

Clauses 76 and 80 concern the power to require documents and information. This is an area where we appear to have erred in our comments. However, the substance still applies. Our first reading led to a view that some defined agencies may have been precluded. However, on a second reading this appears not to be the case. However, the committee is asked to take into account the secrecy provisions of other agencies more broadly than is the case at the moment. The commission has considerable powers and is able to obtain the most sensitive information, in some respects as sensitive or more so than that canvassed in the law enforcement secrecy provision definition which is contained in the bill. This is balanced by significant secrecy provisions in our own act. The bill, as it is presently worded, appears to require the commission to release potentially the most critical information—and this information may well have been obtained under our own compulsive powers—regardless of our secrecy provision and the potential for impact on current investigations.

Without a more detailed review of the consequential amendments proposed, similar issues might arise with other agencies—that is, agencies may be required to provide information regardless of the agency's own obligations for secrecy. While remote I expect the issue would never arise, it may also affect national security information. There does not appear to be a mechanism for balancing these competing obligations in the bill. We make a number of other comments there. However, I will not go into those in detail unless there are some specific queries.

CHAIR—We particularly appreciate the submission of the PIC and understand entirely the commissioner's commitments. In terms of the work that the committee is doing, it is very helpful to us to get the perspective of a body such as the PIC on aspects of this legislation, so there is no need to be self-deprecating about the submission or anything else.

Senator LUDWIG—I note that the definition of corrupt behaviour in this bill does not seem to reflect the New South Wales definition. Do you have a view about whether it is a similar definition or a sufficiently comprehensive definition?

Mr Kearney—Could you refer me to the clause? Is it clause 5?

Senator LUDWIG—Yes. The Independent Commission Against Corruption seems to have a more exhaustive standard for corruption. The ICAC define corrupt conduct as a variety of conducts relating to the adverse or dishonest use of a person's official functions or misusing information that they have gained in the course of their official functions. The ICAC seem to have a more rigorous standard than the one here. If you have not turned your mind to it—

Mr Kearney—It is not an issue I have turned my mind to. From a practical standpoint, we have had no difficulty working with the current definition that we have. We tend to focus on the more serious end of corruption in New South Wales Police and therefore we are looking at very serious criminal behaviour—dealing in drugs and the like. So it clearly falls in regardless.

Senator LUDWIG—Although you focus on the more serious end, it seems to be that the legislation only provides for 12 months to be regarded as a serious matter. Is that your experience—those offences which carry a 12 month—

Mr Kearney—Yes, I think that provides for a wide range of matters to come to our attention. Those matters would not necessarily capture our attention. We are also required under the act to focus on the most serious end of serious misconduct.

Senator LUDWIG—The 12-month imprisonment has been chosen as the standard—in other words, everything above that is open for investigation as a serious offence. But that would not be your normal experience, that you would be dealing with the serious end where imprisonment for 12 months was the penalty.

Mr Kearney—Highly unlikely.

Senator LUDWIG—That would be at the lower end?

Mr Kearney—Very much so. It may be that we are investigating more serious offences and that those lower end offences get caught up in the evidence gathering of the investigation as you go along. They are additional offences.

Senator LUDWIG—It just seems a rather low bar to set. I know you cannot look into the drafter's mind, but it seems to be a low bar.

Mr Kearney—It does, based on what you are saying. However, I was not involved in the policy at the time and cannot assist, I am afraid.

Senator LUDWIG—What level you use is really the point of the question I am getting to in terms of determining where you start to say, 'This is a matter that I should or should not look into.'

Mr Kearney—We tend to use less definitive criteria. Seriousness is one aspect and a 12-month maximum penalty would not normally get over that bar. Seriousness is one aspect. Another is whether there is a pattern of a particular kind of misconduct occurring or a pattern involving a particular officer or officers. We consider the difficulty of the investigation. Is the group we are looking at a particularly well-entrenched powerful group within the organisation? That would be one element we consider. Is there potential for it to impact on public perception of the New South Wales Police? Is there some other public interest? Has an issue been bubbling around in the press for a long time and not going away and affecting the credibility of New South Wales Police? They are the kinds of issues we are considering in deciding whether a matter should be investigated. It is a broader, less definitive group of criteria.

Senator LUDWIG—So there is no specific trigger in your legislation for what you then have to set as your bar to start the investigation?

Mr Kearney—No. We are allowed to set the bar entirely ourselves.

Senator LUDWIG—And you find that agreeable—it is a sensible approach?

Mr Kearney—Absolutely. If I can just elaborate a little there: having a bar set for you can dilute your activity, dilute your focus. If we are required to perform some action, whatever that action might be with regard to all matters meeting a certain criteria, then you are really at the whim of the complaints process. The complaints process varies considerably from year to year for the Police Integrity Commission. There are between 3,500 and 5,000 complaints each year. As you can see, there is quite a considerable difference there. Not being able to determine those matters you can focus your attention on has the capacity to constrain you in the effective use of your resources.

Senator LUDWIG—I want to turn to your submission for a moment. On page 2, in the second paragraph from the top, you say:

This appears to exclude, or at least limit the capacity of the ACLEI to disseminate information for intelligence purposes at the conclusion of an investigation …

Do you hold the view that what that means is the legislation, as currently proposed, limits the ability of the ACLEI to disseminate relevant information-sharing intelligence—that is, 'This is a type of operation that we found here; it might be relevant that you look in your police organisations or other organisations for the same or similar behaviour.' That would be a type of sharing of criminal—

Mr Kearney—I think it might include that kind of information, yes. The sort of information we were thinking of at the time were things like relationships where there is no evidence of specific misconduct but where officers are engaging in inappropriate relationships, those kinds of things, and analysis of information. For example, suspicious cash transactions are another area.

CHAIR—We take the point the PIC makes, and we will pursue this.

Senator LUDWIG—The second point in the third paragraph on page 2: is that the same point you have looked at, Chair? It says:

… 207(3) … provision is limited to information unrelated to a corruption issue …

There are two parts to that.

CHAIR—Yes. It is the same principal concern, which we would pursue.

Senator LUDWIG—That carries through to page 3. Your view of coercive powers and their use is interesting. Is that a view you would hold more generally?

Mr Kearney—Which submissions are you referring to?

Senator LUDWIG—We will start at the beginning, then. Do you have a view about the use of coercive powers in these types of investigations?

Mr Kearney—I hold the view that investigating corrupt police officers is some of the most difficult investigation work that you will ever undertake. Corrupt police officers are aware of the strategies that are available to you, having probably used them themselves on many occasions beforehand. They are very difficult people to investigate. I think any reasonable power that can be made available to an agency involved in this kind of work can and should

be coercive. These powers are incredibly valued from our perspective. Telephone interception, listening devices and coercive powers are a very powerful combination; we find them extraordinarily valuable. In fact, without that combination our work would be impossible.

Senator LUDWIG—Moving on from that, where they do not provide the outcome that you expect—in other words, the information is not forthcoming; people do not want to participate if compulsory powers are found to be wanting—what about the next stage of pursuing them?

Mr Kearney—Yes. Our act provides the capacity for a certificate to be issued by our commissioner and for that certificate and the person involved to be brought before the Supreme Court. The Supreme Court has the capacity to deal with the alleged contempt as if it were a contempt of the Supreme Court.

Senator LUDWIG—Have you undertaken many of those in the last 12 months of your operations? Is it a power you rely on?

Mr Kearney—We rely on the fact that it is there. I cannot provide definitive advice. It was a power we may have contemplated using. As to whether it eventuated, I cannot tell you.

Senator LUDWIG—So you have the ability.

Mr Kearney—Yes.

Senator LUDWIG—The second question is whether or not you can report it. I take it that you do report the use of those provisions.

Mr Kearney—Yes.

Senator LUDWIG—Then you find that you have not relied on it in the last 12 months or more, in any event.

Mr Kearney—I suspect we have used it in the last 12 months or so. In the last 12 months or so we have been before the Supreme Court with regard to a contempt issue—whether it was by way of certificate I cannot tell you at this stage. I would be happy to take the question on notice.

Senator LUDWIG—Thank you, if you would.

Senator MASON—I have a quick question. I was just reading through the bill. This may be very simple, and perhaps I am creating an issue that does not exist. Sharing of information is flagged as an important issue by the commissioner. What does that mean? When police share information, are they facts or conclusions drawn from those facts?

Mr Kearney—It can be either or any combination. It can occur in a variety of different ways, too. There are arrangements within our act to provide for the exchange of information for joint task forces, for memorandums of understanding and for other less formal arrangements. These things will cover the exchange of information and the sharing of resources, potentially—specialist resources which are a bit hard to find and to accommodate within each agency. As to the information itself, in a joint partnership it will be quite detailed sharing of information, because you are engaged in a joint investigation.

Senator MASON—I was not trying to be particularly difficult. There have been examples in recent times in the United States where information was shared by security organisations in

the United States with other security organisations, because they had a statutory obligation to do so. But the organisations that had to share that information gave none of the background that would make sense of that information. They knew, indeed, that it had certain implications. That is one of the reasons why President Bush had to come up with Homeland Security and totally revamp intelligence sharing in the United States. It was all about intelligence sharing. That is why I asked the question. The argument put in the United States was that information can be virtually irrelevant unless it is given some contextual relevance. Do you see what I am getting at?

Mr Kearney—I do, yes. The arrangements between crime investigation agencies, if I can call them that—the Australian Crime Commission, the New South Wales Crime Commission and agencies like ours—are such that exchange of information is two-way street.

Senator MASON—You do not have turf wars, do you?

Mr Kearney—No, we do not—not with those agencies. It is a different jurisdiction completely. However, we rely on each other. There is a genuine desire to encourage the exchange of information because we rely on each other to the extent that if the New South Wales Crime Commission is investigating a major drug activity it is likely to fall over a corrupt police officer at some stage. If our relationship is such, it will pass that information to us. We may reach an agreement as to the timing of any action we may take, but the relationship is such that the information will be passed. Similarly, we come across information of major criminal activity and return the favour. Likewise, we have similar arrangements with New South Wales Police.

Senator MASON—The issue here is that the Commonwealth body may not pass on information when it should. There is still a concern that you have flagged here that information may not be passed on.

Mr Kearney—Yes.

CHAIR—We will take it up.

Mr Kearney—Most of the relationships that we have are not defined by legislation. We work professionally with other organisations because there is value in sharing information. I expect that exactly the same thing will happen with the ACLEI when it comes along. We will develop those kinds of relationships and the free flow of information will occur.

Senator MASON—I have one other very quick issue. Do you also have an educative role? We are obviously talking about law enforcement, but Dr Brown flagged before that education is very important in integrity measures. Do you play a role in doing any of that?

Mr Kearney—In the New South Wales framework, education is the only function concerning the New South Wales police that remained with the Independent Commission Against Corruption, so that role is still with them. We have a role in prevention.

CHAIR—Deterrence, hopefully.

Mr Kearney—One would hope so. Sorry—We quite definitely have a role in deterrence. We take two different approaches to our prevention role. We conduct investigations. During those investigations, we might identify management practices or procedures which could be strengthened and as a result make recommendations. We also do quite detailed research

independent of our investigations where we have noticed a disturbing pattern. For example, drug use by police was a major issue recently.

Senator MASON—So you do some empirical research to buttress what your investigations are telling you?

Mr Kearney—Indeed.

Senator MASON—Okay; good. Thank you.

