



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**SELECT COMMITTEE ON AN INDEPENDENT INTEGRITY
COMMISSION**

(Reference: [Inquiry into an Independent Integrity Commission](#))

Members:

MR S RATTENBURY (Chair)
MRS G JONES (Deputy Chair)
MS B CODY
MS E LEE
MR C STEEL

TRANSCRIPT OF EVIDENCE

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Secretary to the committee:
Dr A Cullen (Ph: 620 50142)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 9.30 am.

SAUNDERS, ASSISTANT COMMISSIONER JUSTINE, Chief Police Officer,
ACT Policing

JOHNSON, ASSISTANT COMMISSIONER RAY, National Manager Reform,
Culture and Standards, Australian Federal Police

THE CHAIR: Good morning, everybody, and welcome to this hearing of the ACT Assembly Select Committee on an Independent Integrity Commission for the ACT. This is the fourth public hearing of the committee. On Thursday, 15 December the Assembly established the committee to inquire into, amongst other things, the most effective and efficient model of an independent integrity commission for the ACT. The Assembly also asked the committee to make recommendations on the appropriateness of adapting models operating in similar-sized jurisdictions.

Today the committee will be hearing from representatives from the AFP and ACT Policing, the ACT Commission for Law Enforcement Integrity and the Accountability Round Table. On behalf of the committee, I would like to thank all witnesses this morning. I will come to the AFP in a moment. The committee will conclude its hearing at approximately 11.30 am today.

I welcome Assistant Commissioner Justine Saunders, Chief Police Officer, ACT Policing, and Assistant Commissioner Johnson. We would like to thank you both for the submission you have made, for appearing in person today and for taking questions from the committee. I imagine that you are aware of the pink slip on the table and the witness protections and that you are comfortable with the implications of that.

Asst Commissioner Saunders: Yes.

THE CHAIR: Thank you. I remind everyone that, of course, the proceedings today are being recorded and transcribed for the purposes of Hansard and also webcast to anyone who may care to tune in this morning.

MRS JONES: I am sure thousands of very committed local residents will listen in.

THE CHAIR: Exactly. Before we proceed to questions, Ms Saunders, would you like to make any opening remarks today?

Asst Commissioner Saunders: Yes, thanks, I will. For the official record, I am Assistant Commissioner Justine Saunders, Chief Police Officer ACT, and I will also introduce Australian Federal Police Assistant Commissioner Ray Johnson, who is the national manager for reform, culture and standards. Whilst it is not clear in that title, obviously Ray is responsible for our professional standards regime and our relationships within our integrity framework, including the Commonwealth Ombudsman office and ACLEI.

On behalf of ACT Policing, I wish to thank the select committee for the invitation to appear today and for the opportunity to address any questions you may have arising

from ACT Policing's submission regarding the proposed ACT independent integrity commission.

I thought what might be useful would be to offer some context to the committee in its deliberations by providing a general overview of the AFP's position and our understanding of the opportunities and risks arising from the proposal. As you are aware, all ACT public service organisations, including ACT Policing, have current integrity mechanisms in existence and report to various bodies in relation to corruption.

I acknowledge that it is clearly important that we have an understanding of these current mechanisms and their efficacy to ascertain how they would operate in line with the introduction of an integrity commission. That would be important. Whilst I am not an expert in the range of ACT oversight mechanisms that exist, I can assure the committee that ACT Policing members, as members of the AFP and thereby commonwealth officers, are the subject of long-established, robust integrity frameworks and internal and external oversight mechanisms to detect, disrupt and deter corruption. These include AFP professional standards, the Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity.

The AFP integrity framework has been recognised as the benchmark for Australian government agencies. AFP professional standards provide ongoing advice and support to other agencies to strengthen their integrity frameworks. PRS is staffed by experienced investigators drawn from all areas of the AFP, including ACT Policing.

The AFP's integrity framework undergoes continuous reviews by ACLEI and the Commonwealth Ombudsman. A recent review indicated that the existing AFP framework is effective and robust. As a commonwealth entity, the AFP, hence ACT Policing, also has a fraud control and anti-corruption plan, which is subject to compliance with public governance performance and accountability rule 2014. The AFP is committed to managing fraud and corruption risks as part of its everyday business and as such complies with the ANAO *Fraud control in Australian government entities, better practice guide*.

Additionally, the ACT government has the reassurance of regulation 18 of the Law Enforcement Integrity Commissioner Regulations 2017. This establishes a mechanism for the relevant ACT government minister, in this instance the Minister for Police and Emergency Services, to be informed about ACLEI's activities when investigating serious corruption and systemic corruption as defined by the LEIC act.

Furthermore, ACT Policing reports on misconduct and corruption allegations and finalised investigations in the ACT annual report and in regular reporting to the Minister for Police and Emergency Services. The framework is also supported by a broader range of legislative measures, which are outlined in our submission.

Whilst being the subject of the AFP's integrity framework, ACT Policing is also a tool which is currently used to investigate broader corruption with the ACT. When dealing with matters of misconduct by public officials, ACT Policing relies upon specific offences as determined by the circumstances of the offending. Current and recent investigations—I am happy to give some examples of those if the committee is

inclined—

MRS JONES: Yes.

Asst Commissioner Saunders: would include theft; obtaining property or financial advantage by deception; making, using and giving false or misleading documents and statements; and abuse of public office. In general, ACT Policing corruption investigations are instigated on a referral basis following the identification of employee or associate entity criminal conduct by ACT government directorates or other government stakeholders, but that is not always the case.

The majority of ACT Policing's work in this field is referral-based. However, proactive investigations are also conducted where appropriate. In 2012 an ACT government employee was charged with abuse of public office when his misconduct was identified during a targeted investigation of an ACT outlaw motorcycle gang member. That is just one example, but I have others.

ACT Policing assess and investigate allegations of corruption and serious misconduct in public office regardless of the manner in which the information comes to our attention. We have five current investigations underway in respect of alleged corruption or serious misconduct in public office. Noting that they are ongoing, I am obviously limited in how much information I can provide, but I am happy to give a general overview.

It is difficult to identify trends and patterns of corrupt behaviour across the territory because each matter is unique. The nature and scope of offending activity is generally determined by the individual offender's position or role, which becomes a vehicle for their misconduct.

In this regard, trends and patterns of offending are as broad as the scope of the employee roles and responsibilities across all government directorates and associate entities. ACT Policing often find corruption and serious misconduct matters difficult, and in some instances impossible, to prove to a criminal standard due to poor accountability, recordkeeping and policy frameworks which themselves enable misconduct to occur.

For example, in 2016 ACT Policing conducted an inquiry into the activities of an incorporated entity which received ACT government funds that were spent inappropriately and outside the scope of the funding arrangements. The funds were spent on cars, employee pay rises, undocumented loans to staff members and cash payments to former executive management employees. Criminal prosecution in this matter was impossible due to the fact that there were no guidelines in place as to how the money should be spent and inadequate independent oversight of the expenditure of those moneys.

While corruption and serious misconduct investigations are difficult, ACT Policing is not without success in this field. Between 2007 and 2014, two ACT government employees defrauded more than \$1.5 million from clients of the public trustee of the ACT. Both the employees and two associates were charged with over 100 offences and real property valued at over \$1 million was restrained. Both government

employees have been sentenced to terms of imprisonment and the restrained property will be forfeited to the ACT confiscated assets trust fund.

In considering the arrangements currently in place, it would be ACT Policing's recommendation that rather than create duplication and a requirement for deconfliction with other integrity bodies, the current framework as it applies to ACT Policing and the broader AFP would remain. The position is supported by the testimony of the ACT Ombudsman and the submission of ACLEI, who I know will be giving evidence shortly. But I understand that broadly both have expressed their confidence in the current ACT Policing oversight integrity arrangements.

Should an ACT independent integrity commission be established, ACT Policing would support the commission having appropriate powers, governance and capability to deliver a range of outcomes from education to the prosecution of serious corruption and systemic corruption.

To deliver this efficiently, the commission would need to be appropriately funded to deliver a scalable and flexible capability. This will incur, obviously, significant cost to the ACT government in terms of initial establishment and ongoing training and development. Consequently, leveraging off existing capabilities, including the AFP, in the investigative field may assist in reducing some associated costs.

The delivery or supplementation of investigative services by ACT Policing and/or the broader AFP would not only be an efficient and effective means to establish and maintain a scalable and flexible investigative capability, it would also be consistent with the AFP's current working relationship with ACLEI at the commonwealth level.

An additional benefit of drawing on these resources would be that those police would remain under the scrutiny of the existing internal and external integrity frameworks while conducting integrity investigations on behalf of an ACT independent integrity commission. I hope that has been of some use to the committee. We certainly welcome any questions you may have.

THE CHAIR: Thank you. I was interested in the fact you referenced that if the ACT commission were to cover ACT Policing there would be duplication. Presumably if we were to go down that path, there would actually be a removal of that duplication. The scope of ACLEI would be removed to cover ACT Policing. Why do you think there would be continuing duplication?

Asst Commissioner Saunders: I think there would be some; that would be quite a complicated process, chair, insofar as if you look at how ACT Policing delivers its service, we have the benefit of being able to leverage off the broader AFP often and regularly. So actually delineating those members who you would say were full-time ACTP members is not always straightforward.

I guess this is a simple example: ACT government actually provides funding for a whole range of support services for the ACT police. For example, on the weekend when we require support, whether it be negotiators or tactical response, they are actually commonwealth members under outcome 1 of AFP delivering a service to ACT Policing. So, for me, it would be like a bowl of spaghetti that you would be

trying to unravel in terms of that oversight requirement. That is one example, but I think that there are some broader complexities as well. Ray, do you have any comments on that?

Asst Commissioner Johnson: Thinking about it in terms of the entire AFP workforce, we would have people who move through ACT Policing, get great career opportunities and experience here, then move on to do other things, and vice versa. Not only for the individuals but for us, in trying to stay on top of any sense of systemic corruption or issues, having all that information together is pretty important. I guess that there would be challenges in terms of the individual moving in and out of the jurisdiction.

THE CHAIR: Your assertion essentially is that there is no black and white line between the two services and therefore it would be difficult to draw that?

Asst Commissioner Saunders: In simple terms, that is right.

THE CHAIR: Yes.

MRS JONES: When people do work as part of the standard ACT AFP, though, they are signed over to that organisation, aren't they? There is a process that goes on currently?

