



**Joint Standing Committee on the
Anti-Corruption Commission**

**REPORT ON THE HEARINGS HELD
BY THE
JOINT STANDING COMMITTEE ON THE
ANTI-CORRUPTION COMMISSION
IN THE
LEGISLATIVE COUNCIL CHAMBER
PARLIAMENT HOUSE, PERTH
ON
FRIDAY, 5 MAY 2000**

Tenth Report

June 2000

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Tenth Report

Presented by

**Hon. Derrick Tomlinson, MLC and
Mr W Thomas, MLA**

Laid on the Table of the Legislative Council and Legislative Assembly on
Thursday, 22 June 2000

ORDERED TO BE PRINTED

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**HEARINGS HELD BY THE JOINT STANDING COMMITTEE
ON THE ANTI-CORRUPTION COMMISSION
IN THE LEGISLATIVE COUNCIL CHAMBER
PARLIAMENT HOUSE, PERTH**

The Joint Standing Committee (“the Committee”) on the Anti-Corruption Commission (“the ACC”) determined that -

1. A public hearing into the effectiveness of the ACC commence at 9.00 am on Friday 5 May 2000 in the Legislative Council Chambers, Parliament House, Perth.
2. At the public hearing the following speakers would present a paper which would reflect their respective expertise in Anti-Corruption measures as experienced in their respective jurisdictions.
 - Mr Michael Dean, President of the Western Australian Police Union of Workers;
 - Mr Les Ayton;
 - Judge P D Urquhart QC, Commissioner, Police Integrity Commission of New South Wales;
 - Mr Terry O’Connor QC, Chairman of the ACC;
 - Mr Murray Allen, Parliamentary Commissioner for Administrative Investigations (State Ombudsman);
 - Mr Terry O’Gorman, President, Australian Council for Civil Liberties; and
 - Mr Barry Matthews, Commissioner, Western Australian Police Service.
3. The paper would confine itself to an examination of the effectiveness of the ACC under the following themes :
 - The extent of public corruption in Western Australia.
 - The cost effectiveness and performance effectiveness of the Anti-Corruption Commission.
 - The powers and practices of the Anti-Corruption Commission.
 - Operational accountability of and the redress of grievances against the Anti-Corruption Commission.

On the 5 May 2000 at the Legislative Council Chambers, Parliament House, Perth, a public hearing was held into the effectiveness of the ACC.

The Committee tables the transcript of evidence from the public hearings into the effectiveness of the ACC before the Legislative Council and the Legislative Assembly on this 22nd day of June 2000.

APPENDIX ONE
TRANSCRIPT OF EVIDENCE

Name	Position
Mr Michael Dean President	Western Australian Police Union of Workers
Mr Leslie Ayton	Retired
Judge P D Urquhart QC	Commissioner Police Integrity Commission of New South Wales
Mr Terry O'Connor	Chairman Anti-Corruption Commission
Mr Murray Allen	Parliamentary Commissioner for Administrative Investigations (State Ombudsman)
Mr Terry O'Gorman	President Australian Council for Civil Liberties
Mr Barry Matthews	Commissioner Western Australian Police Service
Mr Graeme Charlwood	Director Anti-Corruption Commission Investigator
Mr Edwin G Lienert	Assistant Commissioner of Police Western Australian Police Service

**JOINT STANDING COMMITTEE ON THE
ANTI-CORRUPTION COMMISSION**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
FRIDAY, 5 MAY 2000**

Hon Derrick Tomlinson (Chairman)
Mr Thomas
Hon J.A. Cowdell
Hon N.D. Griffiths
Hon Murray Montgomery
Mr Bloffwitch
Dr Constable
Mr Trenorden

Committee met at 9.04 a.m.

**DEAN, MR MICHAEL JAMES,
President, Police Union (WA),
639 Murray Street
West Perth, examined:**

Chairman's Welcome.

Mr Dean—The Police Union (WA) welcomes the opportunity to address the Joint Standing Committee on the Anti-Corruption Commission on the effectiveness, performance and accountability of the Anti-Corruption Commission. The Police Union abhors all forms of corruption within the Western Australia Police Service. It forms no part of the union's charter to prevent the proper investigation of allegations of corruption. Every allegation of corruption against a police officer needs to be treated seriously, investigated thoroughly and fairly and, if substantiated, dealt with appropriately.

Police officers are no different from other members of the community. They are someone's son, daughter, husband, wife, brother, sister, mother or father. Police officers provide an essential service and perform many difficult tasks. The remuneration received by the vast majority of police officers is less than that received by many members of the community and, I suggest, less than that received by almost every person in this room. Except for soldiers during wartime, no other group in the community has suffered so many deaths during the course of simply doing its job. Given the tragic circumstances of the Miller inquiry, which damaged the reputations of innocent police officers and the Anti-Corruption Commission, the Police Union welcomes this seminar and approach it constructively. I intend to submit in due course what we regard as an essential reform agenda.

In recent years, Australian law enforcement has moved away from traditional forms of investigation to the use of commissions which have been given wide-ranging, inquisitorial powers. The Western Australian Anti-Corruption Commission is a significant permanent commission of inquiry and is without doubt the most powerful in a legal context. The creation of such an organisation is based on the premise that it will reduce corruption and misconduct in public agencies. The efficiency and adequacy of the Anti-Corruption Commission as a law enforcement body is dependent on obtaining results, either through successful prosecution or the elimination of corrupt or improper conduct. To date, I am not aware of any successful prosecution by the Anti-Corruption Commission. Although their annual reports claim numerous prosecutions, it seems clear that many of these cases were investigated and prosecuted by the Police Service and other agencies. To quantify the types and the level of corruption that exists in Western Australia is, given the nature of corruption, a difficult and impossible research task. However, those cases identified should be analysed and reviewed with a view to identifying those areas most susceptible and best practice support mechanisms to avoid a continuance or systemic practice. The Crime Research Centre at the University of Western Australia is one organisation that could undertake this task.

Establishing and maintaining effective and ethical political and governmental institutions is seen to be dependent upon selflessness, integrity, accountability, openness, honesty and leadership. The ACC has not yet made a valuable contribution to enhancing the quality of public administration. There is concern that the ACC is not transparent, accountable or open. It is cloaked in secrecy and any leadership or integrity that may be present is hidden from the community. It is the union's belief that a permanent standing committee of inquiry into corruption in WA is not required as there is no evidence of deep-rooted corruption or impropriety within this State. However, Parliament considered it necessary, and the police accept the will of the Parliament.

The competency and professionalism of the Anti-Corruption Commission has been questioned publicly and, without addressing each case, it is sufficient to note that a review of those cases and the professional skills of the persons involved is urgent.

The ACC's far-reaching investigatory and search powers must be consistent with preserving all citizens' civil liberties. The ACC has the coercive powers of a royal commission, allegedly necessary because of the subject matter of its investigations. It appears that the ACC is an authoritarian system based upon a new brand of McCarthyism, which compromises hard won civil liberties.

The ACC's primary objective is to investigate allegations of corrupt and illegal activity concerning government officers and report the allegations and results of investigations to appropriate authorities. The ACC may investigate an allegation without informing the witnesses of the specific nature of the inquiry, thereby eroding the common law right against self-incrimination. Other far reaching powers include the power to obtain documents, section 44; search premises, section 45; appoint ACC special investigators, section 8; recommend immunities, section 40; and conduct hearings, section 42. However, the investigation of allegations of corruption needs to have regard for, and be balanced against, other fundamental rights which our society has long held dear, including, in particular, the presumption of innocence, the protection of reputation, the preservation of dignity and the right to a fair trial. Police officers, public servants, parliamentarians and the general public have been denied these rights without, in our view, any apparent community benefit.