CHAIR—Mr Kearney, thank you for appearing this afternoon. Thank you also, as I said, for the PIC's submission. We appreciate it, and it has been very helpful. You have indicated that you will take a couple of issues on notice, and there may be one other matter we would like to follow up with the PIC. The secretariat will be in touch with you in relation to those.

Mr Kearney—Thank you very much.

CHAIR—Thanks very much and thanks for attending.

[2.23 pm]

PHILLIPS, Mr Ian Robert, Director Legal, Australian Federal Police Association

TORR, Mr James Peter, Chief Executive Officer, Australian Federal Police Association; Delegate, National Council, Police Federation of Australia

CHAIR—I welcome Mr Jim Torr and Mr Ian Phillips from the Australian Federal Police Association. I understand that the witnesses will also be representing the Police Federation of Australia.

Mr Torr—That is correct.

CHAIR—The AFPA has lodged a submission with the committee which we have numbered 6, and the Police Federation of Australia has lodged a submission with the committee which we have numbered 7. Do you need to make any amendments or alterations to those submissions?

Mr Torr—No. We will give a brief introduction if you give us the opportunity.

CHAIR—I would never refuse the AFPA an opportunity to speak to this committee. We have a longstanding good working relationship with both organisations, and look forward to continuing that with newer officers we have not met before. Please make an opening statement. We will go to questions at the end of that.

Mr Torr—From the outset, thank you again for the work that this committee did in 2001 and that eventually resulted in the Fisher review. My memory of the recommendation that this committee made in 2001 was that AFP employees should not be disadvantaged by the evolution from a discipline model to a managerial model. After all those years, unfortunately, I do not think we are any better off now—but we will come to that as we go through the process. We thank all those who were on that committee and those of you who are still on the committee—

Senator LUDWIG—That is all of us.

Mr Torr—We also thank Judge Fisher and the access he afforded us to his review. We also thank Commissioner Keelty for specifying as part of the terms of reference for the review that the judge would liaise and afford the association time in making a submission. Thank you to all those people.

From the start, I would like to say that the AFP's position is and always has been that all police employees should be able to work in an environment which is free from the compromise caused by the corrupt conduct of others. That has always been the association's position. In many ways over the years we have worked very closely with the AFP to develop what are now termed the professional standards of the AFP. We can go back to the illicit drug testing program and all those sorts of things on which we have worked very closely with the AFP.

I think it would be worth while if I gave you a very brief background on me. I am a police member with the AFP, with 23 years of continuous service. Essentially, for most of that time I have been involved in federal investigations. I also had a four-year term of duty managing the

AFP's employment standards team. There was also a two-year period when I was an internal investigator in the AFP. Now I am the CEO of the AFPA. So I have seen it from a few dimensions.

Ian Phillips—Director, Legal, AFPA—works very closely with the current AFP professional standards team. We have a good, productive working relationship there. As recently as late last year, we and the manager of professional standards went around parts of Australia training our association delegates in the roles and responsibilities of association members in the internal investigation professional standards process. I just wanted to explain the perspective that this submission is coming from and what is behind it.

We want to acknowledge the good philosophy that underpins the Fisher review—streamlining complaints handling and acknowledging and preferring a development rather than a disciplinary path with all its old-fashioned sanctions and punitive aspects. We commend the Fisher review for its recommendations and notions that, where an employee is dismissed or suffers from some form of financial penalty as a result of a professional standards outcome, they will have access to some form of external review. At the time he had in mind the Industrial Relations Commission. To the extent that ACLEI will protect police employees from the corrupt conduct of others, we welcome it. But we have some suggestions to make along the way about ACLEI.

I would like to read a 1½-page document and then we can go to questions. Our position, from constable to commissioner, has always been that police employees should and generally do welcome thorough, fair and sober analysis of their professional conduct. Police should and do accept the consequences of illegal, unprofessional or incompetent conduct. Accountability at all levels is the key to a good corporate reputation.

No area of police management is more capable of disenfranchising employees than mismanagement of the complaints handling process. The damage to a police employee's self-esteem, professional self-respect and reputation caused by a mishandled complaint or overreaction to misconduct can permanently damage that officer's morale. Negativity compounds as other employees become disenchanted with their perception of how their colleague has been treated.

On decisions such as dismissal or major redeployment, employees must have a credible forum in which they can be heard and where unfair or unsound decisions can be recognised and redressed. As it stands today, and even under the unamended bill, an AFP employee can be dismissed for anything that constitutes a perceived breach of professional standards. Even the unsolicited receipt of an emailed cartoon—the type that could be found in a major daily newspaper—could result in the dismissal of an AFP employee. That same employee has no forum in which to challenge such an overreaction.

Corruption must be anticipated at any level in the AFP and could also be a cause for dismissal. A whistleblower who is getting too close might most conveniently be dealt with via dismissal. There is no obligation for the AFP to account for or defend any dismissal decision outside of the AFP. The unique role of constable policing evermore controversial laws in an evermore challenging environment demands a forum in which those same constables can address complaints and defend themselves against unfair treatment. They need their day in

court. Unfortunately, the AFP has resisted external oversight of employment decisions since late 1999 when it effectively abandoned the Federal Police Disciplinary Tribunal. That tribunal was adversarial, overly bureaucratic and slow in operation but the president was a Federal Court judge and palpably independent of the AFP.

The AFP is committed to a cohesive professional standards model consistent with the Fisher review which calls for independent review of certain matters including dismissal and matters involving financial penalty. Let us not be in any doubt. Everyone in the AFP needs to embrace accountability, including the Commissioner. The AFP values listed in the AFP Act are meaningless if compliance to them is based on a self-assessment by the Commissioner. On that basis, we call for an external review panel, tribunal or court, as envisaged by the Fisher review and as is found in all other Australian police forces bar none. AFP regulation 24 is the vehicle that already exists. The panel can work quickly in camera and would not impede the Commissioner from suspending or dismissing an employee.

I would now, if the committee is happy, like to tender a document to the committee and use it as an example to tease through the issues and the processes of how an employee could be dismissed. The document represents a cartoon taken from the Brisbane *Courier-Mail* and it only comes from that paper because I am in Noosa on holidays with my family at the moment and I read it yesterday.

CHAIR—We apologise for interrupting your holiday, Mr Torr!

Senator MASON—Welcome to Sydney!

Mr Torr—The cartoon is the sort of thing that is found in any major uncontroversial daily newspaper. It represents the sort of thing that might be emailed from one employee to another. It might even be emailed between senators or their staff. It is a bit of fluff; it is the sort of thing that people enjoy. You might have already revved each other up over it, you might not have or you might later but the point is that it does not matter whether—

CHAIR—I do not read the *Courier-Mail*, Mr Torr!

Mr Torr—It does not matter whether the subject of this cartoon is Labor, Liberal, Green or Democrat—the truth of it is that is a cartoon that most people would see as the sort of harmless fun that you find in mainstream uncontroversial correspondence. Had that exact cartoon, as it stands, been emailed to me as a federal police officer and in my busy day I saw and ignored it or looked at it, smiled and went on with my work, the Commissioner, as it stands right now and as it stands under the unamended bill, is fully capable of determining that as a breach of professional standards and dismissing me. Let's just use it as an example.

Senator MASON—On what basis?

Mr Torr—I will get to that but I just want to qualify this first. When I say 'the Commissioner' and when I say 'me' I am just talking about me as an employee and the Commissioner—I am not talking about the individuals. I hope that is understood.

CHAIR—We understand.

Mr Torr—The Commissioner could see that not as a cartoon. He could see that as a show of disrespect to a national icon—that is, Anzac Day.

Senator MASON—I thought the national icon was the Prime Minister!

CHAIR—Don't go there! Just let Mr Torr finish, please.

Mr Torr—He could see it as disrespect for and lampooning of the Prime Minister. He could see it as offensive to the families of any casualty of war. He could see it as sacrilegious of the Christian icon—that is, the tombstone. He could see it in any of those ways and he could dismiss me for it. He could see that as a breach of professional standards—

CHAIR—For receiving it.

Mr Torr—And not remonstrating with the sender who might well be a senior person I am dealing with from another agency. Certainly if I then sent it along to someone else on the AFP computer system —we acknowledge that the AFP does allow reasonable private use—and if I, in my view, was using this for reasonable private use and I emailed it to any other AFP colleague, the Commissioner is entitled, under all the prevailing legislation as it stands and the unamended bill, to dismiss me for breaching professional standards. If or when he dismissed me for that, that is it. Twenty-three years of stainless service with commendations and all those sorts of things are over in the effective equivalent of a dishonourable discharge. I have got nowhere to go outside of the AFP to seek to bring some moderation to what I believe would be an overreaction—that is, my dismissal for receiving that cartoon.

That is how it stands and it will not change under the new bill. Every other police force or service in Australia has some form of external review for dismissal. One of the most fundamental failings affecting our members is that they do not have the ability to get a decision by a sober, independent person outside of the police environment to look at issues like this. Many people have been dismissed for sending emails and many times it has been very appropriate when you took at the content of the email, but I could be dismissed for sending or receiving this email and I have nowhere to go in seeking redress from it. The commissioner can dismiss me for it, and I cannot get a day in court for it. When I say court, it could be a tribunal or a panel but it must be someone independent of the AFP.

Why would the AFP resist having some sort of external forum? It may be that in this day and age of fighting terror we all need to act quickly and decisively and, if the commissioner wants to get rid of a person the commissioner feels he or she wants to get rid of, they want to be able to do it quickly. Nothing we are suggesting would impede the commissioner from acting quickly operationally. The commissioner can stand an employer down, suspend an employer, dismiss an employer. It can all happen very quickly. But, in an environment where accountability is everything, effectively why can't we have a tribunal which the regulations already provide for?

CHAIR—I am assuming that is rhetorical. You do not want an answer from me, but we will pursue it.

Mr Phillips—Particularly under the new legislation, one of the main themes of the Fisher review was for there to be more transparency in the process. I think the irony of the new bill that is apparently supposed to emulate the Fisher review's proposals would be that there would be more transparency. Under some of the sections that are brought in, a particularly onerous section will be inserted into the new AFP Act to section 69B(1)(b), which effectively allows the actions that are undertaken under Part V and actions in relation to those actions to

be outside the jurisdiction of Workplace Relations Act. So when you tie that in with what Mr Torr is stating, it also creates a more non-transparent process.

One of the other principles of the Fisher review was to have lower level management decisions reviewable—in a sense that they are reviewable internally by management. Justice Fisher stated this point quite often throughout his review, but the drafters have failed to incorporate an option for review. Not having review at the lower level—obviously being realistic about the cartoon, it is quite possibly regarded as low-level conduct—is coupled with Mr Torr not having an option for review, which is what New South Wales Police have, that being the model that Fisher had based his review on. It was one of his recommendations—for the record, it was recommendation 12. That simply does not exist. I guess Mr Torr is not only in a more onerous position; he is also in a position for having absolutely no option for review.

CHAIR—I am, with your agreement, going to open this up for questions because we do not have a lot of time available to us. In relation to both submissions, the AFPA submission has a lot of detail in terms of the operation of a number of clauses; the PFA submission has some broader concerns expressed. There is no way we can deal with all of the concerns and recommendations, particularly out of the AFPA submission today. It will not preclude us from following those up and seeking responses on notice in various contexts. I would not like you to think that if you did not get a question on every single aspect of it that we are not pursuing it, so we will do that. I will go to my colleagues now.

Senator LUDWIG—Just to clarify: how will the commissioner's orders fit into the new regime in your view?