Asst Commissioner Saunders: No, there is not.

MRS JONES: So you just take someone from a federal AFP desk, pop them in ACT Policing, and there is no internal process about the fact that they are now working under you?

Asst Commissioner Saunders: The internal process is, of course, for the purposes of administration, payroll et cetera. They then go on the ACT books. However, as I indicated, some of the services delivered to ACT are provided by the AFP nationally.

MRS JONES: I understand that. I am talking about the standardised, daily, walk-the-beat police officers that we deal with on a daily basis in our suburbs. Are they administratively signed over to ACT Policing?

Asst Commissioner Saunders: Administratively, yes, that is correct.

MRS JONES: So you can identify that cohort?

Asst Commissioner Saunders: Yes, although I should point out that, on occasion, as is the case currently, we have members to develop their capability currently working in AFP headquarters doing national work, and vice versa. In fact to address the mobility issue between the two areas and give our people that exposure, there is regular movement for short periods of secondment and others in and out of both sides.

MRS JONES: Is their administrative management still held with ACT Policing at that point in time, or are they transferred over and then back?

Asst Commissioner Saunders: I would have to check. I think it varies depending on the period of time that they might be deployed.

MRS JONES: I am happy for you to take that on notice. It would be good to get the detail of that.

Asst Commissioner Saunders: Of course.

Asst Commissioner Johnson: To add to the conversation, an AFP member in any jurisdiction also has the same powers as an ACT Policing member. Technically, they could exercise their policing powers here, and potentially do so from time to time. I am not saying it would happen commonly, but there are sworn members in the national sphere who would be at headquarters who might exercise their powers to undertake traffic duties if they see something happening on the roads, for example. So that is another slight wrinkle.

Asst Commissioner Saunders: Yes, that is a good point. If we did have a major incident in the ACT, I would naturally be drawing on the broader AFP resources to supplement and support our activity, and that does happen routinely. If we think about an international dignitary coming to Canberra, for example, typically there would be an amalgamation of both national and ACT supporting that visit. That is just one example.

MS CODY: That would be the same across other jurisdictions as well?

Asst Commissioner Saunders: To a much lesser degree. The roles are quite distinct when we are dealing with other jurisdictions.

MS LEE: Leaving aside the legislative requirements as to what might need to be done, is there anything that would stop, for example, if an ICAC were set up here, it working together with ACLEI, and the commissioners discussing it and making a decision? The commissioner that will be appointed will have quite a lot of power and jurisdiction over a lot of matters. Is there anything that you can see in terms of problems with the commissioners saying, “Hey, for whatever reason, this fits more in the ACT and this doesn’t”?

Asst Commissioner Saunders: ACLEI is probably in a better position to answer that than we are.

MR STEEL: Thinking about the current integrity landscape, what oversight in terms of your operations does the ACT government currently have with regard to corruption matters being investigated either by professional standards in the AFP or by ACLEI?

Asst Commissioner Saunders: As I mentioned in my opening statement, under regulation 18 of the ACLEI act, if there are matters that reach a threshold that have an interest for ACT there is a mechanism which allows the ACLEI commissioner to engage with the respective minister, who in this instance is the Minister for Police and Emergency Services. That is a clear mechanism to allow that formal communication to occur as it relates to ACLEI, and ACLEI may be in a better position to expand on that further in terms of what the nature of that relationship has historically been.

Certainly, in my time, since I have been in ACT Policing nothing has come to my attention that has reached that threshold that would require that communication to have occurred, but once again I think that is a matter for ACLEI.

In regard to professional standards investigations, I report quarterly to the Minister for Police and Emergency Services on all matters that are the subject of investigation and/or have been concluded, of all categories. Of course, the minister is entitled to ask any further questions he may have in regard to the substance of those matters. We report in the annual report on a yearly basis in regard to all of those matters.

MR STEEL: Is there a limit, though, in terms of the specificity of a particular matter that you would be able to provide under regulation 18?

Asst Commissioner Saunders: Once again, you would have to ask ACLEI that question, because it is about the nature of the relationship between the ACLEI commissioner and the minister.

MR STEEL: But if the minister were going to ask you a question about a specific matter that was being investigated, what level of information could you provide to him in relation to that matter?

Asst Commissioner Saunders: It would be on a case-by-case basis, depending on the nature of the facts. Obviously, as is the case now, we would not provide anything operational: if something were a matter of investigation, regardless of the nature of the operation, whether it was a corruption investigation or any other, we would not give any advice that would compromise that investigation.

MR STEEL: If the matter were closed, would you potentially be able to provide more information?

Asst Commissioner Saunders: We would not provide any information which would compromise that investigation.

MRS JONES: If the investigation is complete, then would you be able to give all details?

Asst Commissioner Saunders: I could not comment as to whether “all details” are provided. Ray, could you expand on that?

Asst Commissioner Johnson: It is probably again one for ACLEI. Certainly, one of their roles is to publicly produce reports, and at least one that I know of recently that related to the circumstances has been publicly produced. Over history there have been other ones related—

MRS JONES: You are hard to hear, Assistant Commissioner Johnson.

Asst Commissioner Johnson: Historically, there have been other ones particularly related to the ACT. In terms of ACLEI’s role in educating the organisation and the community, yes, there are matters that go into the public domain. We try within our organisation to, as much as possible, cover issues of people’s personal privacy, as

well as using opportunities of misconduct to educate people about what might go wrong in their careers. We do try to use those as lessons learned.

MR STEEL: You might want to take most of these questions on notice. You mentioned the specific numbers of corruption matters that are currently being investigated and have previously been investigated. In your annual report for 2015-16 there were 10 corruption issues.

Asst Commissioner Saunders: I might clarify that. No, my advice was that we report on professional standards investigations on a quarterly basis in our annual report. The case management system that exists is not a management reporting tool or a performance reporting tool. It would be quite a comprehensive task to actually drill down to every corruption matter. I should clarify whether we are talking inside the AFP or outside. I am not sure if we can drill down that far.

In terms of outside ACT Policing, corruption generally in the ACT, that is quite difficult for me to analyse due to the nature of the offences that are prosecuted. But in terms of internally—

MR STEEL: Yes.

Asst Commissioner Saunders: I think there are two parts to this.

MR STEEL: In the annual report you have already provided that there were 10 corruption issues investigated in 2015-16.

Asst Commissioner Saunders: Yes.

MR STEEL: Can you, over the past four years, provide us with a number, but also with the nature of those corruption issues that were investigated? You mentioned some specific offences that might have been linked to some of those corruption issues. If you could categorise it by those offences, that would be helpful, or by the nature of the corruption involved. If you could take that on notice, that would be great, just to give us a sense of what we are actually dealing with. With the high-level numbers it is hard to draw anything from them. I understand that it may be difficult, even with the breakdown, to have a view about any systemic issues. But that would be helpful.

Asst Commissioner Saunders: Is that something that is viable, Ray?

Asst Commissioner Johnson: I can give you the raw numbers going back to the 2013-14 financial years, as far as what we would call category 4, which is corruption matters that we would notify ACLEI of, relating to outcome 2, being ACT Policing. There were 11 in 2013-14, 15 in 2014-15, and 10 in 2015-16. We have not finalised the numbers for this year but it will be a similar number.

MS CODY: Are these internal investigations or external?

Asst Commissioner Johnson: These are ones that we, under the current arrangements under the act, have to notify ACLEI of, because they fit the definition.

MS CODY: Is that investigating within ACT Policing?

Asst Commissioner Johnson: Yes.

MS CODY: These are investigating officers within ACT Policing?

Asst Commissioner Johnson: Yes.

MR STEEL: Can you also provide a breakdown of the numbers within each year that were investigated by ACLEI? Also, how many of those matters resulted in termination of employment under section 28 of the AFP Act?

Asst Commissioner Johnson: Yes. I am conscious that in fact the Integrity Commissioner has significant powers in regard to managing matters of corruption, and most of the time we operate on their behalf. So, in principle, absolutely, we can provide that material, but I think the question still would be relevant for ACLEI, and you will have the Integrity Commissioner here.

MR STEEL: A further question might also be: what particular surveillance powers et cetera were used in relation to each of those corruption issues?

THE CHAIR: Can I clarify that? You report through your annual report all professional standards unit investigations?

Asst Commissioner Saunders: Yes.

THE CHAIR: ACLEI does separate investigations?

MRS JONES: On some of them.

Asst Commissioner Johnson: Perhaps I can clarify, chair, the way the process works. Under the AFP Act, part V of the AFP Act articulates a number of categories of misconduct, broadly. Category 1 would be described often as customer complaint type matters, service-type matters. They are often dealt with informally, in the main. Category 2 is what we would call more the minor misconduct matters. Often they are something that should be dealt with within management lines, but are still recorded as complaints because the framework requires it to be done. Category 3 is what we would call serious misconduct, and that goes to what would be elicited in your mind as possible potential dismissal from the organisation: serious negligence in terms of performance of duties and the like. That is category 3, of which all are investigated by the professional standards unit.

Category 4 involves the matters that are described under the LEIC Act that we have to notify the Integrity Commissioner of. There is an arrangement we have with the Integrity Commissioner under section 17 of the act which allows us to work with them to make determinations on matters that we might investigate ourselves. So we would investigate them within the AFP. The options might be that we would investigate it and report the results to the Integrity Commissioner. There are matters where we might choose to, or at the request of the Integrity Commissioner, investigate jointly, and there are matters that the Integrity Commissioner reserves the right to

investigate within their own powers and authorities and ultimately deal with.

Of those matters that we have discussed that sit particularly in ACT Policing, there will be—albeit the numbers are small—a break-up of those types of ways they have been dealt with. Quite a number are dealt with by internal investigations, by our own investigators, but then all information is provided to ACLEI as required by the act, under category 4.

MS LEE: Who makes the decision about whether it falls into category 4 and gets reported?

MRS JONES: Who is investigating?

Asst Commissioner Johnson: We have a fairly low threshold in terms of what we would notify. Again, I think it is probably more for the Integrity Commissioner to speak in terms of the definitions around corruption.

MS LEE: Sure, but I am just seeking information from your end. When do you go, “Okay. This is a matter that is category 4; we need to report this.”

Asst Commissioner Johnson: We maintain a fairly low threshold in terms of what we notify, but noting also that with all category 3 matters—what would be misconduct, serious misconduct described—we also notify those to the Ombudsman as required. That is every category 3 matter that we get. If there is a potential that we get the categorisation wrong, regardless, we will have told either the Ombudsman or ACLEI. The Ombudsman can come back and say, “We think this is more appropriate to be provided to ACLEI.”