Another provision of general application to all persons in the community, and not merely public officers, is contained in the preliminary inquiry powers of the commission in sections 37 and 38 of the Act. Those sections empower the commission to "request", orally or in writing, any person or body to provide such information or documentation as is specified in that request in such manner, and within such period as is specified in the request. Although the Act speaks of a request, failure to comply with any such request attracts the sanction of imprisonment for a period up to two years and a fine of up to \$8,000. Curiously, under section 44 of the Act, when conducting an investigation, the commission or a special investigator may request a public authority or public officer to produce a statement of information. This suggests that the preliminary inquiry power is wider than the power given to the commission when conducting an investigation.

If a distinction is to be made on the graduation of powers, one would have thought that the power exercised by the commission at the preliminary inquiry stage would be narrower, rather than greater, than the power of the commission to conduct a full investigation. In practical terms, this provision gives royal commission coercive

powers to the most junior investigator employed by the Anti-Corruption Commission. This, we believe, is inappropriate. The secrecy surrounding the ACC prevents the community from knowing what is under investigation. The secrecy of the ACC has, at times, been compromised by its very processes. However, while the ACC has the right to defend its reputation, it should confine itself to those issues of process and procedure. Perhaps it should consider adopting some of the policies of the Police Service, which very rarely comments on operational issues.

Public discussions regarding the single, all powerful inquisitorial body dealing with corruption during the Commission on Government revealed considerable concern that such a body would not have sufficient checks and balances regulating its own mechanisms of inquiry and internal operations. An independent accountability agency was recommended. It is questionable whether corruption was or is endemic in Western Australia, and whether a body with such far-reaching powers as the Anti-Corruption Commission was ever required. The Auditor General, the Office of the Ombudsman, the Western Australia Police Service itself, the Director of Public Prosecutions and the State Public Sector Management Act are able to effectively manage allegations of corrupt, illegal or improper conduct. The 1992 Royal Commission into Commercial Activities of Government and Other Matters and the subsequent Commission on Government illuminated and engendered the need for cultural change consisting of the establishment of ethical, corporate and government philosophies. Although these systems may have individual weaknesses, together they embody an effective regulatory system.

Permanent commissions of inquiry become bureaucratic and possess a motive of self-interest for advocating the body's continuance. As a body infused with its own sense of importance and crusading zeal, the ACC may be insensitive to the delicate balance between conflicting public and private interests. The ACC must be accountable and its composition, membership and agenda visible.

Public sector standards and the inculcation of professional responsibility and ethical behaviour are recognised as effective methods for eliminating and controlling impropriety and corruption. We need to redirect our focus from the single all-powerful investigative body, to requiring strong ethical leadership with increased openness and accountability at all levels of the public sector - from ministers, chief executive officers and top management of the Western Australia Police Service. To be effective, the ACC must establish and maintain public confidence and carry out its functions with integrity. Accountability and visibility is essential, yet lacking.

The ACC is not subject to any democratic process of accountability. Greater accountability of the ACC is imperative for the effective performance of its functions and to ensure public confidence and support. The oft-cited indication of corruption - non-disclosure, secrecy and non-accountability - are at the centre of the functioning of the ACC. It must be accountable for its actions and be open to criticism as part of the essential democratic process.

Since the ACC was established, it would be difficult to confirm that its presence has either eradicated endemic corruption in the Police Force or the Public Service, or has had any effect on preventing such corruption arising in the first place. Unfortunately, although the need for an anti-corruption commission was obvious in New South Wales and Queensland due to endemic corruption in those State's respective police forces, public servants and some parliamentarians, the same cannot be said of Western

Australia. The controversy surrounding the issues from what has been colloquially as WA Inc did not reveal endemic corruption in Western Australia, but rather the misconduct of a small group of parliamentarians and an even smaller number of politically appointed public servants.

Regrettably, that small group, either rightly or wrongly, has been accused of losing hundreds of millions of dollars of the State's capital. The size of the loss became the justification for an expansion in the Anti-Corruption Commission's role to provide a remedy for an illness this State does not suffer: Endemic corruption.

From the perspective of police officers generally, it is fair to say that the position has now been reached whereby a "them and us" mentality between the commission and many police officers pervades. Many honest and hard-working police officers have a distrust of the commission. For them, it is not the case that if they have acted corruptly, they have nothing to fear; rather, they are aware that the allegations can be easily made, difficult to disprove. Once a negative report is furnished from the commission to the Commissioner of Police, in practical terms there is no presumption of innocence; rather, the reverse is the case. They are guilty until they can prove themselves innocent. Without the assistance of the many honest and hard-working police officers, the commission cannot hope to address in any meaningful sense any corruption which might exist.

An example of this unfair process is the conclusion of the Full Court of the Supreme Court of Western Australia in *Parker & Others v Anti-Corruption Commission* - I refer to the unreported case of 31 March 1999 - that confirmed that the power of the Anti-Corruption Commission to summarise, evaluate and comment upon the evidence in its reports to the relevant authority or agency. No grounds were provided for setting aside such a report of the commission that any such evaluation or comments might be incomplete, misleading or plain wrong. The inaccuracy of a report does not establish a legal basis for having it quashed. I am advised that the effect of this decision is to make resort to judicial review well nigh pointless. The commission is lawfully able to make report, which is wrong, and for that report to be transmitted to the Commissioner of Police and for the commissioner to act on that report.

The end result is that although the commission no longer speaks in its report of guilt or innocence, the practical effect is little different. The recipient of the report is left in no doubt about what the view of the commission is and what action the recipient of the report ought to take. This will be so where, as is generally the case, a lengthy investigation which may take months, or even years, is transmitted to the Commissioner of Police accompanied by a large volume of material together, with a relatively short evaluation summary by the commission. In those circumstances, it is unsurprising and to be expected that the short summary evaluations and conclusions will assume critical importance in the mind of a busy Commissioner of Police.

Those concerns might be pushed to one side where there are mechanisms in place to ensure the police officer concerned had an effective means of challenging the commission's findings, evaluations and conclusions; unfortunately this is not the case. Moreover, the way a report is dealt with by the Commissioner of Police reverses the presumption of innocence, denies the police officer concerned the protection of his or her reputation, or the right to a fair hearing. I will explain to the committee why this is so. On receipt of an adverse report in relation to an officer, it is not uncommon for the Commissioner of Police to issue the officer concerned a notice under section 8 of the

Police Act which requires the officer to show cause why that officer should not be removed from the Police Service.

In some cases, a lesser penalty such as demotion may be contemplated. The officer concerned is not entitled to access to all of the evidence taken by the commission and references to particular witnesses before the commission can be, and often are suppressed in the commissioner's report. The officer concerned is not only denied the opportunity to cross-examine his or her accusers, but in many cases will not even know who they are. The evidence before the commission may, and often does, run into thousands of pages. As I have indicated previously, the commission's inquiry may span over many months and sometimes years.

The commission is, of course, the recipient of substantial government funding to the tune of millions of dollars per year. It employs professional investigators and lawyers. Notwithstanding all that, it is not unusual for an officer who is the subject of a section 8 notice to be given a matter of weeks - sometimes as little as two or three weeks - to respond to the notice. Once the officer's response is received, no further formal inquiry takes place. The matter is determined by the commissioner of police, however, in regard to the commission's report and the officers response. The potential for injustice and unfairness needs no further elaboration by me.

In 1999, administrative arrangements were agreed between the then Minister of Police and the Commissioner of Police for the exercise of the commissioner's powers under section 8 of the Police Act to be reviewed by the Industrial relations commission. However, to date such a review has been restricted to considering whether the commissioner followed correct procedures in exercising his powers under section 8 of the Police Act. Significantly, the Industrial Relations Commission is not empowered to reverse the decision made by the Commissioner of Police. Its powers are restricted to confirming the commissioner's decision or recommending the reversal of the decision.

The Police Union (WA) does not support public hearings of the ACC, and would prefer independent royal commissions or judicial inquiries. Without full and open disclosure, the public airing of allegations would unjustly damage reputations beyond repair. Public hearings are not consistent with the ACC's role and objective; that is, to investigate and provide reports to either the agencies concerned or the Director of Public Prosecutions.