Mr Phillips—Are you talking about the Commissioner's orders in relation to setting out what is conduct?

Mr Torr—A breach of the commissioner's orders is a breach of professional standards.

Senator LUDWIG—Yes.

Mr Torr—And a breach of professional standards can take you anywhere from the absolute entry level to losing your employment and being dismissed.

Senator LUDWIG—And that will then fit on the scale of whether it is a category 1, 2 or 3?

Mr Phillips—If it isn't categorised at that stage, it will automatically move straight through to category 3.

Mr Torr—But, on the subject of the emailed cartoon, obviously if it caused my dismissal it would be considered a category 3 issue.

Senator LUDWIG—Will the existing commissioner's orders lapse and then there will be new ones?

Mr Torr—They are changed from time to time. The commissioner's orders are the same as the old general orders and instructions that the AFP Act provides the commissioner with the capability of making, from time to time. They are reviewed and updated and new ones are produced as the commissioner sees fit.

Senator LUDWIG—What happens now if you want to appeal a decision by the commissioner?

Mr Torr—A decision in an employment sense?

Senator LUDWIG—Yes, because you cannot go to the AIRC even if you do have more than 100 employees.

Mr Torr—I suppose you could ask the commissioner to reconsider why he dismissed you, and he might come to the same conclusion.

Senator LUDWIG—Yes.

Mr Torr—But that is about it.

Senator LUDWIG—You can appeal on the basis of law?

Mr Phillips— You could at the administrative level, yes.

Senator LUDWIG—You could go to the ADJR?

Mr Torr—The ADJR might full well take account of whether the person was afforded procedural fairness or those sorts of things. But the ADJR cannot come to the conclusion that that is an overreaction.

Senator LUDWIG—It will not deal with the merit?

Mr Phillips—No.

Senator LUDWIG—So there is no review of merit, even though you have more than 100 employees?

Mr Torr—We would contend that that is not in the interest of the people of Australia; it is certainly not in the interest of the Australian Federal Police.

Senator LUDWIG—What about the other forces around the state? Do they have access to various commissions?

Mr Torr—They all do. There are almost universally judicial officers who chair them, so they are judges, magistrates and old IRC roles and that sort of thing.

Senator LUDWIG—Was that also a matter that Justice Fisher commented on?

Mr Phillips—He was quite positive, particularly on the New South Wales model.

Senator LUDWIG—Turning to a broader issue, although it is probably more narrow than anything else: in terms of the way the categories 1, 2 and 3 will operate, category 1 seems to be so widely put. Will it have a pecuniary effect and, if it has a significant pecuniary effect, is it no longer category 1 or is it still category 1 with a significant pecuniary effect? I am thinking of the argument of training. Training can seem a very wide or narrow term, but if it means the manager then says: 'I know you are on shift work 24/7 but I would really prefer now that I detect this minor matter'—you might refer to that cartoon as a minor matter—'I would rather you go off and do some training about this, so I am going to send you off for three weeks, four weeks or a month on training, which will be nine to five,' or a different remuneration may be attached to that as a consequence.

Mr Torr—A realistic example of that could be in the area of protection, where you get your salary plus all your overtime, shift penalties and those sorts of things rolled into a composite. Because you do not know how to deal with potentially offensive material, I would want to send you to somewhere where you are going to be under much closer supervision. It may be a day-shift job or that sort of thing. There could be a pecuniary consequence for the individual there.

Senator LUDWIG—The point I am trying to find is that although it is categorised as a category 1 offence, that seems to have a greater effect than a category 1 offence.

Mr Phillips—The punitive aspect to it?

Senator LUDWIG—Yes. You could use it unfairly in a punitive way, knowing full well that if you remove someone from that role and you send them off the training for two or three weeks, it has a significant pecuniary effect, as distinct from a category 2, where you may simply counsel them. When it has that effect, should it be a category 1 or a category 2? I guess that is the point I am trying to ask you about. Should there be an ability to be able to say that it would only happen if there is an exception—that is, a least pecuniary effect? I think we all understand that category 1 applies where there has been a minor transgression and it requires a manager to intervene at a low level, fix up the problem on the run and keep it all moving. Whereas, if you send someone off for training for four weeks, which has a significant pecuniary effect, they will not forget it in a hurry.

Mr Torr—Yes.

Mr Phillips—I think that was the general theme of Justice Fisher's model. I guess that results of a punitive nature would certainly be reviewable. Under section 40TC that you are referring to, the training and development action that can be taken in relation to category 1 could certainly have a considerable punitive effect; also in relation to the remedial action that can be taken in relation to category 2, in terms of possibly transferring employees. A manager could effectively transfer an AFP employee to any part of the AFP, which could obviously include the Solomon Islands.

Mr Torr—Essentially, when we are talking about the way the commissioner is able to deal with people, it might be a geographic transfer, which is tantamount to dismissal in any case, such as a 50-year old transferring, for example, from Geelong to Sydney.

Senator LUDWIG—It can amount to a constructive dismissal.

Mr Torr—Yes.

CHAIR—We discussed that at length in an earlier inquiry.

Mr Torr—It means dislodging the children from school, their partner from their employment and those sorts of things.

Senator LUDWIG—Thank you.

Senator MASON—Mr Phillips, do you think this is an improvement from the current situation? Are you happy with the mooted changes for this bill?

Mr Phillips—If I had not read the Fisher review I might have been happier with it. It certainly has not emulated some key points of the Fisher review, which has certainly caused a

few questions in my mind. Just from the practical point of view of dealing with people going through the professional standards system, it is obviously quite a time consuming process as it stands at the moment, so I am certainly happy with bringing in different levels of conduct. But in terms of having the checks and balances along the way to afford the correct process or the fair process for those who go into these investigations, I do not think that exists. Justice Fisher certainly wanted there to be some form of review or some form of allowing the person going before the internal review to have the option of having the conduct moved up the scale et cetera. Simply none of that has been brought into this.

I would hazard a guess, just from general sight, that the word 'review' does not even exist in this bill. Justice Fisher made comment constantly throughout his paper that there were reviewable and non-reviewable actions, which simply do not exist. The other issues include bringing part V to outside the Workplace Relations Act. While some would argue that the IRC is obviously not as effective as it used to be, certainly in relation to reviewing determination matters that are unjust and unfair, that avenue of review should exist and it simply does not exist. A section is put in towards the end of the bill, outside part V, that pulls part V outside the jurisdiction of the Workplace Relations Act, which I think is considerably onerous.

Mr Torr—The retrograde aspect of it is seen when you consider the recommendation of this committee in 2001, with the review of the AFP professional standards to ensure that employees are not disadvantaged by the movement from the discipline model to a managerial model. Under the old discipline regs, had the commissioner taken the offence that we have hypothetically talked about here, he would have to have charged me with a disciplinary offence, proven it at the tribunal and then sought dismissal as a penalty from the tribunal. That was too cumbersome. We are not saying that the commissioner should be expected to go to those lengths, but we are saying that you were better off in front of the tribunal than you are under the bill as it has been translated, digested and presented out of the Fisher review.

Senator MASON—Did you have a chance for input on this bill?

Senator LUDWIG—Post the Fisher review, were you consulted about this legislation?

Mr Torr—On the ACLEI we spent some productive time with Minister Chris Ellison, but there was only the most scant informal phone call a long time ago and that was to talk about—

CHAIR—On the professional standards?

Mr Torr—On the professional standards. That was talking about the resignation provisions, which we have outlined in our written submission.

CHAIR—It is important to be clear on which bills we are talking about.

Mr Torr—Yes. So it was on the ACLEI more so than on the PRS one, but on the PRS one it was very informal and very dated.

CHAIR—I do not know whether you have had a chance to see the submission of the Commonwealth Ombudsman, which makes reference to the professional standards and related measures bill as well. If you have not, which judging by the looks you have not—

Mr Phillips—We have cited it but certainly have not read through it.

Mr Torr—We can say something on it.

CHAIR—What are your views in relation to the Ombudsman's role?

Mr Torr—Many of our members currently see the Ombudsman as their last line of defence of what they might perceive as mismanagement, but it does not translate that way. With all due respect to that office and that role, it has not proven effective in dealing with complaints about senior level police. It has proven very effective in dealing with, to the most fine degree, the conduct of the male and female practitioners who actually achieve the good publicity for the AFP, but in terms of looking at the conduct of senior police it has proven ineffective.

CHAIR—I am not sure that that is a comment on the Ombudsman's submission in relation to the bill. I would be grateful if you would have a look at that and provide any feedback on that as a question on notice.

Mr Torr—I made that point not out of any desire to criticise but to consolidate our position of why we need something external to the AFP.

CHAIR—I understand the point of the point. If matters arise out of our discussions and our follow-up on the issues that you have raised in your submissions, we will come back to you with them as matters on notice.

Mr Torr—Did you want us to say anything on ACLEI? I have two very brief points, following on from your previous speakers.

CHAIR—Please go ahead.

Mr Torr—The definition of corruption is a vexed issue that every agency has wrestled with for years. The Workplace Relations Act has very comprehensive examples all the way through it. We would urge that any enabling legislation for ACLEI should contain examples of corruption. For example, it could say: 'If you assault someone off duty with your baton, that is corruption. If you assault someone off duty with your fists, that is not corruption. If you have a DUI in a police car off duty, that is corruption.' These are the questions that constantly come up when material comes in. I think Senator Ludwig was talking about the 12-month provision. We see that as very much a catch-all. Virtually everything is 12 months or more.

Senator LUDWIG—Would you expect to see the commissioner to provide guidance in implementing ACLEI, which would then go some way to explain some of the examples, how the commission itself would apply the legislation and that sometimes it might be more problematic to get the legislation changed, especially with the parliamentary numbers the way they are? In terms of guidelines which help to understand how the commissioner—

Mr Torr—That may be the solution to it, although the legislation is what stands.

Senator LUDWIG—You still have the commissioner's orders that can provide examples as to how the legislation is applied, but there will always be exceptions because it will always turn on the factual matrix which is presented. So although it might seem simple—he used a baton that day, and he used his fists at home another day—when you look at the overall conduct and the context of the conduct, it might mean that, yes, it does fall into corruption, whereas for the ordinary police person on the beat it may not. But it can guide how the legislation would at least be viewed.

Mr Torr—That may be the solution to it. Our very final comment about ACLEI—and it applies to the PRS bill as well—is that neither of them anticipate that the commissioner could be the subject of the investigation. They anticipate the deputy commissioner and everyone else, but I think we should be mature enough to recognise that it could be anyone in the AFP.

Senator LUDWIG—I am from Queensland.

CHAIR—I am from New South Wales.

Mr Torr—But he has seen them in jail.

CHAIR—I am just making an observation. Senator Mason is from Queensland too.

Mr Torr—I was trying to work out who was before I started to talk about that. But, along with constables, inspectors and sergeants, commissioners can go to jail for corrupt conduct.

CHAIR—It is noted. Thank you very much for appearing before the committee and for your submissions.

[2.55 pm]

BROWN, Ms Vicki, Senior Assistant Ombudsman, Commonwealth Ombudsman

THOM, Dr Vivienne, Deputy Ombudsman, Commonwealth Ombudsman

CHAIR—Welcome. The Commonwealth Ombudsman has lodged a submission with the committee which we have numbered 4. Do you need to make any amendments or alterations to that submission?

Dr Thom—No.

CHAIR—Thank you for attending earlier than previously arranged; we are very grateful and it helps the committee enormously. I invite you to make an opening statement and at the conclusion of that we will go to questions.