MS LEE: So every category 3 is reported to the Ombudsman?

Asst Commissioner Johnson: Yes.

MS LEE: Thank you.

MRS JONES: However, just as a supplementary to that, with category 2, if the same thing were to happen 40 times, it would not necessarily get reported to anybody?

Asst Commissioner Johnson: So—

MRS JONES: Say you had lots and lots of minor misconducts in a specific area. That gets dealt with internally?

Asst Commissioner Johnson: The way we have set up our systems is that there is a mandatory requirement for members of the organisation to report anything that is described across those categories, which they do. In fact, a majority of complaints are as a result of people’s internal reporting. Therefore, they are recorded—

MRS JONES: Is that anonymous?

Asst Commissioner Johnson: The expectation is that people put their hand up and

report themselves, but we have a mechanism known as the confidante network where, particularly in corruption matters, if people are concerned, we allow a mechanism for them to bring that forward. But ultimately we would like them to put their hand up to witness whatever it is that they witnessed.

MRS JONES: So you have mandatory reporting?

Asst Commissioner Johnson: Yes. And it is all recorded in the one system, albeit the system is not a perfect system. Once we know that a consistent course of conduct over two or three occasions has occurred, we have the facility to upgrade that to serious misconduct.

MRS JONES: Across different individuals, or with the same individual?

Asst Commissioner Johnson: It could be the same individual; it could be different individuals in business areas.

MRS JONES: And that throws up a flag? Or do you have to actually go over and have a look at that and analyse it?

Asst Commissioner Johnson: A combination of the two. When a complaint comes in about a member, the triaging, for want of a better word, team will look at what else exists, and then work out whether it actually warrants consideration to be dealt with differently because of a history. We have a capacity—what we would call an integrity assurance capacity—to keep an eye out. So in case there is stuff that is not reported, we might see it in other places.

THE CHAIR: Thank you for that clarification of the four categories. If I can just follow on from that, I want to understand the public reporting of each of those categories. Rather than my asking questions, do you want to just take me through it? You have talked about the annual report, as I best understand you, containing a recording of each of the professional standards unit investigations. Where are the category 4 investigations reported?

Asst Commissioner Johnson: As our annual report is aligned, in terms of the numbers, we will also report on category 4 in terms of the raw numbers. In terms of the Integrity Commissioner's reporting, there is one for them. Note also that the Ombudsman has the obligation to report on the entirety of the part 5 complaints regime once a year. They report to the parliament. So there is a report tabled on our use and performance against the framework.

MRS JONES: To the federal parliament?

Asst Commissioner Johnson: To the federal parliament.

MRS JONES: And to the ACT? Regarding ACT members?

Asst Commissioner Johnson: They are, at this point, not separately provided, as I understand it.

MRS JONES: Just as a supp to that, one of the things that is attractive about the integrity commission models that we are looking at is that reporting is not just to a minister in cabinet. Reporting of what has been investigated and how things work comes to a parliamentary committee and is possibly overseen by a superintendent function. So there are two additional perspectives given on what types of things have been investigated, assuming, if there was to be a superintendent function, that that person can look into the detail of any investigation of this proposed new body, which means they can really drill down and see whether the work is being done properly, that there is someone watching the watcher, essentially.

Asst Commissioner Johnson: Yes.

MRS JONES: The parliamentary committee can ask lots of questions, either in camera or in public hearings, about investigations that are being undertaken, so the ACT Assembly can have a broad view of what is going on in the different areas of government so that it is not just left to a cabinet member. Can you see how it affords the voters of the ACT additional understanding from what we have now of what is going on in these bodies that we are paying for or that we are relying on?

Asst Commissioner Saunders: I recognise the observations of the committee.

Asst Commissioner Johnson: And, to give another point of clarification, the report the Ombudsman makes is to the parliament as opposed to the minister.

MRS JONES: Yes.

Asst Commissioner Johnson: Also, the Ombudsman, under the current arrangements, to go to two other points in terms of the process that currently exists, has the authority to examine particular investigations that we undertake under part 5, and they do from time to time as a result of people—

MRS JONES: Just randomly?

Asst Commissioner Johnson: Yes. They do that when they do their annual examination of the process. They give us feedback on whether we can improve and how to improve, and we do our best on that. I apologise; I think I might have lost my very important second point.

THE CHAIR: What I am trying to explore with this line of questioning is this. A key value of an integrity commission process is the public dissemination of the information on misconduct cases. I am trying to get a clear handle on how public these lines of reporting are, and whether there is sufficient exposure of those, because of both the public interest in knowing those things and also the educational value of those cases being known. You have talked about using some of your cases internally, which is obviously welcome, but I am trying to understand if the public has a clear enough line of sight on those outcomes?

Asst Commissioner Saunders: It is up to government in terms of how much oversight you expect and then what the public expectations are. In terms of reporting, there is always scope within what exists to expand that. I draw your attention to the

annual report. If you look at the 2015-16 report, you will see that pages 28 through to 32 address the professional standards regime and the nature of matters as they relate specifically to ACT Policing. There is a whole range of statistical reporting there. Obviously, if there is an expectation that we expand on that reporting and provide further detail, that is something that I would be very happy to explore. My observation is that I think there is probably a range of solutions the committee can consider in addressing that particular issue.

THE CHAIR: Thank you. Your submission also proposes the idea of secondment of AFP officers to provide investigative capability to an ACT integrity commission. Given the relatively small size of our jurisdiction, do you foresee any potential for actual or perceived conflicts of interest in doing that?

Asst Commissioner Saunders: No, I do not, noting that ACT Policing has had a longstanding responsibility for the investigation of corruption matters, and, as I have outlined, we have successfully prosecuted a number. That is not to say that there are not other corruption matters in the ACT that we are not privy to. I will be honest: regardless of the conversation regarding the establishment of an integrity commission, if it were the government's view that there needed to be a greater response by ACT Policing in this space, we could do it; I simply do not have the capacity to do much more than what I am currently doing in regard to responding to referrals that exist.

I think the view is that, absolutely, it has been our role, a longstanding role, to investigate corruption, as it has been with the AFP nationally, so I am not too sure if there would be any basis to suggest that there would not be trust in our ability to do that.

As to the rationale in terms of suggesting that you might want to leverage it, it may not be ACT Policing; it might be a view that you want to draw on broader AFP national capability, knowing their extensive skills in this space. I guess the point was that it is just a very efficient way to go about your business, knowing that once you establish an investigative capability you actually need to invest in building that capability. It is training; it is education; it is skills. And of course those skills can perish. Having a very small specialised investigative unit has its risks. It would be interesting to get ACLEI's views on this in regard to the benefit of engaging the AFP in this particular space, to get an independent view.

THE CHAIR: The experience of other jurisdictions, such as IBAC in Victoria, has been that they have an explicit policy that recently serving police cannot be on the Victorian IBAC. They presumably believe that that does present a conflict of interest. That is informing the committee's thinking, although we also struggle with the scale of the ACT.

Asst Commissioner Saunders: That was the challenge that I was considering when I made that suggestion. Of course, there is a range of options that the committee could explore, but I think the challenge would be that in a practical sense you would have to have a core capability. That would need to be flexible and scalable, and the issue is: where do you draw that capability from on a needs basis?

MS LEE: Thank you, chair. Commissioner Saunders, in your opening you mentioned that often it is difficult to prove to a criminal standard a lot of these matters. How are those matters dealt with, then? Obviously, a big factor in having a body like this is to satisfy the public that wrongdoing is essentially dealt with appropriately and in a way that will satisfy the public's confidence in public officials. Obviously, if it meets a criminal standard, it goes through the usual court justice system. But how are other matters—which, as you say, are often difficult to prove to that standard—dealt with?

Asst Commissioner Saunders: I guess there are two parts. One is about internal matters as they relate to ACT Policing officers. I will refer to Ray in terms of the range of options that are available administratively in that regard. In regard to the matters that ACT Policing have investigated as they relate to other ACT government parties, obviously that information is then referred back to the relevant department or agency for the executive of that agency to address administratively.

MS LEE: Yes.

Asst Commissioner Johnson: In terms of our internal arrangements, again, any administrative process that most organisations would undertake allows you to make a choice about a conduct on the balance of probabilities, as opposed to the criminal standard. When we triage matters, we will look first to see if we can achieve a criminal threshold. Obviously, that is the first preference if we can. If not, the option to deal with it administratively means that behaviours in the organisation that would otherwise not have been able to be dealt with criminally can be dealt with; we deal with them on the balance of probabilities.

The first path is to see if we can reach a criminal standard. The second is on the balance of probabilities. Decisions made in terms of people's conduct, to establish or not, and potentially departing from the organisation, are also the same standard, the view being that it is better to deal with it even if we cannot get to the criminal standard. We can use those matters still in our case studies to inform the organisation about what people might have done wrong, so that they learn from them.

The other point to make, while I have the opportunity, in terms of part 5, is that the AFP also internally has some coercive powers in terms of requiring questions to be answered, where in the normal event that does not occur. The purpose for that is primarily to ensure that you understand the full gamut of the potential issue. Somebody could be silent, and I can only know what I know. If I can require them to answer questions, I might understand the network, which might be more systemic. So there is a purpose for that. Consequently, though, once you have used coercive powers to obtain information, you have to be careful that it does not taint potential criminal prosecutions. So we are always balancing the two.

Asst Commissioner Saunders: If I could just make an observation, though, having been a long time in the AFP and having worked with a number of other agencies, we do, and we should, hold our police to a much higher standard than any other government department that I am aware of, to be frank. Administratively, they are assessed on the balance of probabilities, and the consequences are significant for our officers who demonstrate behaviours that are not consistent with the values of the organisation and amount to misconduct and other inappropriate behaviour. They are

held to a very high threshold, and the consequences are significant.

MS LEE: Thank you.

MS CODY: You mentioned in your opening statement a number of investigations that you have done external to sworn members. I wanted to know what challenges you think are facing ACT Policing in investigating procurement scenarios—scamming, I guess—in government, and how you might work with other agencies in doing that. I would imagine that with ACT Policing, it is a bit difficult for you to investigate federal matters, that that would be a matter for the AFP, but we house a majority of federal public servants in the ACT as well, so it is from an ACT government side and possibly from a federal government side.