The Police Union believes that for the Anti-Corruption Commission to become effective, a number of reforms are required. First, the Police Union is in agreement with the recommendations of the Joint Standing Committee on the Anti-Corruption Commission and with the recommendations of Mr Boucher that an independent office be established with full access to the operational files and staff of the ACC. This independent office requires extensive powers to audit the operations of the commission, investigate complaints against the commission and its officers, evaluate the effectiveness and appropriateness of the commission's procedures, and repair and compensate injuries caused by the commission. The joint standing committee recommends that an office of parliamentary inspector perform those functions. Although the Police Union supports the establishment of such an office, it has no objection to those functions being performed by another office. The powers, functions and independence of the office are more important than its name. The office must be given wide powers, including the power to recommend that the commission

discontinue inquiries, recommend the reinstatement of officers, or the discontinuance of the suspension of officers, and the power to make any recommendation it deems appropriate to any agency, authority or person to whom the commission has published a report or made recommendations.

Second, royal commission powers must be available only to special investigators. The exercise of coercive powers carries with it a sensitive responsibility to maintain relevancy, respect for its effect and offence upon common law rights, and the knowledge that it should be used only for the most serious of crimes.

The third matter which must be addressed is the reliance of the Commissioner of Police on reports and material provided by the commission when exercising his powers of removal under section 8 of the Police Act. The exercise of section 8 powers by the commissioner in such circumstances can be characterised only as a disciplinary or management measure. In those circumstances, it is difficult to understand why the officer concerned should not be subject to the procedure for removal provided for in a section 23 application under the Police Act. This would enable the officer concerned to know all the evidence against him or her and to test that evidence. That discipline or management hearing conducted by the Police Service allows the admission of hearsay evidence which is tested to the level of the balance of probabilities. In matters of employment of autonomous officers of the Crown, such processes are very necessary, and are certainly not overly onerous on the employer. The union believes that this process is the correct and proper venue in which the Police Service can properly decide the continuance or otherwise of a sworn member of the Police Service.

Unless these measure are adopted, the activities of the ACC will continue to be shrouded with distrust and its effectiveness significantly curtailed. The present absolute secrecy and unaccountability surrounding the activities of the commission has precluded any form of scrutiny of its activities and, with it, the criticism and review by the people it is meant to serve. Police officers, public officers and the community of Western Australia are certainly entitled to a better system.

CHAIR—I open questions with a reference to the different powers available to the commission under the act during preliminary inquiries and the powers available to the commission when it undertakes its own investigations. You made the point that it appears that the powers in the preliminary inquiry are greater than the powers available during an investigation. Have I interpreted you correctly?

Mr Dean—Sections 37 and 38 provide far wider powers at the preliminary investigation than at the investigation stage. We find that to be extremely inconsistent.

CHAIR—I think the committee would agree with you. Would you consider it appropriate that the powers now available under section 37, preliminary inquiry, be available to the commission during an investigation, including the powers to call any person and to compel that person to provide information?

Mr Dean—I remake the point in my submission: We are providing royal commissioner powers, usually attributed to judges of the Supreme Court at a minimum, to an investigator. Quite often these are very junior and obviously inexperienced investigators. Given the nature of those powers, I do not believe they

should be available to a normal investigator of the ACC. I see no difficulty with those powers going to a special investigator as I regard that as a far different situation.

CHAIR—The act makes provision for a special investigator to have the majority of powers of a royal commissioner. As I understand the powers of preliminary inquiry, they can compel a person to provide information.

Mr Dean—Precisely.

CHAIR—That power is not generally available to police investigators.

Mr Dean—To my knowledge, it is not available to anyone except a royal commissioner.

CHAIR—I think it may be available to other investigators, but certainly not to police officers. Given the nature of corruption by public officers, do you believe that the power to compel a witness to answer questions is appropriate?

Mr Dean—It is appropriate, Sir, if the person using those coercive powers has a full understanding of the extent of those powers and the onerous responsibility which falls upon him. If it is not handled properly, that evidence is inadmissible in court and worthless in the long term.

CHAIR—But would you have any objections to an appropriately qualified person exercising those powers according to proper procedure?

Mr Dean—None whatsoever:

CHAIR—Do you regard an ACC investigator as an appropriate person?

Mr Dean—Given the qualification involved, there is no doubt that they would be qualified.

CHAIR—Referring to the question of secrecy - I prefer the term confidentiality, but we will not split hairs about the difference - the confidentiality of the ACC's investigations has been the subject of a great deal of public comment. Can you envisage a situation where it is desirable for the ACC to have open inquiries, for example?

Mr Dean—The difficulty with open inquiries is that they would be only part of an inquiry, and other parts would not be available. We would prefer to see a full and open royal commission or a judicial inquiry, which is independent and separate, conducted into the more serious cases. It cannot be open for one witness and closed for another. We need the right of cross-examination of witnesses. Quite often there are misconceptions on very minor points. We have noticed that the ACC has got it wrong, mainly because a matter could easily have been sorted out if counsel were representing the person who had been the subject of the allegations.

CHAIR—Matters may be referred to the ACC by an appropriate public authority, public officer or a member of the public. They can range from improper conduct through to deep-seated corruption. Would you want the powers of a judicial inquiry to investigate improper conduct or even serious improper conduct?

Mr Dean—I think you are correct. One of the difficulties of the ACC is in its original design. Matters of management and dismissal of police officers should rightly be in the commissioner's hands. The ACC tries to be a criminal investigator and to decide issues of management or discipline at the same time. It certainly creates a difficulty for it on a number of fronts.

CHAIR—This is an important matter: The commission may receive complaints, may make preliminary inquiries about the matters brought to its attention and then may make decisions about what further action to take. One of the decisions is to refer it to an appropriate authority. In many instances the matters referred to the commission are referred to the Police Service, Ombudsman or Public Sector Standards Commission.

Mr Dean—I think that is where the conflict arises.

CHAIR—Why?

Mr Dean—ACC people are going to be criminal investigators. The matter of evidence goes to the core. It is not evidence; it is untested information. They are putting the heads of those agencies in an extremely difficult position, mainly due to the way they might provide the information or not provide it. A number of police officers who have been subject to those reports have complained bitterly that evidence that they wanted to be presented, in some cases references and other material, was not presented to the Commissioner of Police. They felt that was extremely unfair.

CHAIR—You make the distinction between evidence and information. In my dealings with police officers in the past that distinction has been pointed out to me. For the benefit of the committee, would you explain the difference between evidence and information?

Mr Dean—Evidence provided on oath is exactly that until it goes through the cross-examination and re-examination process. Arising out of that challenge to the evidence is the extent of the value or weight the person in judgment can apply to it at the end. You will be well aware that some evidence given in court is worthless or rejected outright, and that all evidence must be weighed and given due credit or not.

CHAIR—Therefore, when the commission receives information to properly investigate, would it not be appropriate for it to determine whether it is evidence and then submit that evidence to the appropriate authority as its report? That might mean some of the information given by witnesses and the evidence considered important is regarded as information rather than evidence.

Mr Dean—One of the fundamentals here is that a person about whom the allegations are made should have someone representing him and the right to cross-examine those witnesses, particularly if evidence is to be used against him. I see that as a reasonable due process.

CHAIR—That is due process at the judicial level. Is it due process in an investigation by police officers?

Mr Dean—I think the distinction here is once again the management issue versus the criminal issue.

Mr THOMAS—You said in answer to a question from the chairman that the management and discipline of police officers should remain in the commissioner's hands. I thought you said earlier when you were talking about your support of this committee's recommendation that there should be a parliamentary inspector, Ombudsman or someone like that to investigate complaints against the ACC. I thought you said that body should have the right to reinstate officers. Is that the case?