Dr Thom—Thank you very much for the opportunity to make comments here today. I would like to make the few comments firstly in respect of the professional standards bill and then move on to the ACLEI bill. The Commonwealth Ombudsman's office assists people in resolving complaints and is committed to fostering good public administration that is accountable, lawful, fair, transparent and responsive. The role of the Ombudsman in oversighting policing complaints has been regarded as especially important in Australia. Within the Commonwealth jurisdiction a special act, the Complaints (Australian Federal Police) Act, was enacted. In some states, for example in New South Wales, police oversight is a high-volume jurisdiction within the state ombudsman's responsibilities, while in other states, for example in South Australia, a special police complaints authority has been established. We believe that the Commonwealth Ombudsman's office is very well placed to oversight Federal Police complaints. The fact that we operate nationally means that we can handle complaints against the AFP throughout Australia.

The current complaints act reflects the fact that the oversight of policing was a more controversial issue in earlier days and is a product of the thinking of the 1980s which required that precise rules be set down to cover every possible circumstance. It also perhaps envisaged a less cooperative environment, with the need for the Ombudsman and the AFP commissioner to refer some disputes to the minister to arbitrate. Currently, the oversight of the AFP's complaints handling constitutes the majority of our work in law enforcement. This is largely because of the AFP's high level of interaction with the public in the ACT community policing role and the requirement, which is specific to the AFP, that all complaints received by the AFP be disclosed to the Ombudsman for external assessment. This means that we get a disproportionate amount of very minor matters.

The Ombudsman supports this much more streamlined approach to handling complaints against the AFP. We have been closely involved with the development of the bill and support the reform of the AFP complaints system and the proposed model. The Ombudsman considers it would provide a more efficient and flexible framework while maintaining the strong independent oversight role of his office.

The scheme retains some important safeguards of the Ombudsman's role. Firstly, the bill designates the Commonwealth Ombudsman as the Law Enforcement Ombudsman, which

should raise the profile and understanding of this role within the community and provide greater access to the complaints handling system. Secondly, the new oversight model allows all complaints to be categorised by level of seriousness. The types of matters that fall within each of the categories are described in very general terms in the bill, with specific matters within each category to be agreed between the AFP Commissioner and the Ombudsman. These agreements would be legislative instruments and subject to tabling in and disallowance by parliament. Agreement on what matters fall within the various categories would allow for some flexibility and adjustment over time to cater for changing circumstances.

Minor complaints, such as those about rudeness, could be dealt with quickly and informally by the AFP management, thereby providing a more timely response to complainants. The removal of the need for the Ombudsman to be involved in all of these complaints will allow our office to focus on the more serious complaints about systemic issues. The more serious complaints, such as allegations of assault or persistent low-level misconduct, would be investigated by the AFP Professional Standards Unit, but an important safeguard is that all serious matters would be notified to the Ombudsman at the same time as they are received by Professional Standards.

The bill includes other significant safeguards. For example, all complaints, including minor matters that are handled managerially by the AFP, will be subject to an audit by the Ombudsman at least annually. The bill also provides a greater focus on AFP practice and procedure than is currently the case, which would allow for better continual improvement through improved feedback and provide the Ombudsman with an opportunity to look at broader administrative practice within the AFP, subject, of course, to resources.

The Ombudsman retains both own motion and coercive powers in the Ombudsman Act and it would be open to the Ombudsman to undertake own motion investigations into the conduct of an AFP investigation if that were required. It is the intention of the Ombudsman to undertake a greater number of own motion investigations, to improve strategies for identifying systemic issues—for example, through statistical analysis—and to provide greater oversight of investigations into serious allegations. The Commonwealth Ombudsman will be committed to ensuring that this important Law Enforcement Ombudsman role is vibrant and effective.

The Commonwealth Ombudsman currently has a monitoring and inspection role in respect of the AFP and ACC under the telecommunications interception legislation, the surveillance devices legislation and the Crimes Act. The effect of the ACLEI and ACLEI consequential bills will be that the new agency will be able to intercept telecommunications, use surveillance devices and carry out control operations. The agency and integrity commission will be given the same status as that which the Australian Crime Commission and the Australian Federal Police chief officers now have, and we will scrutinise the conduct of the operations in the same way.

We have noted the need for additional resources to deal with expansion of the inspections program. And we have also expressed some concern about the flow of information about corruption complaints that may be passed on to the Ombudsman by the commission. We believe that information about such complaints that have been dealt with by the commission should be provided on request to the Ombudsman. We have also noted that the Ombudsman

should be able to refer allegations or information arising from own motion investigations to the commission if they raise a corruption issue.

CHAIR—Thank you very much. Ms Brown, do you have anything to add at this stage?

Ms Brown—I have nothing to add, Senator, thank you.

CHAIR—I will say for starters that, in terms of the observations made in the submission about resourcing, this committee has been quite mindful of the new roles accreting to the Ombudsman's office through various pieces of legislation that we have been considering over some time; the last one we had in front of us was probably the telecommunications interception developments. So we are quite mindful of that and have been consistently recommending that the Ombudsman's concerns be taken up on those matters. Unless there is a revolution under way of which I am unaware, I imagine that the committee members would continue to support those observations. We thank you for spelling them out in your submission.

Senator MASON—Right down to a percentage.

CHAIR—Yes; there is one instance—I did notice that. So we will go from there. I note that the Ombudsman in this capacity will now be designated as the Law Enforcement Ombudsman. How many caps does that provide the Ombudsman's office with?

Ms Brown—About eight or so.

CHAIR—You are the Immigration Ombudsman now.

Ms Brown—Yes.

Ms Brown—Postal industry.

Ms Brown—Yes, Postal Industry Ombudsman, ACT Ombudsman, Tax Ombudsman, Defence Force Ombudsman—I have lost count but there is quite a spectrum.

CHAIR—It is certainly an increasing set of rules for you.

Ms Brown—Definitely.

Dr Thom—It shows the expertise within the office.

CHAIR—You will have heard the evidence provided by the Australian Federal Police Association and the representatives also representing the Police Federation of Australia in relation to some of their concerns about the AFP professional standards and related measures bill. Notwithstanding what this committee is minded to recommend, obviously at the end of the legislative process is the government's position. The committee occasionally deludes itself in thinking that its reports are well considered and its recommendations all taken up, but that is not always the case. If the concerns that were expressed by our previous witnesses are not addressed in changes to the legislation, it seems to me that the role of the Ombudsman in relation to that part of this legislative package is a very important one. That point is not really adverted to in the submission but I guess we would draw your attention to it as one that may be a very important aspect of the bill's operations in due course.

I have two questions in relation to the matters under ACLEI that you describe as implications. One is this issue out of the consequentials bill about transferring matters from

the Ombudsman to ACLEI and whether that includes not only complaint investigations but also own motion investigations. We will seek to get some clarity around that one way or another and then make some decisions about it ourselves. What is the concern that you are trying to enunciate there?

Dr Thom—We are saying that we should not have to receive a complaint before deciding whether to refer something on to ACLEI. If something became apparent to us through an own motion investigation and that raised corruption issues, we should be able to refer that.

Senator LUDWIG—Broader than the area of interaction between the Ombudsman and, as you propose, ACLEI is the issue of resources. I think the last submission you made to this committee also mentioned resources in respect of the telecommunications interception legislation, and now there is this one. You do not think this is going to assist with your resources; you think it will drain your resources even further.

Dr Thom—What we are saying is that, of course, as you increase the size, you can increase the efficiency. For example, we will be able to reuse some of the guidelines and procedures that have been set up previously. It is more efficient to have these functions all together, but there will still be the need for the additional resources for the marginal increase in extra work.

Senator LUDWIG—I take it we are in a pre-budget discussion now, are we?

Dr Thom—We are certainly going to be seeking resources to deal with this work, to do it effectively.

Senator LUDWIG—Because without sufficient resources, my concern, perhaps on behalf of the committee, is that what you are saying is, without sufficient resources, you are not sure or you cannot say whether you will be able to provide the scrutiny that the Ombudsman's office has done in the past in a range of other places.

Dr Thom—I think the concern might be that we focus the resources on the complaints rather than doing own motion investigations, for example. So you can deal reactively with the things that come in, but you do not proactively look at systemic issues, and that would be a concern for us.

Senator MASON—Sorry, can you just repeat that?

Dr Thom—If you are short of resources, if resources are the limiting factor, then you would do the reactive work, which is looking at complaints coming in, and you may not proceed to doing own motion investigations looking at systemic issues.

Senator MASON—I understand. You would just be reactive rather than perhaps working out strategies to hinder corruption, maladministration and so forth.

CHAIR—Can we also turn to the part of your submission which refers to the operation of clause 25 in terms of conveying information in relation to outcome of referred investigations and so on? I think, if I understand correctly, the point you are making is: you think the bill should provide a little more clarity about the ability of the Ombudsman to obtain information about a referred matter without having to actually mount an investigation to do it. And, as it is currently drafted, you think that would be required.

Dr Thom—As it is currently drafted, we believe we would have to mount an investigation to seek the information if it was not given to us.

CHAIR—You could certainly get your investigation numbers up, but it would not necessarily be a particularly efficient method of addressing the issue.

Dr Thom—That is right.

CHAIR—Okay. I do not have any further questions in relation to the Ombudsman's submission but, as I said to other witnesses, we may need to take issues up on notice as they are coming out in the inquiry and as we begin our drafting processes. So, if that is the case, we may take up some questions on notice to give to you, and we would appreciate your assistance with responses on those. We thank the Ombudsman very much for the submission, and we thank you both for appearing this afternoon.

[15.17 pm]

HARRIS, Mr Craig Anthony, Assistant Secretary, National Law Enforcement Policy Branch, Criminal Justice Division, Attorney-General's Department

KEELTY, Commissioner Michael Joseph, Commissioner, Australian Federal Police

MANNING, Mr Michael Grant, Principal Legal Officer, National Law Enforcement Policy Branch, Criminal Justice Division, Attorney-General's Department

MILROY, Mr Alistair Maddonald, Chief Executive Officer, Australian Crime Commission

SCOTT, Federal Agent Alan, Manager, People Strategies, Australian Federal Police

CHAIR—Welcome. The Australian Federal Police has lodged a submission with the committee, which the committee has numbered 3. Do you need to make any amendments or alterations to that submission?

Commissioner Keelty—No.

CHAIR—I note for the record that we do not have submissions from the Australian Crime Commission or the Attorney-General's Department. Does anyone have any additional information they would like to add at this stage?

Federal Agent Scott—I wish to add that, before my current role, I was the head of the Professional Standards portfolio, so I have had some considerable involvement in this matter.

CHAIR—Before we begin, I remind senators that under the Senate's procedures for the protection of witnesses, department and agency representatives should not be asked for opinions on matters of policy and, if necessary, must be given the opportunity to refer those matters to the appropriate minister. I invite both agencies to make an opening statement, if you are so minded. At the end of that we will go to questions from members of the committee. Perhaps we will start with the Commissioner.

Commissioner Keelty—Thank you, and I will be brief. Thank you for the opportunity to appear before the committee. I would like to make a few points about our AFP submission. I recognise that these three bills represent a significant stage in the development of integrity and accountability systems that govern the AFP. I want to reiterate to the committee that I am committed to maintaining the highest levels of professional standards in the AFP as I firmly believe that it is through the integrity of the AFP employees that the AFP returns the trust placed in it by our parliament, by the government and also by the Australian public.