Asst Commissioner Saunders: That is an interesting observation. Yes, that is true. In fact, of interest, we have had a recent matter where we did work jointly together.

THE CHAIR: If I might, we are just getting some feedback here. You both are quite difficult to hear.

Asst Commissioner Saunders: My apologies.

THE CHAIR: These are not amplifying microphones; they are simply recording microphones. If you project more strongly, that would be helpful.

MRS JONES: You can be heard better up in the offices, on the TV. You need to imagine you are on the parade ground.

Asst Commissioner Saunders: To give an example of that, and there has been some media on this, there is a good example of how we work together. We executed a search warrant on a former CSIRO senior executive—I do not know if you saw the reporting in relation to that—and a former AFP employee. The matter was referred to the AFP from CSIRO. The lead investigator in that matter is an ACT police officer. A number of actions have been taken, and we have charges underway. A brief of evidence is currently being built in regard to that, with a number of offences being considered, including abuse of public office, general dishonesty, producing false and misleading documents and obtaining property by deception. That is just one short example.

Another example I thought about, and there are a few that would be of interest, getting back to your point, is about a gap that I have seen. As I said, this is just through general conversations with my investigators; I have not done detailed research. If you want specifics, I would prefer to take it on notice. A general observation that has been shared with me—it is not unique to the ACT; we see this at the commonwealth level—is the need for having the appropriate governance and oversight mechanisms within agencies to make sure that procurement is managed appropriately. Let me give the example referred to as Operation Anchor, the investigation into the alleged misappropriation of funds by employees of the Public Trustee for the ACT. In that instance, there were longstanding fraudulent payments estimated to exceed \$1.5 million over that period of time. That suggests that there were not sufficient checks and balances within the agency to identify that earlier. So with any oversight

capacity, whether it be an independent commissioner or otherwise, it is really key that there is time and energy invested in prevention and making sure that appropriate checks and balances are in place to make the environment more difficult to exploit.

That is why we have established, at the AFP national level, the fraud and anti-corruption centre. That brings all of those capabilities and agencies together so that the lessons are learned. We target-harden agencies so they are not as vulnerable. That is a capability that we leverage off now, and we are participants in.

I thought I would flag one other matter which might be useful. Once again, this is a good news story. A representative from ActewAGL made a complaint in regard to suspicion that two ex-contractors were suspected of being involved in transferring customers' credit into unauthorised accounts. So staff in the customer call centre have accessed a customer's personal information. We found that between mid-April and mid-May, \$9,000 was transferred into unauthorised accounts. ActewAGL identified the potential fraud. At that stage they identified that potentially up to \$70,000 had been removed. They changed their refund system, so they were responsive. However, there was a further loss of about \$3,100. Once again, it was about systems not being adequate to address the threat.

As a result of that investigation, one defendant appeared in court on 24 August, entering guilty pleas to four offences, including property by deception, attempting to obtain property by deception, joint commission obtaining property by deception, and, under section 136 of the AMLCTF Act, providing false information to a reporting entity. Of note, this would be the first time a person has been charged anywhere in Australia with providing false information to a reporting entity under the Anti-Money Laundering and Counter-Terrorism Financing Act.

I think that goes to demonstrate that when gaps are identified, there are strategies that have been put in place by agencies. Some of them have been effective, some perhaps not as effective as they could be. Our response has been appropriate, and we are getting successful outcomes in court.

MRS JONES: My question, which is a quick one, because we are a little over time, is this. Obviously, there is a federal committee looking at a similar body for the federal jurisdiction. Without pre-empting or trying to influence what they are doing, it is possible that a federal integrity commission could cover the AFP as well, in which case, if there were a local body, presumably that would mean that you would have a standard that would have to be applied across the entire AFP anyway. That is perhaps being applied now, but at least it gives a bit more public knowledge of the more serious matters and how they are dealt with. Do you have any comment about that?

Asst Commissioner Saunders: No.

MRS JONES: Okay.

MR STEEL: Just a question about integrity testing, whether you have used your integrity testing in the AFP or whether ACLEI has been using that in relation to ACT Policing to investigate corruption matters here. Maybe it is something you could take on notice in terms of the number of instances.

Asst Commissioner Saunders: Could we be clear about what you are referring to when you say “integrity testing”? It does mean different things.

MR STEEL: Particularly establishing scenarios and situations that may capture people who are engaging in the act of active corruption or bribery, whatever it is. It may be members of the AFP, and you have actually specifically targeted them in an integrity testing regime.

MRS JONES: Like a secret shopper type of thing?

MR STEEL: Yes.

MRS JONES: I am curious as to what you are talking about.

Asst Commissioner Johnson: There was an amendment made to legislation to allow integrity testing to be implemented some years ago. It mirrors the controlled operations legislation to a degree, so there could be crossover. I think I understand your question. I am not sure of the reporting regime, but we will see if we can answer that to the best of our ability.

THE CHAIR: I might just conclude with one last question. One of the fundamental questions this committee needs to consider is why the ACT would not have oversight of its own police force. I think there is probably a key community expectation that this committee needs to consider that in each other jurisdiction they have moved to put these in place, and yet in the ACT, because of our unique policing arrangement, there is a suggestion that we should not have that arrangement.

Asst Commissioner Saunders: In response, I would say that I guess there are a couple of reasons why not. One is that I would argue that the oversight that currently exists is working well. That has been supported by other independent parties, including ACLEI and the commonwealth Ombudsman. It is a well-tested and robust framework. And, as I indicated, the current arrangements have been seen as being best practice and are being benchmarked across other agencies. I guess the point is, in simple terms: if it is not broken, don't fix it. But secondly, the mechanisms do exist for the ACT government to have oversight. As to whether that is being adequately capitalised on and could not be enhanced or improved, I think that is a subject for the committee as well.

I am just saying that I think there is a range of strategies that could be employed to address the concerns that you have raised, one of which would be to have an independent commission. But I also think that you could explore enhancing the current arrangements and reporting arrangements that exist.

THE CHAIR: Thank you. Any other questions, colleagues? We are a little over time. Thank you very much for appearing today. There have been a few issues that you have taken on notice to follow through on; we would welcome receiving those answers as soon as practicable.

Asst Commissioner Saunders: Of course.

THE CHAIR: You will receive a copy of the proof transcript of *Hansard*, as is normal practice, for you to consider any issues that you think need to be clarified in *Hansard*. We will briefly suspend the hearing while we bring the next witness to the table.

Asst Commissioner Saunders: Thank you.

Short adjournment.

GRIFFIN, MR MICHAEL AM, Integrity Commissioner, Australian Commission for Law Enforcement Integrity

McKAY, MS PENNY, General Counsel, Australian Commission for Law Enforcement Integrity

MARSHALL, MS SARAH, Executive Director, Operations, Australian Commission for Law Enforcement Integrity

THE CHAIR: We will now resume this hearing of the Select Committee on an Independent Integrity Commission for the ACT. Thank you for taking time to appear before the committee this morning. I start by reminding you of the protections and obligations afforded by parliamentary privilege. I draw your attention to the pink coloured privilege statement on the table and check whether you understand both the content and the implications of that.

Mr Griffin: Yes.

THE CHAIR: Thank you. I also remind you that the proceedings this morning are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live. Would you like to make some opening remarks before the committee poses questions to you?

Mr Griffin: Thank you. The Australian Commission for Law Enforcement Integrity, or ACLEI as we are known, welcomes the opportunity to appear before the committee today. You will have noted that my agency has provided a submission to the committee which provides an overview of ACLEI's powers and responsibilities and my role in that framework. We welcome any questions that you may have for us.

THE CHAIR: In your submission you note that as a commission you have a number of options when dealing with a corruption or a misconduct issue. If you decide to refer the issue to the agency for internal investigation, do you have an ongoing role in monitoring the progress of that investigation and, therefore, I guess, testing the integrity of that investigation?

Mr Griffin: There are several ways of achieving that. We can manage the investigation ourselves, even though it is done by the agency. We can oversight it, that is, regularly look at it. And then the catch-all is the section 66 provision in the act that requires the agency to report back to us at the conclusion of their investigation. We will then assess that and determine whether or not we are satisfied that the issue has been adequately dealt with.

THE CHAIR: That clarifies that. We have had quite some discussion, as you will have heard, with the AFP this morning about the reporting of investigations, and particularly the community awareness of the outcome of those investigations. Can you take the committee in a bit more detail through how you report, particularly from an ACT perspective given that you have a national role. We are obviously particularly interested in the ACT component of that.

Mr Griffin: Yes. It occurs to me that what might exercise the mind of the committee, as it does for the public when they look at an agency like mine, is probably the issue

that is best considered in the terms of Justice Finn's famous Blackburn lecture where he talked about public trust for public officials. The issue is: what is going on there? What is happening behind those closed doors? I understand why it exercises the mind of the committee and of the public.

The way we seek to achieve that end, that is, the confidence of the public, is through a variety of reporting mechanisms. The first and probably the most powerful is if we have an investigation, we find corruption, we detect it, we investigate it, we expose it. It may or may not involve criminal offending. If it involves criminal offending, a brief will be prepared and provided to the relevant authority, which is usually the Director of Public Prosecutions. That is where the rule of law exposes what has happened in the public proceedings in a courtroom. So the eventual end is exposed properly in a court of law if it is a criminal matter.

If it is an administrative matter, which I heard the committee exploring with the AFP officers, it is a different process, as it is in all government departments, be they state, federal or local government, in fact, where there are code of conduct issues. A matter may not be criminal but it raises an integrity issue.

This becomes something of a circular discussion about what is corruption and what is corrupt conduct. Some legislations exhaustively define corrupt conduct. You will see that in the New South Wales ICAC legislation, for example. Others have a much broader approach, as is the legislation that guides my role. If you go to the definition of corrupt conduct you will find it is somewhat circular: "engages in corrupt conduct".

What often happens where an act is not definitive is that the courts traditionally will resort to the *Macquarie Dictionary*. What is the ordinary everyday meaning of the term? When I took up my role, I did just that. I went to the Macquarie. What does it say about corruption, corrupt conduct, and what does it say about integrity? They refer to each other. If you look at the definition in the Macquarie about "corrupt", it says, "dishonest or lacking in integrity." If you go to the definition of "integrity" it says nothing about dishonesty. It talks about soundness of moral character.