Mr Dean—What has occurred with the ACC has perhaps been one of the most difficult phases for the Commissioner of Police in Western Australia. He has been provided with obviously what he has taken to be evidence that was not in dispute. As it has turned out on a number of occasions, it is very much in dispute. On occasions the ACC has injured the reputation of a person. In any inquiry the wrong door can be pushed open, and the investigation will cause offence. Where that occurs it is up to the agencies to repair and compensate it as quickly as possible to lessen the damage. I see this oversight committee having that power.

Mr THOMAS—It would second-guess the Commissioner of Police?

Mr Dean—At the end of the day the position of the Commissioner of Police has changed radically right across Australia. He is an employer as well as the Commissioner of Police.

Hon J.A. COWDELL—You have referred to perhaps some abuses of process and to people not being informed of the inquiry's subject. Perhaps there arises here the question of improper or irrelevant questions, threats, duress and leaked details of operations. Do you have any details of abuses of process you have seen that you want to bring before the committee?

Mr Dean—Not at this time. I believe it is imperative that the officers concerned deal with their solicitors. On my advice a number of them have presented complaints to solicitors. Where they have gone from there is entirely up to them and their counsel. I would prefer to deal with the structure. I suspect that discussion on individual complaints would keep us here for weeks.

Hon J.A. COWDELL—In your opinion what impact has the ACC had on the ordinary operational matters of the WA Police Service for good or ill?

Mr Dean—It has certainly made police officers throughout the State stop and think. I have noticed a reluctance in some areas to get involved in or pursue matters energetically. Have no doubt about it: Young police officers, and a lot of the old ones, are scared of the ACC. They have seen people whom they regard as persons of high integrity suffer tremendously. The extent of the effect I do not know. Certainly in major crime areas every officer is deeply concerned.

Mr TRENORDEN—I want to go back to the basic principle. We had a lot of debate in the State before the ACC was established. To my ears much of your evidence has been about that debate; that is, we needed an extraordinary organisation to interact on what the public decided and ultimately what was politically decided. The problems had to be investigated. Many of those powers you talked about are extraordinary. If one 10 May, 2000 were to use an American term, they could be described as maybe Star Chamber. You have also said in your submission that for police officers matters are secret until they hit the commissioner's desk.

To rectify your concerns, perhaps we should be looking at the management details at that level, because to my amateur mind it does not matter whether it is information or evidence, nobody knows about it until it hits the commissioner's desk and the commissioner decides to do something about it. If there is a problem in the Police Force - tell me if I am wrong - surely that is where your problems lie.

Mr Dean—Certainly the vast majority of our problems arise there. Unfortunately, the original reports were accepted as fact. I believe very strongly that it is up to the commissioner of the day to hold his own independent inquiry and try to substantiate or prove or disprove the allegations before him. He has a responsibility and I am sure he recognises that.

Mr TRENORDEN—Surely some of those investigations would have been joint inquiries between the Police Service and the Anti-Corruption Commission, or were they all ACC?

Mr Dean—I believe the original ones were. The last two or three have been combined operations.

Mr TRENORDEN—Do you have any comment about how that procedure may be improved?

Mr Dean—I think it is just a matter of fairness and splitting the two decisions. One is whether there is enough for a criminal prosecution, and the other is whether that person or persons should continue their employment, whether it be with the Police Service or with any other government agency.

Mr TRENORDEN—Do you still support a section 8?

Mr Dean—Section 8s have their place, but I believe these officers should be given due process, and that is the difficulty here. It is difficult for the vast majority of members of the Police Service to accept someone who is very much respected and well-known throughout the service being dismissed without any explanation. I am sure you understand the relevance of my words "an autonomous officer of the Crown". It would be extremely dangerous to dismiss police officers without reason or accountability.

Mr TRENORDEN—Unfortunately, in the world of corruption, often those people we do not suspect are the people who are corrupt. We have a difficulty there. Police officers, members of Parliament and the general public will often be very surprised at who is carrying out the illegal activities.

Mr Dean—I agree with you. However, on matters of employment, the employer must decide on the balance of probabilities whether there is enough evidence or even circumstantial evidence. We are not talking about a huge proof; it is nowhere near the criminal standard. The questions of employment do not carry a huge burden in law.

Mr TRENORDEN—Would that require a great deal of extra resources on behalf of the commissioner, or would it require an involvement of sections of the Police Service in the inquiry for the commissioner to have that confidence?

Mr Dean—I do not believe so. If the Commissioner of Police conducted a fairly standard internal hearing and allowed this person to put his case, produce his evidence and cross-examine and test the evidence put against him -

Mr TRENORDEN—In a closed hearing?

Mr Dean—It can be closed and open for some witnesses. I also make the point that hearsay evidence can be produced in these hearings. The best way to describe that is that it would be more of a tribunal. They are not difficult issues to prove.

Hon J.A. COWDELL—Do the courts provide an adequate avenue for redress of grievance, or is that beyond the monetary or financial capacity of many people who may be affected by investigations?

Mr Dean—An individual could never afford the costs of some of these court cases. The difficulty with these court cases is that we can run them for years. It freezes the question and puts the person's life on hold. It does the Anti-Corruption Commission, the Police Service and the public no good. On occasions we have been forced into that situation. If there were some minor reforms, we could get over these problems.

CHAIR—To clarify one point on the difference between criminality and administrative decisions, the act is quite clear that if the ACC reaches an opinion that criminal proceedings might be justified, it briefs the Director of Public Prosecutions. It is the DPP who makes a decision on whether to prosecute.

Mr Dean—Precisely.

CHAIR—In other matters the evidence gathered by the ACC is referred to an appropriate officer for further action. If it is an administrative matter requiring some sanctions to the extreme of dismissal, that is not the action of the ACC. Surely that is the action of the appropriate officer, just the same as the prosecution is the decision of the DPP.

Mr Dean—If you presented a very edited version of this section of *Hansard* and some of the witnesses were cut out, that would be the nature of the evidence being presented to the Commissioner of Police. He is not being fully briefed; that is quite obvious.

CHAIR—It is your submission that the ACC does not present all information or all evidence it gathers to the appropriate officer.

Mr Dean—I am absolutely sure he would confirm that.

Mr THOMAS—Are you saying it is distorted?

Mr Dean—The officers and solicitors concerned strongly believe so.

Mr THOMAS—Do you believe it is?

Mr Dean—I do not read reports to the Commissioner of Police.

CHAIR—Thank you very much, Mr Dean. You will receive a transcript of your evidence and the questioning. Please read that transcript, correct it and return it to the clerk of the committee at the earliest opportunity.

Mr Dean—Thank you, Mr Chairman. A number of members of the Press have pushed me for an interview after this session today. Is there any prohibition on that?

CHAIR—What you say or do outside this Chamber is your decision.

Mr TRENORDEN—On the basis that I have chaired another committee in which this issue comes up, I advise that you are free to give your point of view of your interview and what you have heard. The only thing you are not free to do is handle the transcripts, which you do not have.

Mr Dean—Thank you, Mr Trenorden.

CHAIR—Before I call Mr Ayton, I point out two changes to the program: First, we have extended the lunchbreak from three-quarters of an hour to an hour because there was some difficulty in a short lunchbreak; and, secondly, the 4.15 pm session, rather than it being an open panel session, will now be a session in which any person who has appeared before us and given evidence may respond to any matter raised by other persons. It is a right of reply.

[9.59 a.m.]

AYTON, MR LESLIE,
Retired,
residing at 75 Lionel Road,
Darlington, examined:

CHAIR—To commence proceedings, will you state your full name, your contact address and the position in which you come before this committee.

Mr Ayton—Leslie Donald Ayton. I live at 75 Lionel Road, Darlington. I come before this hearing by invitation, and my previous position was Deputy Commissioner of the Western Australia Police Service.

CHAIR—I also point out that prior to being Deputy Commissioner of the Police Service in Western Australia, you were the officer in charge of the police internal affairs unit.