The repeal of the Complaints (Australian Federal Police) Act 1981 and the establishment of a graduated system of categories of conduct articulated in the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 will improve the AFP's current disciplinary and complaints handling systems for the AFP as an organisation, its employees and the Australian public. The proposed graduated approach means that complaints by the public or internal matters that relate to minor management or customer service issues will be dealt with by AFP managers as performance issues, which is where they belong.

More serious conduct issues and complaints will be investigated by AFP Professional Standards, as has been the case in the past, but allegations of significant corruption within the AFP will be investigated by the new Law Enforcement Integrity Commissioner. The benefits for both the AFP appointees and complainants arising from the new framework include improved timeliness in resolving minor matters for both AFP appointees and complainants as well as outcomes which are focused on improving appointees' conduct aimed at reducing the likelihood of the conduct reoccurring and enhanced management oversight for managing AFP appointees' performance. I would add to that that the proposed Law Enforcement Ombudsman will have improved oversight of complaints handling and conduct issues in the AFP while retaining the ombudsman's ability to investigate matters in their own right. The new Law Enforcement Integrity Commissioner will also have oversight of the investigation of all corruption issues within the AFP. The roles for AFP managers, the AFP Professional Standards area, the Commonwealth Ombudsman and the Law Enforcement Integrity Commissioner will establish a contemporary discipline and complaints handling system that is transparent and accessible to the Australian public and compatible with the AFP's management structure, our workforce and our operating environment. Thank you. I obviously welcome the opportunity for any questions.

CHAIR—Thank you very much, Commissioner.

Mr Milroy—The Australian Crime Commission fully supports the introduction of an independent body such as the Australian Commission for Law Enforcement Integrity to examine corruption allegations against the ACC. We are confident it will have the appropriate powers and processes to adequately address these allegations. We also recognise that ACLEI will bring greater transparency to the handling of allegations of serious corruption against the ACC. We are confident that the advent of the ACLEI will complement the ACC's own rigorous strategies to reduce the opportunities for corruption, to better educate staff in matters relating to professional standards and integrity and to strengthen our investigations of allegations against the ACC. Similar to the commissioner, I am quite happy to receive any questions. Thank you.

CHAIR—Thank you both very much. Let me start with the ACLEI bill. We might come back to some of the professional standards bill matters. One of the questions that has been asked via submission—and this is maybe one for you Mr Milroy—is that the bill as it is currently drafted has a significant emphasis on investigation and prosecution and may perhaps, therefore, lack a balance between activities that are aimed at preventing corruption and those that are undertaken after corruption has been detected. Submissions have raised that with us. I wonder what your response is to that concern.

Mr Milroy—I believe that any processes that are in place to deal with corruption or integrity matters and are actually proactively dealt with during training and induction of staff and rigorously complied with and monitored by management in actual fact do have a preventative function attached to it. The addition of the ACLEI integrity commission role to be communicated further to staff and the alignment of these to ACC's policies and procedures to complement the ACLEI bill will be ongoing processes on a day-to-day basis that will address this issue of prevention. It has been quite common in my experience around the world

in such bodies that just the fact that you do have a professional standards integrity regime in place, irrespective of what level that might be, is a preventative process.

CHAIR—You have to some degree flagged my next question, which was about the sorts of processes that the ACC will need to put in place—and for that matter, the AFP—to work with the integrity commissioner and ACLEI to ensure that you have got productive relationships, that any allegations are dealt with appropriately and communications are effective. I understand that we are in the early stages, given that we are just dealing with bill, but what thought have you given to date to those matters?

Mr Milroy—We have, of course, looked carefully at the new bill and been involved with the Attorney-General's Department in the development of the bill in the first place. We have looked at where we need to improve, in various areas, some of the current training and induction programs for new staff. With our professional standards and integrity framework, which is a process that has been approved by the board, we are looking at which changes, if any, improvements or realignments we have to do to that process. The current policies and procedures within the organisation need to be reviewed and the current review process is currently being initiated. We run regular random audits and corruption resistance audits, which will be commencing very shortly.

Those sorts of processes, as well as the drug and alcohol policy, improved complaints handling procedures and the rigorous security vetting processes are all current processes that we have in place. We are looking at where they or the relevant policies and procedures need to be adjusted to align clearly with the new ACLEI bill, together with the ongoing work that we do in keeping the board, the parliamentary joint committee and the Ombudsman up-to-date on any changes that we make to our current professional integrity regime and keeping them advised of any incidents that they should be made aware of.

Commissioner Keelty—We propose that ACLEI will disseminate information to us and that will be fed into our existing integrity framework, which is based on an Australian standard for fraud and corruption control. Our framework also incorporates education, prevention and proactive investigation strategies to achieve holistic corruption resistance outcomes. From our perspective, we do not see a large change, except that we will have the external body referring matters to us that might otherwise not have come to our attention. We will fit that into our existing framework.

I do not have any difficulty with the fact that the government has envisaged that ACLEI will have that prosecution and investigation role because as the CEO of the organisation I see it as my responsibility to ensure that we are doing work to insure that AFP appointees are not involving themselves in corrupt activity. I think that is not only my job as the CEO but the job of everyone in the organisation. That is the path that the AFP has gone down in implementing its confidante network and other strategies where we have tried to get the whole organisation to own the responsibility for integrity.

CHAIR—What are the resource implications of the ACLEI bill for either and both of your agencies, if any?

Commissioner Keelty—For us, there are none on the horizon except for if it becomes overbearing. We have all of these issues in the AFP that we do not actually know today that

we have. Combined with the other refinement of the process for disciplinary matters, we should have a saving on resources, because we will not have as many resources tied up in what have been lengthy administrative and nonproductive processes as those more focused on actually changing the behaviour of individuals and encouraging individuals to adopt integrity as one of the key values of the organisation.

Senator MASON—I have a couple of questions on the potential scope of the problem. Within your time as Commissioner, how many matters has the AFP dealt with that will subsequently be dealt with by the Integrity Commissioner? How many, say, corruption matters have there been over the last few years? What is the size of the problem?

Commissioner Keelty—I can give you some details on the sorts of matters that we currently have before us. In terms of corruption under the act, there would be a minimal number of matters over the last five years that would have been referred to ACLEI. That is not to say that there would be no matters.

Federal Agent Scott—The number of matters that we would have dealt with in the last three years would be, as the commissioner has indicated, almost negligible. There is one matter that is currently before the criminal courts in the ACT involving an alleged obtaining of corrupting benefits from an unsworn employee of the AFP. It would be my guess that that would be the only matter in the period in which I was the manager of professional standards that would have attracted the attention of ACLEI.

Senator MASON—This is in the last three years?

Federal Agent Scott—Yes.

Commissioner Keelty—I have a list of the number of complaints that have been made and the number of allegations that have been made, which does not necessarily answer your question per se in terms of the corruption issues envisaged to be investigated by ACLEI but certainly gives you an idea of volume of material that we are dealing with.

Senator MASON—A ballpark figure.

Commissioner Keelty—Yes. Federal Agent Scott's answer is quite correct. There is a minimal number of matters that would go that far.

Senator MASON—It really is minimal.

Commissioner Keelty—I will just get some clearance, Chair, if that is okay, to present this document.

CHAIR—Yes, absolutely. We will take that as a tabled document. There is no confidential material in the document?

Commissioner Keelty—No, that is why I wanted to show it to someone else.

CHAIR—Thank you.

Senator MASON—I raised the issue because the integrity commissioner that the parliament is considering establishing through this bill would not have had a great workload over the past two or three years. So I wonder whether now we are doing this for perception, to look as though we are doing the accountable thing. Or is it because we need these new processes to ensure that the right thing is done? Can you comment on that, Commissioner?

Commissioner Keelty—I think the answer to that would have to come from my minister.

Senator MASON—I thought you might say that.

CHAIR—If we were in estimates, Senator Mason—thank the Lord we are not—I would suggest that it was a matter for the minister.

Senator MASON—I guess it was a fair question given the amount of—

Senator LUDWIG—Especially given that the disciplinary tribunal had never been used in the last seven years.

Commissioner Keelty—Having said that, it is a government decision and I am not going to comment on the government's decision. With the implementation of ACLEI—and I have to say this, particularly with the level of work that the AFP has and has grown and expanded into—you have to have significant public confidence in the organisation. I was nearly going to say something about the Wheat Board inquiry. I anticipate that there will be material referred to the AFP as a result of the Cole inquiry. Both the parliament and the public need to have confidence in the AFP. Whatever we do in such a high-profile inquiry, it must be conducted with the utmost integrity so that both the parliament and the community have confidence in the organisation and the outcome. That is a longwinded way of saying that I understand the reason for the creation of ACLEI. In one sense it is a good thing because it increases the public confidence in the organisation. It also acts as a deterrent to the organisation to anyone who would otherwise engage in corrupt activity.

I am not saying that we have—as Federal Agent Scott said—and I do not believe we do have large-scale corruption in the AFP. But I have had a long history in the investigation of corruption, both with the Harrison inquiry into the AFP following the Wood royal commission and in my work with the former National Crime Authority in dealing with corruption in both government and a number of state police forces. I, for one, will say quite honestly that I cannot guarantee you that there is no corruption in the AFP, because it would be stupid if I did. So an oversight body can be a positive implementation to ensure that the organisation is valuing integrity and resisting corruption.

Senator MASON—And also, as you said, there is an aspect of perception to it which is also beneficial as well. Mr Milroy, in terms of the ACC, would you agree with that?

Mr Milroy—Yes, I do not have much further to comment. I think the commissioner is quite right in his comments. We welcome it. We are not the first law enforcement bodies to have such a body in existence, as they do in some state jurisdictions. The government has made its decision and we welcome it and we will work with it. We believe it will probably strengthen the work that we do in a very highly volatile and sensitive environment.

Senator MASON—Yes. I am often straight on to policy questions and the chair always pulls me up. My next question follows from that, Mr Milroy. ACLEI applies to the AFP and the ACC. Is there a law enforcement gap with respect to other federal law enforcement agencies? You probably cannot answer that.

CHAIR—You might direct that question to Mr Harris, who is looking particularly eager to answer it.

Mr Harris—I would not say 'eager'!

CHAIR— We have been discussing enthusiasm at some length today, Mr Harris, so we are keen on enthusiasm here this afternoon.

Mr Harris—I do not think it does leave a gap. The AFP currently does have the responsibility of looking into corruption in any other agencies across the Commonwealth. So I do not perceive there is a gap by ACLEI focusing its attention on the ACC and the AFP, who are the primary law enforcement agencies at the Commonwealth level. I do not believe that there is a gap.

Senator LUDWIG—What about in circumstances like Operation Wickenby, where you have got an investigation that started out as a tax matter but where there is now a significant investigation going on. I did not want to go into the details of it, because it is obviously an operational matter. Effectively, you have got Tax; the AFP, I suspect; the ACC and probably others, including ASIC, perhaps APRA—a whole range of persons from those areas, law enforcement or quasi law enforcement areas—dealing with it now.

CHAIR—Who, might I say—if I might intervene on Senator Ludwig for a moment—are enthusiastically seeking powers akin to law enforcement powers in every other piece of legislation this committee has the enormous fortune to deal with.