So on one view, integrity is much broader than the narrow definition of dishonesty. Justice Finn talked about the fiduciary obligation of public officials. That is a long-winded way to come back to the administrative issue, where there is a natural justice process, we detect something, we send it back to the AFP, because under my legislation I must give priority to serious and systemic corruption.

If it is of lesser severity, I might refer it back to the AFP to deal with. Then they go through the standard process that all government departments do, be it federal, state or local government code of conduct. That is usually reviewable in the courts and that is reported.

THE CHAIR: Where is it reported?

MS LEE: Sorry, I had a supplementary, but you—

THE CHAIR: You can do it in a second. Where is that reported?

Mr Griffin: When I say “reported”, it is reported if it goes to a court. If there is an appeal process, the Administrative Appeals Tribunal in the federal system, the Fair Work Commission or the courts will hear the appeal if there is an error of law.

THE CHAIR: In those cases where you refer a matter back to the AFP because you deemed it administrative and it does not fall within your remit, do you report that at all?

Mr Griffin: No. If it is a matter that we are not expending our resourcing on, then we will not report on it.

THE CHAIR: And based on the evidence we have just had, you would expect that would be reported by the AFP under their annual reporting requirements?

Mr Griffin: Yes.

THE CHAIR: Okay.

Mr Griffin: It may be of interest to the committee that in recent times we have almost completely opposite approaches being taken in two state environments. In New South Wales, after the Tink review, it was decided to take all the minor offending, the lower level police allegations that used to be dealt with by the New South Wales Ombudsman, and put that into the new commission called the Law Enforcement Conduct Commission.

THE CHAIR: Yes.

Mr Griffin: Exactly the opposite happened in WA in 2015, where what used to be dealt with by their anti-corruption commission, that was the lower level stuff, was moved to the Public Sector Commission. So completely opposing philosophies about what to do with what you and I have just described as the administrative offending rather than the criminal offending.

THE CHAIR: Yes, I think it is generally considered to be misconduct as opposed to corruption.

Mr Griffin: Indeed.

THE CHAIR: Sorry, just one more question and then I will hand over to Ms Lee. How many instances in the case of ACT Policing, the AFP bit of ACT Policing, would you have handed back to the police in recent years? Are you able to give us a number or perhaps come back to us later?

Mr Griffin: We could come back to you, but we entered into a section 17 agreement that the AFP officers mentioned to you earlier. We identified that there was an amount of material that really was stopping them from going ahead, because under the legislation they cannot proceed with an investigation at the point in time it is referred to me. They have to wait until I have made a decision.

Now because I have several large departments in jurisdiction, that can produce

something of a choke point. So it was identified that we had to free that up quickly so that the AFP could move with some expedition on matters that were misconduct but nevertheless concerning for their workplace environment.

We agreed that there would be a cut-off point which, effectively, is minor misconduct. Other government departments have similar things. For example, Defence has a view that there is a monetary figure in relation to fraud or misuse of financial powers. At that point in time, below that figure, it does not go off to prosecutions. It goes back to be dealt with at a lower level. We have done the same with AFP.

MS LEE: Commissioner, you talked about the two streams. If it is criminal it goes to the DPP and admin goes back to the agency. If, of your investigation, you have made a judgement call that it is actually a criminal matter and you have done the brief to the DPP, they obviously undertake their own assessment about whether to proceed to court. Has there ever been an instance where they have actually decided, no, it does not quite stack up? If so, how do you then deal with those types of matters? Clearly, they were serious enough that you considered them to be warranting the DPP to look into.

Mr Griffin: When we look at the section 66 reports that come back to us, we assess what has been done. It may be that we will take the view, and indeed have done in the past, that this matter requires further consideration, further investigation, and we will do that.

MS LEE: I want to make sure; if the DPP decides, “No, we are not proceeding with it,” it does not just fall through the cracks and—

Mr Griffin: If the DPP—

MS LEE: Yes, you have referred it as a criminal matter—

Mr Griffin: Yes.

MS LEE: and the DPP has made their own assessment. For one reason or another they have said, “We are not actually going to take it to court.” Does that matter disappear? Does that go back to you? Where does that matter go?

Mr Griffin: It comes back to us. As well as providing the evidence to the appropriate authorities to prosecute if I consider that there is a threshold case, I will then usually await the outcome of the court proceedings so that I do not run the risk of muddying the waters for the court or for the people who are appearing before the court.

Once that is completed, I will then proceed with my statutory obligation to provide reports to the minister. I will complete that, because I am not making findings there of criminal conduct, but of whether or not there has been corrupt conduct.

MRS JONES: Is that to the federal minister or also to the ACT minister when it involves AFP ACT?

Mr Griffin: Both. You are quite correct that regulation 18—

MRS JONES: So you delineate between those two bodies within the AFP?

Mr Griffin: Yes, exactly.

MR STEEL: I have a supplementary on that and then a substantive question. How many times have you provided under regulation 18 information to the minister over the past four years? Can you provide that on notice, if that is possible?

Mr Griffin: I believe it is three.

MR STEEL: What is the level of specificity of that information in relation to corruption matters in ACT Policing that you think you can provide under that?

Mr Griffin: The level of specificity?

MR STEEL: Does it touch on direct operation matters rather than aggregate numbers of investigations?

Mr Griffin: No, they are specific matters.

MR STEEL: Secondly, my substantive question is in relation to your parliamentary oversight body, the parliamentary joint committee on law enforcement integrity. I am assuming that the senators and members from New South Wales, Victoria, Queensland and Tasmania have a particular interest in ACT Policing. But how many times have they asked you specific questions about ACT Policing investigations with regard to corruption or how many times have you provided them with briefings about ACT Policing in camera or in public hearings? Is that a regular—

Mr Griffin: I do not believe we have broken it down into that delineation.

MR STEEL: I also notice that your annual report touches on ACT Policing twice. Is that something you think you may look at in the future in terms of breaking it down by the AFP function areas, including ACT Policing, to provide a future committee that may oversee law enforcement integrity in the ACT with better information?

Mr Griffin: We could certainly look at that and consult with government and the AFP, but also with the ACT, indeed, yes.

MS CODY: Can you provide some examples of the types of complaints that you have investigated in regard to ACT Policing—if not now, on notice?

Mr Griffin: Yes, we could do that on notice. I will turn to the executive director, operations, because she has a better grasp of that.

Ms Marshall: We have previously reported, and the reports are available on our website, in relation to three investigations concerning ACT Policing. They are historical. They are from the years 2011 and 2012. Their names are Buckler, Comport and Ashlar. They involved some drug matters and some sexual servitude. We can certainly provide those reports to you.

MS LEE: I do not know if you were here, commissioner, when I asked a question of the police and they told me that it would be best to ask ACLEI. As you know, the committee is looking at whether or not ACT Policing should be part of the jurisdiction of this body, and we have had very strong views from the police and also from ACLEI.

Leaving aside the legislative requirements that would need to be looked at, is there anything that stops you, in your capacity as the commissioner, having a dialogue with the commissioner who is appointed to the ACT body so that there is no duplication? That seemed to be the biggest concern about whether we look after ACT police or not. Do you see any problems with that?

Mr Griffin: Perhaps I could tell you what happens with the other—

MRS JONES: Integrity bodies?

Mr Griffin: states; that may be of assistance. We meet regularly—that is, the various anti-corruption and integrity commissioners in the various states and I. We also have constant dialogue between our general counsel and our operations side of the house. We convene what is called the community of practice, and it happens almost monthly. The community of practice talk to each other and convene with some regularity, both at the legal officer level and at the intelligence officer level.

Right through the agency, if you take a slice of each of the agencies, we are in constant communication. For example, I often use the facilities of the state agencies, because I have a federal footprint but for efficiency and for cost purposes we utilise their premises. We also have a degree of secondment between us so that we are all getting a good view of what is happening in the corruption space. So it already happens, on that description, right through the structure, and I am sure it could happen within the ACT system as well.

MS CODY: I notice that you have a couple of different agencies that fall under your purview as Integrity Commissioner?

Mr Griffin: Yes.

MS CODY: Do you only use the AFP to investigate, or does each body have their own investigation stream?

Mr Griffin: Almost all of the bodies have their own internal integrity or professional standards bodies. We have our own resources, but, for example, if I needed to look at one agency, I might reach out to another agency to utilise their suite of powers and staff. Similarly, at the state level, I am currently utilising investigators from other agencies because I want to have absolute independence in dealing with certain federal matters. That is a very helpful process that happens right around the country.

MS CODY: If you contract Victoria Police, as an example, to investigate a matter in the federal sphere, how does that get billed out? Do you pay Victoria Police to do the investigations? How does that work?

MRS JONES: Or is there a reciprocal arrangement?

Mr Griffin: We work on memorandums of understanding. I will turn to general counsel, who has a better grasp of that.

Ms McKay: We do utilise the services of other agencies, and sometimes, as the commissioner has alluded to, if we are using the hearing rooms or facilities of other integrity agencies, it is done on a quid pro quo basis. But if we are perhaps using investigators from other agencies for a particular investigation to get that independence that the commissioner spoke of, yes, we can be invoiced for those services and pay that other agency for those services.

MS CODY: With ACT Policing, if a matter comes to your desk and you think, “Yes, this needs to be looked at,” would there be cases where you would go not necessarily to ACT Policing or the AFP but to someone else to look at that?

Mr Griffin: Yes.

THE CHAIR: I understand ACLEI can conduct public hearings?

Mr Griffin: Yes.

THE CHAIR: Is that exclusively at the request of the minister or is that a capability you have for yourselves?

Mr Griffin: No. It is a very interesting question, if I might say, noting the media interest in this around the country. Each and every time I conduct a hearing, I go through a statutory process requiring me to consider whether or not I will hold it in public or in private, and there are a list of criteria that I must give consideration to in deciding whether or not the matter should be public or private.

THE CHAIR: And that is laid out in your act?

Mr Griffin: It is.

THE CHAIR: Could you tell us the section number, to save us some reading?

Mr Griffin: I think it is 82.

Ms McKay: That is right.

THE CHAIR: How many public inquiries would you conduct, or would you have conducted, say, in the last couple of years?

Mr Griffin: ACLEI is 10 years old. It has never held a public inquiry or a public hearing.

THE CHAIR: Why not?

Mr Griffin: It is almost entirely a function of what we investigate and those criteria

that I mentioned to you. With the criteria that I am required to look at, the first one is whether or not the hearing is likely to involve confidential information. As you would appreciate, that covers a whole range of things. It could be contractual information, commercial-in-confidence. It could be psychology-in-confidence—a person or their family may have psychological issues. It may be medical-in-confidence. It may be legal-in-confidence. So I have to look at that and give consideration to that.