Mr Ayton—Correct, I helped start that up.

CHAIR—Do you wish to make a statement to the committee?

Mr Ayton—Yes, and thank you for invitation. Probably not for the first time, on a few points I am at odds with the union's view. I have a strong belief that this state needs an efficient and professional corruption fighting organisation. It must be said, first of all, that that will not fix the corruption problem in Western Australia. The solution lies in effective strategies to prevent corruption at various levels of government. Today is an important day for a lot of people, both those within the Anti-Corruption Commission and those affected by it in one way or another, and my earnest wish is that we finish up with some positive outcome.

The ACC is faced with the difficult task of investigating government corruption at all levels. To do that it must have a number of things working for it. It must have a quality executive, and that executive must have a clear understanding of the problems it faces and have some workable solutions. The commission also must have a clear and achievable plan of action. The most important thing of all is that it must have an organisation possessed of highly competent and professional investigative staff. It is sad that I have to say that based on current performances, the ACC is lacking in some and perhaps each of those areas.

I am a strong supporter of the anti-corruption initiative and of a courageous and purposeful Ombudsman's office and an efficient internal police investigation system that has the support of rank and file of the police. I also support the efforts of the Information Commissioner to widen public access to information. That is because each of those things is an important factor in combating corruption. It is only when these bodies are working well that we can feel confident that the fight against corruption and misconduct is in good hands. I believe that at the moment, while those mechanical functions are in place, there is widespread community, police and public service dissatisfaction with the outcomes that we are seeing. I believe the problem is that our watchdog organisations are not delivering the goods. That is a major reason we are here today. While I am on that subject, I congratulate this joint parliamentary

committee for having the good sense and courage to call a public hearing on an issue as sensitive as this. It is only by eliminating problems within that organisation that we can hope to see some corrective action, and to improve performance, because basically we are talking about improving performance.

No organisation can hope to succeed if it does not have the support of the people it exists to serve. The ACC cannot win the fight against corruption while it alienates the honest majority of police and public servants through its poor record of performance and its lack of professionalism. There is a considerable body of past evidence and recent empirical evidence that indicates significant numbers of police are reluctant to report the crimes of their peers and their misconduct and improper practice. In the main our Police Force consists of honest men and women, so why would that be so? There are a number of reasons; fear of retribution is one. That is a real fear. I believe lack of faith in their executive is another. It is worth mentioning here that a recent internal poll of police found only 13 per cent of rank and file officers believed their executives acted and conducted themselves in an ethical manner. From my observations and contact with police at all levels I believe the principal reason is that they have no confidence in the internal or external bodies whose task it is to investigate corruption and misconduct.

I wish to touch on three principal areas today. The first is the extent of corruption in this state and whether it is a significant enough problem to justify the existence of the ACC. Secondly, the effectiveness and performances of the ACC, particularly in respect of police; and thirdly, the accountability of the ACC and the role of the Joint Standing Committee on the Anti-Corruption Commission. I do not intend to talk on the powers the commission has at its disposal, for I believe that in conducting investigations into the difficult task of corruptions it can never have too much power. I probably will not have too many friends by saying that. Nevertheless, it needs all the power in the world because it is the most difficult job that can ever be taken on.

It is fair to say that media and public pressure in this state, rather than political initiative, forced the appointment of the Anti-Corruption Commission from the Government. That is half the problem. For those not so familiar with our recent past - it may even be helpful to the rest of us - I have a few words about the history. In the past 10 years in this state we have seen two major royal commissions, the Commission on Government inquiry, and a joint parliamentary select committee investigation into police. The focus of each of those has been to examine in one form or another conduct that is corrupt, improper, unethical or dishonest, by politicians, public servants and by police at all levels. A common finding in each of these - among their other findings - has been that there has been a serious lack of accountability at all of those levels. As the chairman well knows, the joint parliamentary committee report into the police found that corruption in our Police Force is a problem and whether it is endemic is not worth discussing.

That committee recommended that a permanent independent body be set up to investigate corruption in the Police Force or, failing that, to have a royal commission. I supported those findings. Sadly our Government showed no great enthusiasm for those recommendations; in fact, no great enthusiasm for a lot of the other recommendations of the other commissions of inquiry. Instead, in succession, we got the Official Corruption Commission, a body whose greatest power was to open envelopes and perhaps receive complaints. It was a terrible sham on the public of Western Australia, if ever there was one. That was subsumed by the Anti-Corruption

Commission when it came into existence. It was a body with extensive power, and I have no problems with that, but it had no accountability. This parliamentary joint standing committee was created to oversee the ACC, but it is hamstrung by restrictive terms of reference, almost guaranteeing its ineffectiveness. The Office of the Ombudsman, while created much earlier, must be considered as part of the anticorruption framework. I believe that its dismal performance record and unwillingness to tackle problems with grit and determination does it no credit.

With those simple words of introduction I would like to attack the first question, which is the extent of corruption and the role of the ACC. How much corruption is there, and is it significant enough for the ACC to exist? Why do we bother to ask that? Frankly, we do not know how much corruption there is, and we do not know how widespread it is. It exists and we may never know how wide it is. Corruption is not an overtly evident crime. Its business is done in secret; that is its nature. It can be going on alongside one, by a man or woman for whom one has the greatest respect, and one might not know. We waste a lot of energy and effort trying to quantify the unquantifiable. Let us just accept it is there and commit ourselves - every one of us - to doing whatever is necessary to root it out. The indicators are - and they are many - that it may be widespread. One of the important things - it is a problem with political systems - is that it is essential that there be bipartisan and ongoing agreement to resource the fight against corruption as our knowledge of that problem improves. The answer to the question is yes, corruption is significant and we do need a strong professional, committed, corruption-fighting organisation to deal with it. The ACC is needed. I would like to support the ACC, because I believe the ACC could with some operational adjustments to make it more effective and some legislative amendments to ensure accountability and enable it to meet the ends that we require of it.

It is common knowledge that a number of people believe that the dissolution of the ACC is the only solution. That is caused by the negativity created by the many bungled investigations that we have seen. It has been suggested that we should start afresh. I do not agree with that. The ACC can be made to work and work well. If we address the troublesome areas of poor performance, and address them quickly, we will regain the confidence of the public, the average police officer will start to have some confidence in it and the public servants, who are also affected, will regain their confidence.

Some critical areas must be addressed quickly. First, the ACC function must be seen to be separate from that of the Police Service internal affairs unit. I will discuss the armed holdup fiasco later. However, the result of that joint raid and the subsequent charge brought no credit to either organisation. Secondly, corrupt or recently corrupt activity must be targeted as the first priority in any investigation. That will lead to more success. Old, stale matters of complaint should never be ignored. However, they should be pursued as a high priority only when the offence is serious and there is a strongly likelihood of success. I can assure delegates from experience that these investigations inevitably backtrack over old, well-worked ground and time is the main enemy. Court successes are extremely rare. There are other ways to deal with these matters.

That brings me to the third point. Viable alternatives that can rid the police and the Public Service of corruption and the corrupt need to be developed. In many cases, because of the nature of the crime, the quality of the witnesses or our cumbersome legal system, conviction will never be possible. The current failure rate of cases

brought by the ACC is unacceptable in that respect. We must have some viable alternatives that remove the problem and benefit the service, and the community interest must be used.

Fourthly, immediate steps need to be taken to address the very real perception that the ACC lacks the determination to target corruption at all levels. There is disquiet that the ACC does not have the fortitude to investigate corruption at the higher levels of government, and it is a major negative factor in many minds.

Fifthly, as Mr Dean stated, some accountability measures must be implemented to ensure that evidence is taken and used properly and impartially by commission officers. There are strong feelings, and some evidence, that ACC investigations commence with a predetermined result in mind and that evidence is either taken or dealt with selectively to achieve that end. I am sorry to have to say that. It is up to the government to ensure that the ACC addresses these issues. Until it does so, it will not gain the confidence of honest police officers and public servants and it cannot do its work without their help.