Senator LUDWIG—I will get to that as well. Every time we meet those organisations, the chair has made it very pointed that in fact they encourage us to give them more power, at least certainly not to curtail their power. These are powers that are now available to the AFP under telecommunications interception and that are now available to a range of what I call law enforcement agencies, including ASIC. They are not going to have an oversight, but they will have the ability to access stored communication covertly. You do not see a need for ACLEI to play a role in ensuring that there is integrity to that organisation and also a perception in the public's mind that that organisation does have an oversight body such as ACLEI to ensure that there is integrity in its dealings, which would provide and engender confidence in the public? When they use the same power, I cannot see the difference. I would hope you can explain to me why that is.

Mr Harris—Not knowing the exact details of the oversight arrangements in those organisations, one does know that there are various means of oversight of the different organisations you have just mentioned. We have to realise that ACLEI is dealing with corruption. In terms of corruption, the AFP does have a responsibility to oversight those other agencies. If there is any allegation made of corruption within those agencies and its operations, whether it be in working with the likes of the AFP, the ACC or any other agency, the AFP would obviously look into that.

Commissioner Keelty—It is a difficult situation I find myself in because of the question. One of the reasons why I am here appearing personally before this committee is because I initiated the Fisher review. I believe firmly that integrity is the core value of the AFP. I have to say to you that it is a question that I have asked myself. Part of the core business of the AFP—our remit—is to investigate and apply the fraud control policy of the Commonwealth to other Commonwealth agencies. There is a gap here—and I do not want to name agencies—if you look at the powers, such as access to search warrants, access to the use of firearms and access to detention.

Senator LUDWIG—You control operations—

Commissioner Keelty—All of those things in my own mind conjure up the connection between power and corruption. I for one, to be very honest, would like to see the committee look at that issue. If we are serious about this, and if it is not just a quick fix, then the AFP could benefit in its investigations if the ACLEI had a wider remit than what is proposed in the bill.

Senator MASON—There would be an integrity dividend right across Commonwealth law enforcement.

Commissioner Keelty—I absolutely respect and understand that the government makes the policy, and we will adhere to and apply the policy the way the government makes it.

Senator LUDWIG—You see, Mr Harris, the problem I have with your submission is that, if you look at DIMIA in the last couple of years and the failures in respect of Rau and Solon, there has been no oversight that has been effective. That went on for many years. Look at the number of those kinds of cases that have come out and been referred especially to the Ombudsman—200 cases or more. That is not to say that there are 200 cases which have difficulties, but a significant number have now been referred—all well after the point. There has been no proactive engagement in this area of oversight, which the ACLEI could in fact do. The Ombudsman's resources do not give it the ability to deal with such things in the way that the ACLEI could deal with them. I am not suggesting that any of that was corrupt; what I am saying is that those types of activities can fall into corruption.

Customs have significant powers which while not exactly akin to AFP powers are the same in some respects. If you look at ASIC, they now have the same powers as the AFP—not in breadth but in narrow part. If you look at DIMIA, they have the ability to detain. Some would say that they have broader powers than the AFP to detain. They do not have any oversight. We are relying on some nebulous oversight arrangements that you are pointing to. I do not think that they are sufficient, or that you have been able to justify your position. Why have you allowed any expansion to be dealt with by regulation? Why wouldn't you expand it at first instance?

Mr Harris—That is a policy decision of the government. The government has decided that the ACLEI will initially look at the AFP and the ACC. But they have provided the capacity to expand its functions or its oversight arrangements to cover other agencies involved in law enforcement operations at a later date, and to do that by regulation, which is obviously quite a simple means.

CHAIR—That is a matter of perspective. Whether you think it is simple or not depends which end of the regulation-making process you are at. Whether it is simple or not also depends on numerical arrangements in the chambers of the parliament. It might be simple at the moment; it is not always simple.

Mr Harris—Compared to the process with legislation, regulation is a simpler mechanism.

CHAIR—We may seek to differ on that, Mr Harris.

Commissioner Keelty—It is not my position to comment on or create policy, but speaking from experience there is a displacement factor that the committee might turn its mind to here.

If I can give you an example, when I was involved in investigations of Italian organised crime I exposed a level of police corruption and a level of corruption within the tax office. I am not saying that the tax office is corrupt, but what I am saying is that organised crime will go to the heart of corruption. There have been some very good examples of that in recent days, if people turn their minds to what is driving some events around the place.

And there is a displacement factor. If you have an oversight or governance regime in a particular place then you need to expect that if you tighten it up in one area displacement may create a problem for you in another area. I am just putting that on the table for the committee. I say that from experience; I am not criticising your policy.

CHAIR—I understand that. I want to ask Mr Harris a few questions out of matters that have come from submissions and witnesses before the committee today. We had quite a valuable submission and attendance by a member of the Police Integrity Commission in New South Wales. He raised with the committee some concerns about the communication processes that are set down in the bill. I do not know whether you have had a chance to look at the PIC submission and whether you have a comment on those, but the committee is certainly minded to take some of those on board.

Mr Harris—We are of the same mind, I have to say. Having looked at the PIC's submission to the committee there are some elements in there that we are looking at actively. Our intention with the bill was to make it as flexible as possible in terms of communication between the ACLEI commissioner and other agencies.

But the aspect that they raise in particular is non-seconded officers. We have always considered that that was covered by the general powers within the commission; but we are looking at that actively because we need to make sure that the commissioner does have the power to provide that sort of information to the state integrity commissions or bodies where a non-seconded officer has been or is allegedly involved in corrupt practices with an AFP officer, an ACC officer or another seconded officer within the ACC or AFP.

CHAIR—What about the concerns in relation to clause 19—that is, the obligation to inform—and their concerns about whether there is any thought given to the commission's perspective on information being conveyed?

Mr Manning—I think that one would cause us some concern in the sense that we feel that, if the integrity commissioner is to have a clear view of the full range of activity that might be categorised as corrupt within law enforcement, we do not want a situation where heads of agencies are too readily in a position to pick and choose what they will actually report. There should be complete reporting.

CHAIR—I understand that. I thought there was—

Mr Manning—All I am saying is that it raises a concern for us. It is also, I suppose, a concern in that we rather wonder why ACLEI would be seen as not having a legitimate interest in these sorts of matters. Sorry, I interrupted you.

CHAIR—That is all right. The commission, just rereading their submission, says it would be:

... concerned to ensure that where it discloses information to Commonwealth law enforcement agencies in the latter instances—

—which is a result of a reference earlier—

the obligation to notify the ACLEI does not arise without regard to the views of the Commission as to whether disclosure is appropriate at that point.

I do not think that is an endeavour to obtain a blanket ban or a veto role for an organisation like the PIC; it is a question of having regard to the views of the commission.

Mr Harris—In the operation of ACLEI it would tend to always have regard for the views of the other integrity agencies in these sorts of arrangements. There is obviously a need to make sure that in any investigation ACLEI does not interfere with ongoing investigations and does not corrupt the work of other agencies. I think there needs to be a very close relationship between the likes of ACLEI and state bodies.

CHAIR—An example drawn by Mr Kearney and extrapolated by Senator Ludwig was that there may end up being parallel inquiries which, because of the lack of communication—because we are not talking about a seconded officer—could be (a) counterproductive (b) destructive and (c) duplicative.

Mr Harris—It is really going to come down to the manner in which the commissioner operates. It does require very close cooperation, equally, from the state integrity bodies where they have information.

CHAIR—Indeed, and they acknowledge that. On another communication matter and the disclosure of information, the Ombudsman's office raise an issue in their submission. Have you had a chance to have a look at that?

Mr Manning—Yes.

CHAIR—It is essentially about what the Ombudsman might be notified about, in relation in one instance to clause 35 and in another in reference to clause 208(3)(a). If you have not had a chance to look at those in detail perhaps you might respond on notice.

Mr Manning—I might just refresh my memory on that.

CHAIR—That's all right—I'm likely to be confusing it with a migration clause after the committee's last two days!

Mr Manning—Yes, I think we may need to have a look at that issue, as to whether we have unintentionally left the Ombudsman in a position where they are not in a position to receive information without going through the form of an investigation of their own—

CHAIR—Without initiating a complaint, yes.

Mr Manning—which seems totally inappropriate. If that is in fact the position then we will get an amendment to deal with that issue.

CHAIR—I am happy we are in agreement. Also in relation to the Ombudsman, you will see in the Ombudsman's submission at a couple of points—including a quite precise percentage estimate of the increase in workload in one point—that there are some issues about resources and funding of the Ombudsman's office. We did ask the Ombudsman's office to list the number of hats they now wear and we stopped at about eight; Law Enforcement

Ombudsman would add another one. There are obviously significant demands on the operation of the office. I am hopeful that the Attorney-General's Department is keeping that in mind in relation to resourcing.

Mr Harris—I think we always would. I do not think I have had an indication from the Ombudsman that the operations of ACLEI would exacerbate their resource constraints currently.

CHAIR—You may need to look at their submission, Mr Harris.

Mr Harris—We might need to.

Senator LUDWIG—On the point about at the border where you have got ACLEI being referred to or investigating something, what happens with territories, particularly external territories?

Mr Manning—There is no bar to their investigating any suggestion of corruption among Australian Federal Police officers working for external territory governments. Is that what you are getting at?

Senator LUDWIG—I thought we would start with that point and then develop it a little further. What happens when you have got ACT policing at the border, you have got the New South Wales Police Integrity Commission and you have got an AFP operation going on at the same time—how do you resolve who should look after any corruption issue that arises where you might have ACT policing in Queanbeyan working alongside or with the state police? You might even have an ACC secondee there as well; it might be a broader case. Who looks after it, how do you resolve that quickly and how does the information sharing occur?

Commissioner Keelty—I can help there, Senator, and Mr Harris might want to describe it from the policy perspective. What in effect happens now is that the heads of those agencies agree on a proposed course. We clearly, even today, have joint operations between the AFP and the New South Wales police where an issue may arise that may give rise to the need for us to speak to be police integrity commissioner. The commissioner and I do that on a head of agency to head of agency basis, and I would envisage a similar sort of arrangement would take place under—

Senator LUDWIG—That is precisely what I would envisage too, Commissioner. The question I have, though, is whether the legislation permits it.

Mr Manning—It is certainly intended to permit that sort of thing. It provides for the conduct of joint investigations and in an appropriate case, for that matter, for the integrity commissioner to decide not to proceed if satisfied that a matter is being appropriately investigated by another body.

Senator LUDWIG—What about own motion investigations in terms of something like that? Can it do that?

Mr Manning—Essentially, the same rule would arise—

Mr Harris—The commissioner certainly would have the power to do that. I think it would be an obligation on his part, professionally speaking, to—

Senator LUDWIG—It might be a case that they agree and the resource is there for the ACLEI commissioner to undertake an own motion investigation into a matter, or he might see something there himself that he wants to use. One can never limit them in terms of what they may see as a relevant issue that requires an investigation. What I am just checking is whether or not the power exists under the legislation. You say it does.

Mr Harris—If I am reading you rightly, the power certainly exists for the integrity commissioner to undertake an own motion investigation into any matter which relates to the possible corrupt conduct of an AFP, an ACC or a seconded officer. If that relates to something which crosses a border between one jurisdiction and another and involves other agencies, that is still the case but there would obviously be an obligation on the part of the commissioner to liaise with the various agencies involved. It is a cooperative arrangement.

Senator LUDWIG—Where did you get the definition of corruption from? I think there was a recommendation to use that of the New South Wales Independent Commission Against Corruption, which provides an exhaustive standard for corruption, but that has not been chosen.