I also have to look at, in conjunction with that, whether or not there may be allegations of criminal offending. Is this going to be potentially of a criminal nature? How would my public inquiry affect the rule of law that I adverted to before—that is, the primacy of the courts? Am I going to muddy the waters for the courts? Am I going to prejudice the defence of somebody who has been charged with an offence? Am I going to expose a whistleblower in those circumstances? So I have regard to all of that material.

I then move on to—forgive me; I will just refresh my memory—the unfair prejudice to a person’s reputation. The way the legislation is framed, if you think of those words, it is actually quite interesting. It does not say “unfairness to a person” or “prejudice to a person’s reputation”; it is “unfair prejudice to a person’s reputation” We could probably spend all day talking about what just those words mean, but I have to give consideration to that in light of the other things.

Usually, the paramount consideration for me, because of what we are looking at, is that the type of corruption, by definition, in a law enforcement environment is deeply concealed. It is what we refer to as a “deep dive”. It requires extensive investigation and intelligence analysis by quite sophisticated methods that we have available to us. We do not want to be blowing the trumpet that the cavalry is coming by holding public hearings, just as police and other investigative agencies do not conduct their investigations in public until such time as the criminality or the corruption is almost ready to be identified. We do not want to run the risk of prejudicing the investigation. To date, that is the reason why I, two other commissioners and one acting commissioner have not held a public hearing. It is the nature of the material.

THE CHAIR: Do you think those restrictions—and given you have never had a public hearing—are too restrictive? Or do you simply think the cases that have come before you have appropriately not been ready for public exposure?

Mr Griffin: I have recently given very strong consideration to public hearings in one particular matter, but, again, the degree of corruption and criminality has been such to weigh still in that direction. But I can see that it can arise.

MRS JONES: As part of your list of considerations, does it include public trust in the organisation?

Mr Griffin: The final one is whether or not it is in the public interest that the hearing take place in public. This comes back, for me, to Justice Finn’s famous Blackburn lecture on public trust. I have to be always cognisant of the saying that sunlight is the best form of antiseptic, and I completely understand that and agree with that.

MRS JONES: I understand what you are saying there. Can I also assume—let me

know if I am correct or not—that your investigations in a hearing sense come earlier in the process than perhaps for some integrity commissions? The information we have been given is that other bodies, like IBAC, ICAC and so on, are really at a point by the time they make a decision regarding a public hearing where they have done two levels of investigation already—an initial look and then a much more in-depth investigation. Essentially, it is at the very last part of working out whether something has gone wrong when that decision is made to go to a hearing. Do you also do quite a lot beforehand or is it part of your process as you go along?

Mr Griffin: We do quite a lot beforehand. Perhaps it is accurate to say that the point at which they have decided to do a public hearing is probably the point we have reached where we have established the criminality.

MRS JONES: But you only investigate criminality; is that correct?

Mr Griffin: No, we look at serious or systemic corruption, which may not be criminality. At that point I am probably in a position to make my findings, and we do a natural justice process with the persons who may be adversely affected.

MRS JONES: May I ask a question? Feel free to tell me that it is none of my business, but what is your professional background and the professional background of the other people who have been in charge of ACLEI, before they have come into the role? I think those who tend to run ICACs are former judicial officers. Do you know what the normal practice is for the recruitment of people into the role that you are in?

Mr Griffin: The legislation requires that it be either a former judicial officer or a legal practitioner with some five years experience.

MRS JONES: So it is pretty much the same.

MS LEE: Similar.

MRS JONES: Similar, yes.

Mr Griffin: Yes.

MS CODY: How long have you been appointed? Did I just miss that?

Mr Griffin: I have been in the position for just over 2½ years. I am halfway through a five-year appointment.

MS CODY: Thank you.

MRS JONES: Does your body have an official relationship with the ACT government of any sort, any signed-on or legislative relationship?

Mr Griffin: No.

Ms McKay: Other than regulation 18, which requires us to provide reports to the

ACT minister, there is no formal relationship.

MRS JONES: Is regulation 18 a part of an ACT government law or a federal law?

Ms McKay: It is part of our regulations.

MRS JONES: So a federal law?

Ms McKay: Yes.

MRS JONES: So right at the beginning of your organisation, it was set up that there would be reporting to the ACT on AFP matters for the ACT?

Mr Griffin: Yes.

MRS JONES: And any other bodies for the ACT? Do you cover any other bodies?

Mr Griffin: No, we do not.

MRS JONES: That currently requires you to report to the minister. One of the things that we are investigating as part of this whole area, in relation to a body for the ACT, is reporting to the Assembly, to a committee. I presume it would only require an adjustment of regulation 18? It would require a change to the regulations if you were to report to an ACT Assembly committee? This is a bit of a legal question, but, rather than subjecting the AFP to the ACT ICAC, should it ever be established, if the AFP were not involved in that process from the beginning, can you see a path where you would be able to report on the matters that you are investigating to an Assembly committee? I am not saying that you instigate that process, but, if that were instigated, are there any reasons why that could not work?

Mr Griffin: I am not aware of any reasons that could not work, no.

MRS JONES: I presume that we would need a change to that regulation?

Mr Griffin: It would be a legislative requirement from the commonwealth space.

MRS JONES: Yes. That is good to know.

MR STEEL: I have the same question I asked the AFP. Can you provide a breakdown of the corruption matters that you have investigated in ACT Policing over the past four financial years, and then also provide a breakdown in regard to the different powers that you have used, surveillance or otherwise, integrity testing and so forth, in relation to each of those? And can you provide any further information that you think might be useful to give us a sense of the nature of the corruption in each of those cases, whether that is linked to a particular offence or otherwise? Is that something you could provide on notice?

Mr Griffin: We have provided the three reports that Ms Marshall has identified that relate to specific matters.

MRS JONES: So there are no others?

MS LEE: That is the 2011-12 one?

Mr Griffin: Yes.

MS LEE: Available on your website?

Mr Griffin: Yes, correct.

MR STEEL: There are no other matters?

Ms Marshall: It is quite difficult to break down the numbers of investigations into specifically ACT Policing without identifying our current areas of interest or operational activity more broadly. Probably of most use to you from that perspective are those reports, which are investigations that have concluded into ACT Policing specifically.

MR STEEL: Yes, okay.

MRS JONES: And, on that, if you have conceptual types of areas that you look at, even if you look historically at the relationship, it would be useful for us to know what types of matters they are, even if you cannot be too specific about individual cases that are ongoing and so on.

Ms Marshall: Sure.

MR STEEL: The other part to it was how many cases—I think Mr Rattenbury alluded to this—you have referred back to the AFP for investigation. How many have come to you that you have referred back, essentially, over the last four years?

MRS JONES: Over the same period, yes.

Ms Marshall: We can certainly check for those figures. I am not sure that we keep a breakdown of matters that we have referred back to the AFP, differentiating between ACT Policing and the AFP more broadly.

MRS JONES: If there were to be more reporting to the ACT Assembly, to a committee, is it possible in your systems to begin the process of identifying matters that are referred back that are ACT Policing versus the general federal AFP?

Mr Griffin: Yes, we could do that. Indeed, it may be of interest to the committee to know that 18 months ago we operationalised—forgive this clumsy term—our corruption prevention function. By that I mean that, instead of having the folk who do the corruption prevention piece—which, you will be aware, is very big in all of the state agencies—rather than having them at the end of the pipeline of the investigations, inquiries and hearings and then producing a report, we have moved them right to the front. So they are part of the investigation process from the outset. That has allowed us to assess vulnerabilities within the agencies and to disseminate that in real time to the agencies, which is proving very helpful.

MRS JONES: So it is a bit like when we had our issue here with the Public Trustee and systems were improved long before the matters were sent off to the courts?

Mr Griffin: Exactly.

MRS JONES: Okay.

THE CHAIR: When you put a case to the DPP and, in their exercise of discretion, they decide not to proceed, what opportunity is there for you to follow that matter through? Do you simply make a finding and that is reported to your minister?

Mr Griffin: There are two avenues—well, three avenues—available to me. One is the report to the minister. The other one is section 146 of the act, which authorises me to disclose that evidence to the head of the agency that was of concern. They can then take the action that they consider appropriate.

THE CHAIR: They would then use their disciplinary procedures or whatever they have within their agency?

Mr Griffin: Exactly.

MRS JONES: And do they then ultimately report back to you what they have done?

Mr Griffin: Yes, they do.

MRS JONES: So you get the full loop and you close off every matter that you choose to take up?

Mr Griffin: Correct.

MS LEE: Sorry, I did not catch what you said. You said there was a third. You have talked about the report to the minister, about section 146 and then what is the third?

Mr Griffin: I am sorry—

MS LEE: Did you say there were three streams?

MRS JONES: Three options available to you.

THE CHAIR: He said two.

MS LEE: You said two?

Mr Griffin: Yes.

THE CHAIR: Colleagues, any other questions? Commissioner, I will also give you free rein. Is there anything else you want to add at the end? Is there anything that we have not adequately asked you clearly about or that you want to clarify after this discussion?

Mr Griffin: I might, if I may, turn to my colleagues, because they have a lot of experience and valuable input.

Ms Marshall: Nothing to add, thanks, commissioner.

Ms McKay: I would only add that the section that you were after in terms of the public versus private considerations is section 82(4) of our act.

THE CHAIR: That will save us searching for it.

MRS JONES: Thank you.

Ms McKay: The section that the commissioner was just referring to, which is section 146 of our act, has a number of steps in it. It is about referring evidence of breach of duty or misconduct of a staff member back to the head of agency. But before the commissioner can do that he has to be satisfied that the evidence may justify the termination of that person or initiating disciplinary proceedings against the staff member. Then he has to be satisfied that the evidence is of sufficient force to justify him disseminating that information back to the head of agency. Then it is up to the head of agency to deal with that.

THE CHAIR: Thank you.

Mr Griffin: But it is a low threshold. It is a low bar.

MRS JONES: I have one final question. Can you imagine a circumstance in which you genuinely would go to a public hearing?

Mr Griffin: Yes.

MRS JONES: So you think probably the fact that that has never happened is simply the nature of what has been brought before you and not that it will practically never happen?

Mr Griffin: Yes, that is correct.