I turn to the effectiveness and performance of the ACC. I believe that the effect of the ACC on the Police Service thus far has been negative and counterproductive. We cannot police this community without going to the edge of powers. Police do not work in a kindergarten; they are dealing with the vicious, wild, uncontrollable elements in society and the dishonest. They need to take risks. While we have the current climate, some risks that need to be taken are not being taken. I have consulted widely and with police and found that the commission is neither respected nor trusted by the overwhelming majority of police officers. That is sad because it should have that respect.

Mr Dean touched on this issue, but, as far as I am aware, there have been no convictions arising out of an ACC investigation thus far save one, which it brought against one of its own employees. We should not be overly critical about that because convicting the corrupt is not an easy task. That is particularly so in respect of corrupt police officers, who know and can and will work the legal system to their advantage. I have had a great deal of experience in that respect. These people also often have strong and uninformed peer support and - one would expect it when an allegation has been made - union support. In cases against police officers, juries will often not convict when they are asked to take the word of a prosecution witness who admits to being a criminal or who is shown to be less than honest. On the other hand, police officers who may be corrupt present well with an image of substance. Invariably they have plausible explanations for the accusations that have been levelled against them.

That is why our ACC commissioners must have a clear and balanced understanding of what the organisation can achieve and how to go about making it possible. As I have previously mentioned, alternatives to arrest or summons for an offence must be considered. However, I caution that, if that track is to be taken, as much work must be done to achieve that end as is done in preparing a good court brief. The commissioners must ensure that all investigations, whatever the desired end result, are of high quality and relevant to the goals being pursued. Performance to date suggests otherwise.

Having had experience with creating an anticorruption body in the Police Service, I expected to see one or two problems arise as the new ACC settled into its role. One

would expect that. I did not expect to be reading what I have read. Perhaps to emphasise the urgent need for a corrective makeover of the ACC, some notable performance results are worthy of mention. The commission initiated a special investigation with coercive powers into an allegation that six drug squad officers had been involved in corrupt conduct. The result was catastrophic for the ACC and more particularly for the officers concerned and the Police Service. The investigation made a finding of guilt against the six and as a result of that finding the police commissioner suspended the men. However, he was later forced to reverse that action as it was found to be outside the law. The Supreme Court determined that a finding of guilt was not available to the ACC under the act. It is incomprehensible to me that two Queen's counsels and a bevy of attendant lawyers and hangers-on could not understand the limits of their own powers under the act. That says something about competence.

The greatest travesty was that this investigation, using its coercive powers and out of which that decision arose, was done so poorly. The end result was the ruination of the careers and reputations of those six people and absolutely disastrous publicity for the ACC and, I am sad to say, the police commissioner - although I think he was the non-guilty party in the whole affair. The suspension of those officers and others in other cases without charge, as a result of advice from the ACC, has attracted serious and justified criticism of the ACC and the police commissioner. That must be addressed.

Where suspension is necessary, charges must be brought immediately or very shortly thereafter. We have had cases of men being on suspension for well over 12 months. Police officers should be treated with at least the same degree of fairness and timeliness that is accorded to the general public in police investigations. No more, no less. Despite the defensive protestations in the press by the chairman of the ACC that police officers are treated no differently, I do not think that is to be believed, and with good cause. As a result of that, the ACC is rapidly eroding the credibility and support that it has or had among rank and file police officers.

In the second case - this underscores my point about dividing the IAU from the ACC - a criminal in a joint ACC police sting operation was given \$18 000 of public money to buy drugs from a police officer. Because of what can only be described as an inexcusable lack of operational supervision, the criminal spent the money on something else. It is incomprehensible that that should be allowed to happen. The biggest problem with that is that no-one in the ACC or the Police Service has been brought to account and no sufficient explanation has been offered for how this gaff occurred. I am aware that charges are in the court on that matter. That does not mean that the public could not be reassured by someone saying an internal investigation has been started to see what processes went wrong and whether anyone is responsible. We have heard nothing and, what are worse, are the subsequent events that flowed from this disaster, which includes the fact that some dubious instructions given to various police officers have not been examined. Some aspects of this case scream out for public disclosures, but we have heard nothing. We have not even heard whether anything is being done.

In the third case, the recent investigation, the laying and later withdrawal of serious drug charges against the officer in charge of the armed holdup squad, confirmed what I believe is the investigative incompetence of both the internal affairs unit and the Anti-Corruption Commission. It demonstrates a casual attitude by the ACC towards its responsibilities under the Act.

Section 12 of the Act sets out the functions of the commission and, in short form, it is to receive allegations of corruption, do something about them itself or give them to another agency to do something about them. I have read the Act from sections 12 to 24 and I can see no power for the commission to oversight or take part in joint operations with the police. It is questionable whether its officers are empowered to do so. That they did so demonstrates lack of understanding of the commission's function for a number of reasons. The problem is compounded first by its failure to avert the elementary blunders in the collection of evidence at the scene of the alleged crime. Oversighting means to ensure it is done right. Some people may say ACC officers were just observing, but they were the premier organisation there and they were oversighting.

I am not trying to excuse the lack of police professionalism. It is absolutely and unbelievably inexcusable. However, I believe the ACC, which was oversighting that operation, is the body that should be held primarily responsible and accountable for the ultimate failures in this case. However, again, no-one is being held accountable. We saw a police report that did not deal with all the issues in any event as I understood it, and no-one from either organisation is being held accountable.

However, it underscores a relevant question: Where is the wisdom of an ACC acting in concert with police investigations? The Police Service is the only body mentioned specifically in the Act as a group of people who need to be investigated by the ACC. The others are the rest of the public service, etc. So why would anyone work with it? In fact, there is good reason to question why the Police Department even has an internal affairs unit. That question aside; it is fair to question the wisdom of why the ACC acted in concert with the police, because the compromise we have seen could not have been more damaging. The ACC is tarnished by the results and in the minds of the public and the police carry the major burden of responsibility for the blunders.

One of the questions we have been asked to address is the cost effectiveness of the ACC. I have found that quite difficult. In terms of dollars expended, weighed against results obtained, we would be justified in thinking the cost effectiveness of the commission is quite low. I caution everyone from jumping to that conclusion. We must be careful because considerable secrecy surrounds the ACC's operations and it means that very little information is generally known to allow us to make an effective assessment of its performance.

We need to know the performance measures the commission uses to judge its activities and we need valid statistical data before we can make a valid assessment. I will listen with interest later today to the address of the Chairman of the ACC, and hope he can shed some light on this question because I believe, of all the people in this room, he is the only person who can.

I turn now to accountability and the joint standing committee. I believe that, notwithstanding all I have said - and I realise it is critical, but I hope it is constructively critical - the ACC can achieve the success we want it to. However, we need courageous and determined decisions to be made at all levels, from a political level down. The legislation needs amendment to limit secrecy - I did not say "abolish", I said "limit" - and increase its accountability.

How ridiculous is it when a police commissioner must refer to the ACC as an outside investigative body if he is responding to a media question on the status of an inquiry. That is high farce if ever there was. Section 54 of the Act needs amendment to permit information being made public when circumstances deem it necessary. I am not talking about at the will of the commission. Other people need to be able to make those decisions. I am not saying that everything must be public, but some things need to be in the public arena. It is of critical importance that the ACC fully report on its activities. At present it reports only the results of investigations if it feels it should. We also need - I disagree with the union's point here - the public inquiry alternative. Although not in every case, some cases scream out for public inquiry. We should have that alternative. Some matters should be heard in public and that opportunity should be available under the legislation.

There must also be a critical re-examination of the commission's aims and objectives. Decisions that direct the commission on the most strategically appropriate course must be made. That is urgent. Another critical issue is that, from commissioners to investigators, there must be an unflinching and courageous examination of competencies. Some people will have to lift their game, improve their performance or be asked to move on. One way we can begin that process is by dramatically lifting the level of accountability of the ACC. Whether it is called confidential or carried out in secret and with the knowledge that no person or body can force exposure, it provides the recipe for slipshod, investigative practices, improper manipulation of evidence, and, worst of all, cover ups.