Mr Manning—We were faced with a choice between attempting to follow the state models in this respect or attempting to follow the existing Commonwealth model, which has the definition of a corruption offence and the related definitions in the legislation that deal with loss of superannuation, the Crimes (Superannuation Benefits) Act or part 5A of the Australian Federal Police Act. We considered that in the circumstances it was desirable that there should be a degree of uniformity in the definitions used within the Commonwealth, especially given that this particular definition was already in use for the fairly serious purpose of depriving people of rights they had acquired in relation to superannuation.

Senator LUDWIG—So where did it come from?

Mr Manning—As I said, it is derived from the definition used in the Crimes (Superannuation Benefits) Act and part 5A of the AFP Act.

Senator LUDWIG—Is it an amalgamation of those two?

Mr Manning—They are substantially the same.

Senator LUDWIG—Are you able to say whether it is designed to be more onerous or less onerous than the ICAC definition? Is it just another iteration of the same type of definition?

Mr Manning—It would be hard to say that it was either more or less onerous. Indeed, I have seen suggestions that, given that it is a good deal more broadly expressed than the sort of definition used in ICAC and other state legislation, a court might well turn to that legislation as something of a commentary on the common law meaning of corruption in order to help it make a decision as to whether or not something did amount to corruption.

Senator LUDWIG—So you do not see it as being less rigorous than the New South Wales definition?

Mr Manning—I do not think ultimately it would be either more or less rigorous. It just goes into less fine detail.

Senator LUDWIG—You use 12-months imprisonment as a standard. The Police Integrity Commission have indicated that they do not use a standard such as that. Why was the standard of 12 months chosen? It seems that a very low bar has been set.

Mr Manning—That was essentially chosen because it is the boundary between summary offences and indictable offences in Commonwealth law, generally speaking.

Senator LUDWIG—So everything that has 12 months is an indictable offence and therefore that is where the bar should start?

Mr Manning—Yes.

Senator LUDWIG—That does not really take into consideration though whether a matter is a serious corruption issue or a less serious corruption issue. Do you leave that to the commission?

Mr Manning—Yes, in terms of the particular facts of the case. It is essentially a rule of thumb. Those definitions are there to establish the focus of the integrity commissioner's work but there is absolutely no obligation on the integrity commissioner to investigate a matter directly if on examination it proves to be a relatively minor matter that just happens to fall within a description that could be serious in some other instances.

Senator LUDWIG—For the definition of an AFP staff member, clause 10(1)(h) includes:

... a person who is:

(i) a member of the police force of a State or Territory; or

(ii) an employee of a government agency;

and who is assisting the AFP ... under section 69D of the Australian Federal Police Act 1979.

It is the part dealing with assisting the AFP, because it comes back to the issue that I raised earlier. That means you could effectively have two bodies investigating the one incident and the way it is resolved. If they both know about it, then at a higher level they might, between the two commissions, decide which one is going to investigate it, but that surmises that they know about the investigation.

Mr Manning—I would have thought in any case that there is an obligation to give some notification in any case relating to a secondee.

Senator LUDWIG—It is not a secondee. It is anyone assisting under section 69.

Mr Manning—Actually, I think if you look at section 69 that does amount to a secondee. It has to be taken in the context of that particular provision.

Senator LUDWIG—So you say that would only be secondees and not someone assisting.

Mr Manning—Yes. It is not someone who is assisting on some less formalised basis.

Senator LUDWIG—But say they are assisting the AFP but not as a secondee. For example, if there was an airport policing contingent and more police were sent to assist it on a particular day, they are not really secondees either.

Mr Manning—No. In that instance, they would not fall within the definition if the matter had to be investigated. If some matter arising out of that sort of situation had to be investigated, it would essentially need to be investigated by the person's home agency, unless

some person who falls within that definition of a staff member of the AFP was involved. In that sort of situation, it would not come within the province of the integrity commissioner.

Senator LUDWIG—Where the difficulty always comes in is if you have a decision where there is a secondee or someone assisting under section 69. If there is one more onerous or less onerous provision in respect of which commission, you have the onerous position of the employee being subject to a decision higher up as to which agency will look into it. It may not be his home agency; it might be the federal agency that looks into it, or vice versa.

Mr Manning—That is certainly true. That decision ought not to be made simply on the basis of which is the more onerous set of provisions. It ought to be made by taking into account all of the circumstances that are relevant. In many cases, I think they include where the balance of convenience lay in terms of the investigation.

Senator LUDWIG—In terms of then conducting own motion investigations, the way the legislation is drafted seems to suggest that they are limited by the act and regs, which means that the regs could limit the ability of the commissioner to launch own motion investigations. We obviously have not seen the regs yet, but both the act and the regs limit it. So the potential is there for the own motion investigations to be curtailed by the regulations.

Mr Manning—That is certainly not our intention.

Mr Harris—We will take that on notice. That is certainly not the intention of the bill, so we will take a closer look at that.

Senator LUDWIG—The way it has been worded seems strange, which means it can potentially be a fetter. I understand that the purpose is to allow the commissioner to have a true own motion investigation without fetter.

Mr Harris—Absolutely.

Senator LUDWIG—I might put some of these questions on notice.

Senator MASON—Mr Harris and Mr Manning, this question is probably for you. Over the years there has often been some toing-and-froing between parliamentary committees that have oversight of, for example, the National Crime Authority or ASIO. Parliamentary committees want more information and ASIO or the National Crime Authority have sometimes been reluctant to give it. I was going through part 14, which outlines the processes by which the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity will operate. I just want to know whether part 14 reflects current practice with respect to the Parliamentary Joint Committee on ASIO or the Parliamentary Joint Committee on the National Crime Authority. Has the oversight capacity of the parliamentary joint committee been circumscribed in comparison to other committees?

Mr Manning—It certainly has not been intentionally circumscribed.

Senator MASON—Where did the words come from?

Mr Manning—To the extent that they come from any other source, they would come from the ACC Act provisions, but obviously there would have to have been some adjustments in order to reflect the slightly different circumstances. Essentially, that set of provisions were modelled on the provisions of the ACC Act.

Senator MASON—So there has been no intentional circumscribing of the oversight role of a parliamentary joint committee?

Mr Manning—No. I think it would be safe to say that we assume that the current position on the ACC is in an appropriate place. Obviously, while there will continue to be the sort of push and shove that you were referring to—

Senator MASON—There has been. I think that is a matter of public record.

Mr Manning—It is a natural part of the process.

Senator MASON—In the past there have been complaints by parliament, I think ASIO and indeed the National Crime Authority on issues about operational matters. At times it is quite difficult. I will not take up much time, Madam Chair. I note, for example, that section 216(1)(a) says:

... the Integrity Commissioner:

(a) must comply with a request by the Committee to give the Committee information in relation to:

(i) an investigation of a corruption issue; or

(ii) a public inquiry;

It goes on to say that if it is sensitive and could be against the public interest then maybe not, and then it goes on to the minister and so forth. If that is the process adopted elsewhere, as a member of parliament I can hardly complain, can I?

Mr Manning—I think you will find that it is very similar—

Senator MASON—It is replicated elsewhere.

Mr Manning—to the provisions in the ACC Act.

CHAIR—Which kind of begs a question. Mr Milroy is already happily subject to the activities of the Parliamentary Joint Committee on the ACC. Why would you not roll this new body into that committee and enlarge its responsibilities?

Mr Harris—This is really seen as being quite a separate body. It is completely independent. It has oversight of the ACC. We do not believe that it would be appropriate for the PJC to then have oversight of ACLEI which has oversight of ACC. It is seen as being necessary to set up a new parliamentary joint committee to look at specifically ACLEI, its functions, the way in which it operates and the way in which it investigates allegations of corruption within the ACC and within the AFP.

CHAIR—Thank you.

Senator LUDWIG—In terms of Fisher, which recommendations did you not adopt?

CHAIR—Sorry, we are now moving to—

Senator LUDWIG—I wanted to stay with ACLEI.

CHAIR—That is fine.

Senator LUDWIG—I was going to put some of these questions on notice.

CHAIR—I understand that we will put some more questions in relation to ACLEI matters on notice. I dealt with most of the questions that I had through the submissions that we

received. We do want to talk about the professional standards bill and we will move on to that now. I am not sure to whom you were directing your question.

Senator LUDWIG—I suspect to the Attorney-General's Department. Which recommendations have been adopted and which ones have not been brought forward?

Mr Manning—We have pretty much adopted all of them. I would have to take on notice a detailed answer to that question and we could provide you with some sort of a table illustrating what we have and have not adopted.

Senator LUDWIG—That would be helpful. One that comes to mind is that the police association raised the issue of what happens after a decision is made to terminate. There is no third party, such as the AIRC, to hear a matter even if you have more than 100 employees, so you do not have that ability.

Mr Harris—Again, I will have to take on notice which recommendations were not adopted, and particularly this question—

Senator LUDWIG—I will put it more broadly—

CHAIR—Certainly, take that on notice, but that is quite a specific question. Take the general question on notice, but that specific question is in relation to a mechanism for review after a termination decision has been made, and I would expect that the department—or, in fact, the commissioner or Federal Agent Scott—could make a response to that.

Senator LUDWIG—At the moment, once a decision to terminate has been made there is no third-party review. You may have prerogative writs available, but that is an expensive process. There is no ADJR, there is no AAT and there is no AIRC—to use three terrible acronyms in a row, but I am sure you are all familiar with them. At that point, a decision has been made and there is nowhere left for the person to go. In an ordinary course of events, even the current minister for workplace relations, in a workforce of the AFP's size, allows them to go to the commission on merit, but in this instance they are not allowed to. Every other state jurisdiction, every other policing jurisdiction, has the ability to go to a similar tribunal, whereas in this instance—

Mr Manning—We have been operating on the assumption that the structure we were creating would still allow a matter to be taken to the AIRC, except in the cases covered by a declaration under section 40K of the AFP Act, but I noted that the submission of the AFPA suggested that the way in which we have amended section 69A of the AFP Act may have produced a different result to that, and that is something that we will have to have a look at.

Senator LUDWIG—Do you say that, as a policy decision—or as a drafting decision, I guess—a person who is terminated by the AFP or ACC can go to the commission?

Mr Manning—Within limits, that was the policy intention.

Senator LUDWIG—What limits are they?

Mr Manning—My understanding is that, presently, where the commissioner issues a declaration under section 40K that the dismissal is for serious misconduct, there is not the possibility of going to the AIRC, although the declaration itself is subject to ADJR Act

review. Perhaps Alan can confirm whether that is an accurate statement of the current situation, but that is certainly my understanding of it.

Senator LUDWIG—I will invite you to comment on that, Commissioner Keelty, but it does suggest that, while it may be a policy intent to allow someone to go to the AIRC, it effectively stops them from being able to do that, if the commissioner makes all terminations with a declaration.

Federal Agent Scott—I can assist you there. The current structure is that the section 28 dismissals and the 40K declarations work together. A 40K declaration is not a dismissal power; it is a process that adds to the dismissal power and has the effect, as Mr Manning has suggested, that there is no—

Senator LUDWIG—Yes, and if you always coupled a termination with that declaration—

Federal Agent Scott—Section 40K requires the commissioner to turn his mind to a number of relevant matters in relation to the dismissal. So, once a decision to dismiss has been made, within the following 24 hours the commissioner has to turn his mind to the relevant questions and then determine whether a certificate is issued declaring the conduct to be serious misconduct. Certainly, statistically, they are very few and far between compared to the number of section 28 dismissals that do not have a declaration accompanying them, because it requires the decision maker to look at relevant matters.

Senator LUDWIG—So what you are saying is that most terminations have the declaration?