MRS JONES: The only thing I finally wanted to say relates to the lack of public reporting, in a sense, of matters to do with the ACT AFP that people or the media associated with the ACT Assembly have access to. It is probably fair to say that the average member of the public has no idea if the ACT AFP has corruption in it or not, or has any level of corruption that is of concern in it. Do you have any comment about how that could be improved, with or without the type of body that we are looking at?

Mr Griffin: It is a matter that has exercised my mind in recent times. I have observed the situation for 2½ years and I had some previous exposure when I was involved with the Criminal Intelligence Commission, or the Crime Commission as it then was. I have been watching this environment for some years. I feel that I have observed a cultural shift in recent times. It seems to me that the public are attuned to the potential and the problems of corruption in public office.

MRS JONES: There is not an acceptance of that type of thing?

Mr Griffin: No. Indeed, we are also seeing an increase in reporting to us, which I think is a reflection of two things: firstly, that cultural shift in the community that they are not prepared to accept corruption; and, secondly, a willingness on the part of government officials at all levels to be confident now or to feel that they should report matters. I think that is a healthy sign. We are seeing the increased reporting that reflects those two things.

How to deal with it in terms of reassuring the public is an interesting question. I think the courts are, of course, the traditional and best way to do that because of the protections available to people who are wound up in that process. But there is also, I think, reason for agencies such as mine perhaps to increase the amount of information provided to the public. We are attempting to do that through our website at first, because I do not think—well, engagement—

MRS JONES: But that would not, at this stage, separate ACT versus federal matters, would it?

Mr Griffin: That is right.

MRS JONES: Yes, that is right.

MS LEE: Chair, one final question, please. Commissioner, I refer to the different options for reporting back to the agency under section 146. You said that you have to be satisfied that it could lead to termination or some disciplinary action. If the agency actually decides not to take any action, I know that under your section 66 they have to report to you, but what can you do about that if—

MRS JONES: If you are not satisfied.

MS LEE: Yes, if you are not satisfied. Do you have any other remit after that?

Mr Griffin: Section 42 allows me to reconsider any matter that has been before me, and I have actually done that during my short tenure, on two occasions. The minister also has the power, of course, to inform the parliament. There is provision in the act for me to make a special report, which requires that report to be tabled in the parliament. If you like, that is a fail-safe provision.

MS JONES: In a worst case scenario, you can always get something tabled in the parliament that says the department is not responding properly.

Mr Griffin: Correct.

MS LEE: Do you know that section number off the top of your head?

Mr Griffin: I think it is 212; the special report?

Ms McKay: It is 204.

MS LEE: Thank you.

MS CODY: Do you have an educative role at all? Do you go out and educate people on integrity matters?

Mr Griffin: We do. In the commonwealth sphere we do with those agencies within that jurisdiction. However, I have been very encouraged by the fact that other agencies have reached out to us to ask for that. I have appeared before a number of agency audit committees over the last two years. You would appreciate that the value of audit committees is that they have members from a variety of experiences and other walks of life who inform the agencies. So for me to be able to engage with them and for my senior staff to do that as well has been a very helpful function, yes.

THE CHAIR: Thank you very much for your time today and for helping us with those research matters and references to sections of the legislation. We appreciate your both making the submission and appearing before the committee. You will receive a proof copy of the *Hansard* of today's hearing when it is prepared. If you have any concerns, you are free to request clarification. I note that there were a number of matters you indicated today you would be able to send through as a follow-up as soon as is practical for you. We appreciate that. With that, we will temporarily suspend the hearing while we prepare for the next witness.

Mr Griffin: Thank you, Chair.

Short suspension.

**CHARLES, HON STEPHEN QC, AO, Chair, Accountability Round Table—
Anti-Corruption Working Group**

THE CHAIR: We will now resume this hearing of the Assembly inquiry into an independent integrity commission. I welcome the Hon Stephen Charles QC, AO, Chair of the Accountability Round Table—Anti-Corruption Working Group. Thank you for taking the time to appear today and to answer our questions and then engage in the discussion. We very much welcome your contribution. I would remind you of the privilege card that is on the table. Do you understand and appreciate the implications of that?

Mr Charles: Yes.

THE CHAIR: Thank you. Would you like to make some opening remarks or would you prefer to go straight to a discussion?

Mr Charles: I will just briefly say that I was a judge of the Court of Appeal in Victoria until 2006. In 2011 I was the chair of the panel of four that advised Ted Baillieu's government on how to set up an anti-corruption commission.

THE CHAIR: Excellent, because I have some questions in that space.

Mr Charles: I think he ignored most of our advice.

MRS JONES: You can't help it with politicians sometimes!

Mr Charles: I heard an optimistic note in the last speaker's concluding remarks. I must say that so far as I can see—I say nothing about your parliament—confidence in the federal parliament and the Victorian parliament has never been lower.

MRS JONES: Yes, we get it when we are doorknocking.

THE CHAIR: Just briefly, can you tell us about the Accountability Round Table? I do not think it is something that is familiar to the ACT community.

Mr Charles: It is a group of mainly retired professional, academic and learned people of a completely non-partisan variety. Barry Jones, for example, is one of our members. We have a variety of people. Tim Smith, David Harper and I were Supreme Court judges. Alan Goldberg, who recently died, was a Federal Court judge. It is completely non-partisan. We are interested in transparency and accountability in government, and matters such as an anti-corruption commission are very much involved in that. We are looking at political donations, how they might be better disciplined. The attempt to obtain access to parliamentarians which is not available to the public is another one of our very serious concerns.

THE CHAIR: Thank you. That is a helpful oversight. I want to start by asking about the different definitions of corruption under the New South Wales ICAC legislation and the Victorian IBAC legislation. There seems to be an ongoing issue in Victoria that comes from setting such a high threshold for investigations. Can you perhaps

comment on those different definitions and what you think is more suitable?

Mr Charles: Sure. The New South Wales definition is the widest. It covers practically anything. Anywhere that the commissioner thinks there may be corruption, in effect, he or she is allowed to investigate. The absolute reverse is found in the Victorian definition of corruption. It was a bitter complaint of ours at the time the act was set up that the definition did not even include misconduct in public office. In effect it tied the definition to the question of an indictable offence. There were some statutory offences made—conspiracy and bribery of public officials—but what we found was that the definition of corruption was so narrow that you could not even investigate misconduct in public office.

The first commissioner, Stephen O’Bryan, told his investigators that before they could start they had to be able to identify the indictable offence that was involved. Also, the first form of the act in 2011, when it was set up, said that the commissioner had, in effect, to be able to articulate the facts giving rise to that indictable offence, and that it was serious corruption, before they could even start an investigation using the powers in the act. That has been improved slightly by the Andrews government, because they have at least added misconduct in public office to the definition. But, apart from cases of that kind, they still have to find an indictable offence, and the threshold has been reduced slightly. But there are still quite unacceptable barriers in place before the Victorian IBAC can commence an investigation.

The problem with that is that, going back to 1983, at the time of Frank Costigan’s painters and dockers commission you found that the people suspected of corruption were usually well heeled. As soon as they found that there was an investigation underway, they moved in, seeking Supreme Court injunctions to stop the investigation proceeding. As soon as that happens the investigator has to lay all the cards on the table, showing what they have; the opportunity for obfuscating, hiding and destroying evidence is enormous, and the delay that follows is critical. That is why it is desirable to go to the wider end, to be found in ICAC, and it is one of the reasons why that has been so successful. There are completely different reasons for the failings of ICAC.

THE CHAIR: I have asked about the two definitions. One of the matters that we must consider is the right definition.

Mr Charles: Yes.

THE CHAIR: Are there other jurisdictions beyond the two we have discussed where you think there is a better definition?

Mr Charles: The Queensland act is often held up as being the one with the best all-round performance. I think that the width of the ICAC legislation is desirable as a starting point. What happens later is more of a problem.

MRS JONES: One of the matters that we have discussed at length in public hearings and around the traps is that the reason that all major parties came to the view that we probably needed a body like this was because of perhaps less than corruption matters—matters of systemic unreasonableness or decisions that are hard, that the public do not understand or do not think are reasonable. Do you have any advice for

us about making sure that a body like this is able to capture those matters and deal with historic matters of recent times?

Mr Charles: In Victoria it was the Ombudsman, George Brouwer, who for a long time, in the absence of an IBAC, was the one who was investigating administrative unfairness and unreasonableness. There is a lot to be said for the view that that sort of thing, unfairness and unreasonableness in administration, is the jurisdiction of the Ombudsman. The present Ombudsman is continuing to investigate those matters very effectively.

MRS JONES: In our case it is not so much necessarily systemic but possibly individual people doing this a few times, which makes it a bit harder for an ombudsman, who is looking at systems changes; is that correct?

Mr Charles: Yes, I think that is so. Brouwer certainly was the one who, in the absence of IBAC, was doing all of these broad-ranging investigations of administrative matters and the conduct of individual municipal councils. He was providing report after report to parliament, some of which stirred the public and the parliament to say, “We’ve got to have an anti-corruption body.”

MRS JONES: I think our Auditor-General has in some ways performed that function here, but she is limited and is not meant to be looking at matters of corruption and so on. Again it is meant to be systemic.

Mr Charles: They have that division, perfectly amicable, between the IBAC Commissioner and the Ombudsman. They sort it out between them: “This one has got serious enough corruption; that’s for you.”

MRS JONES: I would like your take on matters of police corruption. I do not think any head of a police force would be so careless as to stand up and say there are no problems in their own police force, but we do have a strange arrangement in the ACT where we do not have our own police force and we contract that service from the AFP. Do you have any suggestions or would you like to add to that? At the moment there is not a great view of what is going on inside that body for the Assembly generally, only for the minister.

Mr Charles: Sydney has a separate body looking after police integrity. They always took the view that it was desirable to have some sort of office of police integrity, and former Justice James Wood took the view that it was desirable to separate that body from the ICAC.

MRS JONES: Why?

Mr Charles: Because he thought that the police were very clever and if you have them in the same body the police will get into that and stop you having effective investigation of corruption. In Victoria the IBAC does have jurisdiction over police complaints. At present the Andrews government is pursuing IBAC to take on a great deal more of a load in investigating the police. That is fine. Quis custodiet ipsos custodes? It is fine so long as there is adequate finance and so long as there is a large enough workforce. If IBAC is required to investigate, say, all of these police chases

leading to deaths in Mildura and have separate teams going out for that, they will need double their present workforce and they will have to have an increase of about \$30 million in their annual budget. They are concerned that if whispered legislation goes through requiring them to do this, it will dramatically curtail their ability to conduct the civil investigations.