As mentioned earlier, there is some evidence to indicate that - many believe it - these types of things are happening now. The knowledge that accountability is a natural consequence of our conduct, forces people to think and act with greater care and astuteness. Organisations that know they will be brought to account, place greater responsibility on their staff to act with diligence. Some of the blunders I have described have been shrugged off by the ACC with, I believe, inadequate public comment and no-one taking responsibility.

The chairman of the ACC has said publicly that the ACC is accountable to the courts. Indeed, that is one of the questions we have been asked to address. I believe that statement is neither true nor appropriate. First of all, section 3, I think, of the Act means that in civil cases the commission is neither able to be sued nor is suable.

Not all matters investigated by the ACC reach the criminal courts. So where is accountability there? When a matter does not result in a charge, it is not heard of again. Secondly, when cases do reach the courts, it is still insufficient to pass off as a measure of the organisation's accountability.

The court's business is in dealing with matters of law and evidence, not bringing a government body to account, and we know it can deal only with what it hears. As we know, not even the DPP is told everything, let alone the courts. I believe that a grievance process with sufficient authority to succeed is a matter of great urgency. It is inappropriate for the commission to consider determining complaints lodged against its own conduct. The example of the problems we have had over the years and the dissatisfaction we have had with the police internal investigations unit investigating itself should be sufficient argument to nullify any suggestion the commission should examine complaints against itself.

The present joint parliamentary committee, with the very best of intentions, is unable to perform that task. Under its terms of reference, the committee cannot adequately ensure that the Anti-Corruption Commission is accountable or that grievances can be dealt with satisfactorily. The calling of this public hearing demonstrates the concern that the council has about its own limitations and it is to be congratulated for having the courage to do so. There is no doubt whatever in my mind that a watchdog to oversee the ACC is imperative; however, I do not believe in layer upon layer of investigative bodies.

I favour empowering a revamped joint parliamentary committee to perform that role rather than an external independent inspectorate. The committee must be empowered with strengthened terms of reference to give it sufficient clout and power to inquire into grievances and to report to parliament. Members of parliament are very busy and they could not do all that work themselves, therefore there would need to be some field capacity staff to assist them. However, at least the ACC would report to parliament. The current size and bipartisan makeup of the committee should be retained, it should be permanent and it should be required to report absolutely to parliament. The present committee has demonstrated that it has the will, the capacity and the intent to carry out the wider and more onerous task of ensuring public accountability of the ACC. I believe that is why we are here, although it has not been said; that is most encouraging to me. It is my earnest hope that the right people are listening and some good will result.

To close, I hope the message that is heard today is this: First, fix the legislation, amend the secrecy provisions and increase accountability. Secondly, do something quickly to raise the levels of competency and professionalism in the ACC.

CHAIR—I raise firstly your observation about the extent of corruption. From your history, you have a knowledge of corruption in the Police Service at that time. Since then there has been considerable change in the Police Service and I think you, as deputy commissioner, were instrumental in the changes which have occurred. Do you believe those changes have affected the level of misconduct in the Police Service?

Mr Ayton—To some degree I do. I do not believe it has changed the number of people in our Police Force who are either corrupt or have the potential to be corrupt. I think it is easy to keep the conduct of honest people in the rank and file on the straight and narrow, but dishonest ones are still there. When I began the internal affairs unit, the problem was at a different level, not in quantity but in the stature and position of the job. We conducted a great deal of work and changed many aspects of the job; however, a number of people in our Police Force still are either corrupt and dishonest or have the potential for that, and some of them are climbing the ladder of success and being promoted.

CHAIR—Given that, I was somewhat surprised to hear you question whether the internal investigations unit in the Police Service is justified. The internal investigations unit, the internal affairs unit and the public sector corruption unit are in the professional standards portfolio. If there is corruption in the Police Service, are not the professional standards unit and those investigative agencies essential?

Mr Ayton—The professional standards unit's task is to create a climate to encourage police officers to come forward and identify the corrupt within the organisation. The internal investigations branch deals with disciplinary and other matters. The internal

affairs unit was originally set up to investigate, in a covert manner, corrupt activity by senior police officers. That unit has diminished considerably and is almost non-functioning. In any event, if a structure is in place which will encourage honest police to cooperate with the corruption fighter, whoever that person is, why have two levels? No other department has two levels and it is unnecessary. If an Anti-Corruption Commission works well, with sufficient respect and sufficient authority, and the Police Service is working well with its officers confident that they can report matters of misconduct or corruption without fear, an internal affairs unit is unnecessary. General cases such as the sting in Kalgoorlie and the armed holdup investigation are the ACC's jobs and they should be doing them.

CHAIR—You referred to the internal investigations unit as a body set up to investigate corruption in a covert manner. Is the confidentiality of the ACC essential?

Mr Ayton—In many cases confidentiality must be maintained because in a wide range of cases witnesses, information, sources and investigation techniques need protecting. Therefore confidentiality is important but it must be applied with commonsense by people who know what they are doing.

CHAIR—You said some cases scream out for public inquiry. What type of cases?

Mr Ayton—The three cases I mentioned where there have been monumental blunders. We must know firstly how these blunders were allowed to occur but, most importantly, what has been done to prevent them from occurring again. We had the sting in Kalgoorlie which was a debacle of the first magnitude, and the armed holdup squad investigation which almost exceeded it in its ineptitude.

CHAIR—Those are matters that have already been the subject of investigation by the ACC.

Mr Ayton—Yes.

CHAIR—Do you envisage that extending to matters which are currently under investigation by the ACC, not current matters as we do not know what they are? Do you regard it as necessary to have an open inquiry by the ACC in some circumstances?

Mr Ayton—Yes, and I will choose my words carefully as this is close to the bone. There are matters of which the public knows nothing which require a public hearing alternative. That is why I have said those words in that simple way. I have tried to put myself at arm's length and make a positive comment about structure. However, there are matters that scream out for a public inquiry of which the public know nothing.

Mr THOMAS—Mr Ayton, the existence of the ACC is essentially because the parliament allocates a considerable amount of money and equips it with powers which infringe upon the rights of citizens. The trade-off for that is the money and those rights are provided because corruption is a bad thing and it does exist.

Mr Ayton—Yes.

Mr THOMAS—Initially, when you addressed the issue of corruption, you said we should accept that it is there and it is non-quantifiable. We must be able to do better

than that, surely. You ran the internal affairs unit of the Police Force and you must have some idea of the extent to which there is corruption in the Police Force, and perhaps in the public sector in a wider sense.

Mr Ayton—Yes.

Mr THOMAS—You made the statement that corrupt officers - I am not sure whether it was plural or not -

Mr Ayton—Yes, are being promoted.

Mr THOMAS—Surely you must be able to say something more to us about the extent of corruption in those areas than just that we need to accept that it is there, which is almost as an article of faith rather than as a rational decision.

Mr Ayton—Yes, and it is a difficult question. No-one will put numbers on it. We have always thought that 1 to 3 per cent of police in the Police Force either are or have the potential to be corrupt. That is a significant number of people, and that is probably spread across other ranges of the Public Service. That is a number that we pluck out of the air, because that is all we can do. To give an example, when I started investigating corrupt police in 1987, I never thought about corruption - I was too busy working - and I naively thought we had one or two big names. Our inquiry started with one person, and the number widened and widened and widened, and I woke up that I had been living in a dream world. It was very widespread, and that was confirmed by the committee of inquiry that Mr Tomlinson conducted in another place. We did a lot of things about that, but we have not prevented the problem. What we have done is shift the level down. What happens with corruption is that the corrupt police rise in their level of seniority - take Queensland, where they had the police commissioner - but they have lieutenants, sergeants, corporals and privates, and when we knock off the head, the next one bobs up, and so on and so on. The corporals and the privates and some of the sergeants are still there. We need to be able to target them and do something about them.