Federal Agent Scott—No, most do not.

Senator LUDWIG—Is there a percentage?

Federal Agent Scott—It would be around five per cent, I think. The other thing to note is that the section 40K declaration has not been delegated within the commissioner's governance structure. It sits personally with the commissioner, and only he determines the serious misconduct declarations, whereas there are other delegates that can terminate employment under section 28. It is something I know the commissioner has a very personal association with and likes to determine individually.

Senator LUDWIG—Commissioner Keelty, do you want to add anything to that?

Commissioner Keelty—The only thing I want to add to that is that that is quite a deliberate piece of our policy in the sense that we would hope that the government, and in fact the parliament, would agree that the commissioner needs to have the power to declare a certain activity corrupt. We do not want to then go down a significantly unproductive review path. The powers need to be exercised with discretion and due consideration, as I have exercised those powers in the last five years. Federal Agent Scott is right, and it was good of him to point it out, because I do sit and deliberate personally on these matters, despite the advice or recommendations I might get. I understand the implications of going down that path. To me, again, it is an issue of having the public's confidence and the parliament's confidence in the organisation. Whoever the commissioner is, they need to have the ability to make those decisions—and that power is used sparingly but where appropriate.

CHAIR—I have a question on process under subdivision E. There is a provision in clause 40RM for the commissioner and the ombudsman to determine the kinds of conduct that fall within category 1, category 2 and category 3 by legislative instrument. What sort of system or processes are going to be established to facilitate those decisions in a timely way? I understand that if that is not done then everything falls into category 3, which is a significant issue.

Federal Agent Scott—That is right. That is what the legislation provides for. I can advise the committee that there is already some detailed work on the structure of the categories. The AFP and the ombudsman's office have already met on a number of occasions to progress that work in the event that this legislation passes. So we have a process to look at what categories 1, 2 and 3 are. There is some guidance from other jurisdictions around Australia that have similar models, so we have looked at those as a starting point. We have a number of opportunities in the not too distant future to progress that so that on the date that this legislation comes into effect, if indeed that is what happens, then we will have agreements in place ready for the commissioner and the ombudsman to issue them in accordance with the act.

CHAIR—The language in 40RK is interesting in some ways. It refers to the categories of conduct as 'the next highest and next most serious'. I understand that is a cumulative effect. Given the seriousness of that, there is an automatic result in the operation of 40RM which is pretty significant for the member concerned, isn't it?

Federal Agent Scott—Do you mean if there is no agreement in place at that particular time?

CHAIR—Yes.

Federal Agent Scott—Yes, there is.

CHAIR—How likely is it that there will be no agreement in place and that that may kick in as an automatic provision?

Federal Agent Scott—Most unlikely, in my view. I had the great fortune to work with the Justice Fisher on this proposal. His emphasis was on cooperative arrangements between the major players. When His Honour was looking at this, the integrity commissioner was not a proposal he was aware of, but certainly his view was that the Commissioner of the Australian Federal Police and the Commonwealth Ombudsman could certainly get together and determine how best to deal with these matters. His view was that there was a mature relationship that existed between the players and that we should be able to fairly easily determine what the lower end matters are—and I use that expression advisedly, because complainants view their issues with great seriousness.

CHAIR—I know what you mean though: we have a gradated system. That is just a statement of fact.

Federal Agent Scott—That is right, and it is in the interests of the ombudsman to look at those matters in a constructive manner—as it is for the AFP Professional Standards portfolio, because it is our view that our resources are scarce and ought to be directed at the more serious end of the market and enable managers to resolve minor matters in an effective and

timely manner to give feedback to employees who may be underperforming and allow them to grow, develop and address their underperformance issues as well as to get complainants timely advice about how their matter has been resolved. To answer your question, there is quite an impetus for us to have those agreements in place.

Senator LUDWIG—If you look at category 1, you could incur as a consequence a pecuniary loss which is significant. Is that the intention of legislation? I will give you an example: it may mean a manager makes a decision for someone to undertake training as a remedial. It seems to be contemplated by the category 1 type offence. What that could potentially mean is someone is removed from overtime or a type of arrangement which includes significant or additional penalties for two, three or four weeks while they go on a training course nine to five. It seems that that would have a greater effect on individual than what is contemplated by the section.

Commissioner Keelty—Clearly what we are trying to do here is change behaviour and streamline the process. It is not intended that it would be used as a de facto punitive arrangement where somebody would be given a fine, if you like, by another means; it is about applying management strategies to change behaviour. So, whilst your proposition that somebody could be involved in work that incurs additional allowances is correct, this is not aimed at taking from that work for the purposes of applying a penalty; this is aimed at taking them from that work to change their behaviour. I would envisage, although it will not happen in every case and it would be wrong for me to give that undertaking, in most cases once the behaviour altered they would be returned to where they came from. Some of this education and learning can happen within the workplace, so I would think it would be a rare occasion where they would be taken away from their place of work and made to go somewhere like the learning and development area of the AFP to improve their behaviour—but, if it is necessary, that is what we will do, which is a much better long-term effect than what we have had in the past.

Senator LUDWIG—What I am trying to elicit from you is whether that example really is a category 2 rather than a category 1. A category 1 seems to suggest—where it is on the job, it is remedial, it is necessary, it is sharp, it may be mentoring—it may be one of those matters that does not provide deep-seated angst to the subject, because if you subject them to a penalty of four or five weeks on a significantly lesser pay, let me tell you from broad experience I think they are going to not change their behaviour but instead harden it. It may not be apparent to you at the time but, if it is designed to change category 2 type conduct it may have some long-term effect because they have already, I suspect, been subject to your notification anyway and they have already had category 1 offences or category 1 type actions. Therefore, the point of it is: why wouldn't there be a rider in there—and this goes more to the Attorney-General—to say 'providing it does not have any significant pecuniary disadvantage', because if it does it should rightly fall within a category 2 or category 3 offence, surely?

Mr Harris—I do not think we would really want to include that. It really is setting up a framework which has very—

Senator LUDWIG—But it is not precluding it. I just saying in terms of 'significant'.

Mr Harris—Again, we are setting up a framework which gives a fair bit of discretion to management within the AFP in terms of how they want to bring about a corrective aspect to the behaviour of the officer involved. I think if we are then going to be subscribing that there is any potential chance of some sort of significant pecuniary element, we would not be pursuing it. But if, as a by-product of legitimate action, there is some sort of pecuniary cost—

Senator LUDWIG—That is the point, it may not be a by-product.

Mr Harris—I think that is getting too deep.

Senator LUDWIG—If you do not think it goes on in the workplace you need to get out and visit one, because it can and it does happen. People will use alternative means to punish. What I am trying to put is that is not the intent, I suspect, of the legislation. It is probably not the intent of the Commissioner but you do not know when you go right down to managers what their intent might be. If you can circumscribe them to ensure that it is not their intent then it is best done at this level rather than to find out later.

Commissioner Keelty—I agree with the department. I understand where you are coming from but I think if you over prescribe then it creates a framework for challenging the decision made by the manager. In what you have proposed, it falls within the ambit of a different set of circumstances. I am sorry, but I think there is a level of trust that has to occur here between my managers and me. I am sure that if the legislation were being abused in that way that it would come to my attention. I have said to you already that it is not the intent that people would have imposed upon them a de facto pecuniary penalty. The reality is that this is about streamlining and changing behaviour in a positive way that does not affect the morale of the entire workforce, which has been the experience of the past where people go into lengthy processes that sometimes take years to resolve. The police association spends a lot of money defending the issues and we spend a lot of taxpayers' money in an adversarial context trying to prosecute the issues and no-one wins in the end. It is something that I will undertake, since you have raised the question, Senator Ludwig. I will have Federal Agent Scott address this in the internal guidelines that we will establish for managers. It is something, Senator, that I will personally undertake to watch. We will review this internally. Regardless of what others might do to review this, we will certainly review the implementation of this legislation within the AFP.

Senator LUDWIG—I am sure you will. Clause 40TD lists a number of remedial actions that may be taken against an AFP appointee. It does not appear to specifically list a demotion nor am I asking that it include it. With respect to 40TD, is demotion available under subsection 2(b)?

Federal Agent Scott—One of the issues that was very alive at the time Justice Fisher was conducting his review was whether or not we ought to retain something less than dismissal but something that looked very punitive in its form. In particular it was the issue of demotion, so a significant pecuniary penalty for the employee, or a fine. These matters are currently in the New South Wales model, which His Honour looked at and examined in great detail. He thought though on balance that it was best not to have that middle territory as he referred to it because it had all the hallmarks of the punitive system that he was quite critical of. So he was

very firm in his view that we ought not to have demotions or fines available. That was one of his very firm recommendations, which the department took up. So it is not there.

Senator LUDWIG—That is helpful, thank you.

CHAIR—There are a number of other issues which are raised in submissions on the professional standards bill both in the AFPA's submission and the Police Federation's submission. I do not think we have time to go through them all this afternoon, although I do have a rather perverse desire to investigate section 40VB because it interests me. I will not do it now.

Commissioner Keelty—The timing might be—

CHAIR—It is about time, I thought; I thought it was entirely appropriate! But we may place some of those on notice. There is one ACLEI question, which arises out of the Police Federation submission, which I would like to go back to. It is about division 5, clause 139, and division 6, clause 140, about authorised officers. The concern that the federation raises is about the powers of arrest being granted to individuals who might not be sworn police officers but are, rather, authorised persons. I understand that the definition of an 'authorised officer' is someone who the Integrity Commissioner considers 'has suitable qualifications or experience'. But they are given powers of arrest, and that has been raised with the committee. I would be interested in some comments on that.

Mr Manning—The essential objective in this is to ensure that in the last resort the Integrity Commissioner will have at his disposal the assistance of people who are demonstrably independent of any police force by enabling him to make use of people. You would envisage that they would be, for example, ex-police or possibly police drawn from a foreign police force. Very occasionally, I suppose, it is conceivable they might be someone who had a slightly different background but clearly had the requisite skills to perform police type duties.

But the idea is to ensure that in the last resort the Integrity Commissioner does not have to rely on getting someone from an Australian police force in order to obtain the assistance he needs. I would have thought that going to the extent of arresting someone would be pretty unusual in this context, but it could not be totally excluded. It is essentially intended to bolster the independence of the Integrity Commissioner.

CHAIR—I take on board what you say, Mr Manning. I have to say, you need to be a pretty intuitive reader to have discerned that from the legislation; and that, of course, is ultimately, notwithstanding the second reading speech and the explanatory memorandum, the tool with which we are left. So I take on board what you said and will give some thought to that.

I thank all of the witnesses, particularly those who appeared this afternoon. I do indeed want to thank the Commissioner, Mr Milroy and the Attorney-General's Department for adjusting your time schedules to assist the committee. We are very grateful. We understand it is important legislation and we know that that is why you wanted to be here. Whether it was our rigorous efficiency on the customs bill this morning or just the innate nature of Customs legislation, which meant that it went faster than we expected, I am not sure; but we finished early. We are very grateful to you for assisting us by appearing at a changed time this afternoon.

There will be matters we will place on notice for possibly two or three agencies from this afternoon. Mr Whowell is nodding; he is going to be able to help me with that. We look forward to your responses. The committee is due to report on 11 May, which we regard as a luxury, in the current climate; we have three bills for report on 2 May. We will be very grateful for your fast turnaround of any responses to matters taken on notice. Thank you very much.

Committee adjourned at 4.33 pm