MRS JONES: Can I go back to the Latin phrase you used? Did that mean who is watching the watcher?

Mr Charles: “Who guards the guardians?”

MRS JONES: Yes. We have talked about this a lot. I just wanted to clarify it, for those who have not had the privilege of studying Latin.

Mr Charles: I assumed this was at the top of all of your vocabularies.

MRS JONES: Certainly the concept, yes.

MS CODY: Thank you for coming in and speaking with us today. You were talking about the cost involved if IBAC in Victoria takes on more police matters. Surely, there is a substantial cost to having any form of integrity body?

Mr Charles: Yes.

MS CODY: How does that cost relate to a jurisdiction like the ACT? Do you have any views on that?

Mr Charles: I do not know enough about all of your arrangements for financing and things of that kind to be able to answer it sensibly. It is something that will be expensive. One of the problems with setting up a body like this is to find the skilled investigators who will be able to do it. You cannot simply go to the police, because some of them are crooks. I am not saying all of them are. There are very fine policemen at every level, I know. But there are some crooks there.

MS CODY: I just want to go back to something we have been talking about a lot in the hearings.

Mr Charles: Sure.

MS CODY: It is about the difference between public hearings and private hearings. I know that ICAC do a lot of public hearings and IBAC does not tend to go down the public hearing route. What are your views on that?

Mr Charles: The difference is that ICAC have an ability to hold public hearings very simply under their legislation.

MRS JONES: It is easy.

Mr Charles: They have to have given thought to the impact on people, the public interest and matters of that kind, but what I found out—when I was investigating in

2011, I went and spoke to the people there—was that they had a rule of thumb to have at least one public hearing per month. That was regardless of the demands of the individual case. It was set up, I think, by David Ipp. He had the view that you had to keep this body out in front of the public, to keep people's minds fixed on corruption and the need to raise it. That has led to disasters, absolute disasters, with people's reputations trashed.

In Victoria, under section 107 of the act, an examination is not to be open to the public—it is barred—unless IBAC considers on reasonable grounds a number of things: that it is in the public interest; that it can be held without causing unreasonable damage to a person's reputation; and, thirdly, that there are exceptional circumstances. That is something that IBAC complains about: the exceptional circumstances. It is very difficult to assess beforehand what a court is going to think are exceptional circumstances and whether they will simply accept the assertion by the commissioner that these circumstances are exceptional.

But all of these bodies take the view, as far as I know, that it is important to have an ability to hold occasional public hearings and to use that ability. In a bit over 3½ years, there have only been five public hearings by IBAC. The most recent one was of the police at Ballarat. They have been extremely effective. The obvious one is Operation Ord, where they had the investigation of the education department. They discovered these banker schools that were using public moneys, tens of millions of dollars, to pay for good holidays, plenty of grog and wonderful things for individual public servants. Terrific!

What holding that public inquiry did was to focus the attention of everyone on what was happening. They did it at the end of the inquiry process, when they knew pretty well what was happening, which is important. The effect of it was dramatic, and it caused the education department immediately to change its regulations and procedures.

MRS JONES: So, rather than having a circus, you have big moments where you sort something out?

Mr Charles: Yes. And the IBAC have a set of well-established rules about what is going to happen when they have these public hearings. I can let you have a copy if you want to have them. The effect is that there is very little public complaint in Victoria about the holding of public hearings, and the only real question is whether the exceptional circumstances thing should remain. There has been one case in the Court of Appeal about the Ballarat police hearing.

MS LEE: You were saying that New South Wales ICAC have that rule of thumb about one a month, but that does not arise from the legislation per se. That is more of a political decision, for want of a better word, in terms of being—

Mr Charles: Yes, but the legislation allows them to operate that way.

MS LEE: Sure, but it could be interpreted if somebody else—

Mr Charles: Yes.

THE CHAIR: If I might interpret your comments back to you so that I am clear, you seem to be suggesting that the Victorian model is quite a good one if you remove that last requirement.

Mr Charles: Exactly. I would agree entirely, yes.

THE CHAIR: Thank you.

MS LEE: Because we have the advantage of starting with a clean slate, we are able to obviously do this type of thing to try to get the best model that we can. From what we are seeing as a committee, a lot of it comes down to balance on all fronts. In your submission, you have talked about a civil liberties argument. That also goes to what Ms Cody was talking about, the public and private hearings. Do you have any specific views, for a jurisdiction like the ACT, which is different from New South Wales, Victoria and Queensland, on how we find that balance?

One of the things that you talked about was the fact that, if the body is given quite wide powers, there is always going to be a risk that those powers can be abused and that public hearings, as inasmuch as they put the person who is being investigated in the public sphere, may also give public confidence in ensuring that the commissioner is doing the right thing and is being held to account.

Mr Charles: Yes.

MS LEE: Do you have any views on how we can find that balance in the ACT?

Mr Charles: I did try to argue in the documents you have that if you set up a parliamentary committee which has the oversight of any anti-corruption body you set up, if you have an inspector, if you are going to give the body the power to bug phones and matters of that kind, for which you have to go to the Administrative Appeals Tribunal or a federal judge to get the authority to do it, you can set up a public interest monitor, which is there in Queensland and in Victoria, so that there is a lawyer who has to attend any of these sessions and argue in the public interest that it is not necessary to have it.

If you have that amount of coverage, if you add that when a person is required to give evidence on oath at these either public or private hearings you cannot use that evidence against them—and there is a difference of opinion about this—you then decide whether or not legal professional privilege, for example, is going to exist or be removed if you give it the ability to seize documents. In Victoria, the legal professional privilege survives. In New South Wales it does not.

That is a matter for you and your parliament to make an assessment of. There was a tremendous furore in 1983 when Frank Costigan and Douglas Meagher, who were pursuing the painters and dockers, said, “You have to have an anti-corruption body and a crime commission,” and the civil liberties lawyers from all over the place came furiously forward and said, “You will destroy everything.”

It ended up with the Hong Kong body being set up as the model of a very effective

anti-corruption body, and the public were persuaded that it was sufficiently important to set up a body of this kind. But having the inspector, the parliamentary committee and these other boundaries leaves you in a situation where you are pretty much like any royal commission that is set up. They are almost invariably given these powers. Coroners are given these powers—not to have private hearings or anything of that kind—but most of the powers you are thinking of now come to a royal commission.

MRS JONES: Yes. It is essentially, I assume, like a standing royal commission of sorts.

Mr Charles: Yes, exactly.

THE CHAIR: Thank you.

MR STEEL: One of the protections contained in the IBAC legislation that you have mentioned in your submission is that evidence given by a suspect under compulsion cannot be used in later court proceedings.

Mr Charles: Yes.

MR STEEL: We have been trying to grapple with the difficulties that might extend to those sorts of circumstances where a matter goes on to a court. Do you support that piece of Victorian legislation?

Mr Charles: Yes, I do. What usually happens is that, when you have a ring of people that are involved, you have done your preliminary inquiries and you know who are the constituents, A, B, C, D and E, and you take the view that the one that you really want to prosecute is A, you will then get evidence from B, C, D and E which will enable you to prosecute A. You may then, as well, get A in public or in-camera hearings and cross-examine, but you cannot use that evidence. But that is the only way of going about it. I think it is very important.

MR STEEL: Where it has not proceeded to a court—where the ICAC, for example, in New South Wales, makes findings of corruption in relation to that person: not a criminal finding, just a finding—do you agree with that sort of power being given to a commission? And what is your preference in terms of the models you have seen?

Mr Charles: I must say that I am very concerned about at least a couple of findings that have happened in the ICAC in Sydney where people have been found guilty of corruption, have lost their positions and have been prevented from getting public service situations. There is Mr Kear, for example. I think that there ought to be some means like an exoneration protocol in a situation of that kind. He was charged with offences where the onus of proof was on him to establish his innocence. He succeeded before the magistrate and he still has not had the finding against him removed. I think that is an abomination.

MRS JONES: Yes, of course.

THE CHAIR: There is some bitterness in New South Wales about a few of those cases.

MRS JONES: People who had slightly misused their electoral allowances and ended up with no job.

Mr Charles: Yes.

MRS JONES: You mentioned in your opening remarks or early on that there was advice that you gave that was essentially ignored in Victoria. Can you give us some idea about what those types of suggestions were?

Mr Charles: We prepared 250 pages of a report in three months and handed it in.

MRS JONES: Is that a public document?

Mr Charles: No, it is not. For reasons that are pretty unintelligible, it is a cabinet-in-confidence document.

MRS JONES: That happens a lot.

Mr Charles: We were not asked what we thought should be the definition of corruption. We kept saying, "It would help us set this body up if you told us what definition you are going to use." But they did not. The obstacles that were built in before the body could start investigating were intolerable and plainly nothing to do with us.

In fact, they do not need a power to begin an investigation. That has been established ever since Lionel Murphy was up before the parliamentary commission. I was a counsel assisting the parliamentary commission. We had announced that we were starting investigations, and Roger Gyles came along before the judge to say, "They've got no authority to investigate." Parliament said, "No-one needs an authority to investigate." It is reported under the name Murphy and Lush. So a body of this kind can start an investigation, but you cannot, until authorised, start to use all these enormous powers.

THE CHAIR: Where does that authorisation come from? You said they cannot until authorised—

Mr Charles: Until the legislation authorises them to investigate.

THE CHAIR: I see, yes.

Mr Charles: And what the legislation makes plain in Victoria is that, while they will have the ability to summon witnesses, seize documents, have public or private hearings, bug telephones et cetera, none of that can be done until they have reached the stage where preliminary investigations cease, and they have the barrier to cross that they have sufficient information to articulate the offence.

THE CHAIR: Colleagues, other questions? I am mindful that we have run a bit over your time. In the absence of further questions, I would like to thank you, Mr Charles, for appearing today. We particularly acknowledge that you have come from

Melbourne today to share your experience with us.

Mr Charles: That is a pleasure.

THE CHAIR: You have given us some very useful insights today; we are very appreciative of that. As you may have heard me say to some of the other witnesses, we will provide you shortly with a proof transcript of the hearing. If there are any matters, you are welcome to respond.

We are now at the end of today's hearings. I formally declare the public hearing closed for today.

The committee adjourned at 11.36 am.