Mr THOMAS—When you addressed the question of the overlap between the internal affairs unit and the ACC, which has its own investigative staff, you seemed to suggest that there should not be an internal affairs unit in the Police Service if there was an ACC; there should be one or the other.

Mr Ayton—That is correct.

Mr THOMAS—You then went on to talk about accountability, and one of the items that you cited for the lack of accountability was that some matters - I think these are the words you used - do not even get to court.

Mr Ayton—Correct.

Mr THOMAS—Will that not always be the case with any investigative body? For example, no doubt when you ran the internal affairs unit, you investigated cases where in the end there was no evidence, so they never went to court.

Mr Ayton—That is right.

Mr THOMAS—Surely that is not really demonstrating a lack of accountability. That is just the way of the world when you are investigating matters.

Mr Ayton—I said that for a specific reason. The ACC is not accountable, and the commissioner has said publicly that the way it is accountable is through the courts. That is why I made that distinction. The Police Department is accountable and can be made accountable. In fact, it has more bodies making it accountable than any other organisation in the State. That is not true of the ACC. Therefore, it is not right to say that the courts keep the ACC on its toes.

Mr THOMAS—I can see the point you are making, but you would have to accept that the fact that a matter does not appear in the court does not necessarily demonstrate a lack of accountability. It is just what happens.

Hon N.D. GRIFFITHS—With regard to the issue of the extent of corruption, you referred to the indicators of corruption, and I think you said there are many. What are the indicators of corruption?

Mr Ayton—The first indicator to me is my experience of what is happening within the Police Force. Let us step outside the Police Force. Look at the recent report by the Auditor General, who reported a significant number of cases of government departments which, in their financial dealings, had failed to meet the requirements of the State Supply Commission guidelines. Each one of those instances where the guidelines have not been met, where the rules have been bent and where money is concerned, is an indicator that someone needs to look at it quite closely. That is one indicator. Another indicator is the Prison Service, which I think is intending to set up an inspectorate because of problems within the Prison Service and the inquiries that we have had into the Prison Service with regard to the Canning Vale building and various things like that. The indicators of corruption in the police, the Public Service and Government are sufficient to say the ACC is absolutely necessary..

Hon N.D. GRIFFITHS—The next issue I wish to raise with you follows on from what Mr Thomas was saying about the internal affairs unit and the ACC. You have said that we have the ACC and there is no need for internal affairs. In the professional standards portfolio, there is a unit dealing with the public sector; that is, police officers are investigating the public sector other than the police. Is there a need for that unit given that we have the ACC; or is it the case that the ACC should not be involved in that; or is it the case that we should have both the ACC and that unit of the Police Force dealing with that area?

Mr Ayton—If the police unit which deals with the public sector is there to investigate corrupt activities, I would say it falls into the same category as the internal affairs unit. If it is there to investigate matters similar to the way in which the internal affairs unit investigates matters of discipline or misconduct, then it may be necessary. However, the ACC needs to be empowered and should be responsible for investigating all issues of corruption; so if the public sector investigation unit investigates corruption by public servants in the Police Force, then that should go the same way as the internal affairs unit.

Mr TRENORDEN—I guess it is reasonable for me to presume that you are an experienced investigator, having served for a long time in the Police Force. I am concerned that you are so strong in your point of view about the lack of

professionalism in the Police Force; and that is not just your point of view; we read that view in the Press regularly. What is going wrong?

Mr Ayton—My criticism there was about the internal affairs unit's professionalism, but there are problems in the Police Force that we undertook to fix starting in 1993. There has been a lack of training, a lack of mentoring support and a lack of insistence on quality; and that is manifesting itself across a wide range of areas. That is not to say that all police are incompetent. There are many good, competent and professional investigators. However, unfortunately we are seeing far too many bungled investigations. We need to lift the level of professionalism and the level of training. The minute an organisation finds itself in difficulty with its finances, the first thing that is cut is training. It has happened in the Police Force in every year of which I have known. The Police Force is up against it for finances this year, and I warrant that the first thing that has gone is training.

Mr TRENORDEN—You talked about three instances, in one of which the events surrounding an investigation were made very public. Is it reasonable for me or anyone else to assume that there was some deliberate activity in the arrangements whereby evidence was filmed and not filmed and evidence was in one place and not in another place, or is that straight incompetence? I should not say that particular case, but should we be concerned about the ordinary police officer, the investigator from internal affairs and the Anti-Corruption Commission interacting because they do not like each other - that is really what I am saying - or is it just that investigations are bungled?

Mr Ayton—As you said, it is difficult to focus that question with that particular case background because we do not know. However, the answer is yes, you need to be concerned. It is eminently possible for investigations to be carried out where the objective is to not get a result. It is eminently possible, and you need to be concerned about that.

Hon J.A. COWDELL—Is there a necessity for some overlap in our anti-corruption agencies - we obviously have the police professional standards unit, the ACC, public sector standards, the Ombudsman and so on - or do we gain some false sense of comfort from this overlap that it is contributing more to the fight against corruption than we should attribute to it? I add one follow-up question: Do we need a police phone tap unit and a separate ACC phone tap unit, and for the other agencies to go that way as well?

Mr Ayton—Starting with the last question, the ACC needs its own separate telephone interception system. Police investigate crimes committed by members of the public; the ACC investigates crimes committed by police and others in government service. Those two capacities should never be linked. Therefore, yes, we need to empower the ACC to tap telephones, to do its own listening and covert surveillance and all of the things necessary, and we must make sure that it is a capable and professional unit apart from the police. Having said that, I have lost the thread of the first part of the question.

Hon J.A. COWDELL—The first part of the question was: Do we take false comfort from the fact that we have some level of overlap? Although we are concerned about spending money on all these different agencies that tend to overlap, we take comfort

from the fact that that may provide some level of accountability on the basis that one is looking at the other.

Mr Ayton—I think the only people who feel comfortable are those who do not know what is going on. If we take comfort, it is false comfort, because the operations of all of the various layers of control are not functioning well, do not seem to interact with each other and often work against each other. Therefore, yes, if we are comfortable, it is a false sense of comfort.

CHAIR—Thank you for your evidence, Mr Ayton. You will receive a transcript of this session of the hearing. Will you please correct it and return it to the committee as soon as possible.

Proceedings suspended from 10.54 a.m. to 11.15 a.m.

[11.15 a.m.]

URQUHART, JUDGE PAUL DAVID,
Commissioner, Police Integrity Commission of New South Wales,
111 Elizabeth Street,
Sydney, examined:

Judge Urquhart—I have read and understood the document relating to witnesses. I will present what others may refer to as a paper, but which I would not glorify with that name. I had intended to speak to it; however, in view of some of the matters I have already heard I will deal with some parts of it more thoroughly than I had earlier thought I would.

I begin by extending my thanks to the Joint Standing Committee on the Anti-Corruption Commission for inviting me to attend this open hearing on the effectiveness of the Anti-Corruption Commission. The evaluation of organisational effectiveness and the issue of performance measurement have deservedly become issues of some currency among external oversight and investigation agencies such as the Police Integrity Commission and also their parliamentary committees. I am sure no one will think it discourteous of me if I refer to the Anti-Corruption Commission henceforth as the ACC. I will not think it discourteous of my organisation if others follow my lead and refer to it as the PIC. At the outset, I note that whereas the jurisdiction of the ACC extends to all public sector agencies in Western Australia, including the Western Australia Police Force, the PIC is concerned only with the prevention, detection and investigation in New South Wales of police misconduct. My remarks, therefore, are necessarily limited to the fight against but one of the forms of corruption that the ACC is charged with investigating.

In preparing this address to you, I was asked to consider a range of themes and questions relating to the subject of today's open hearing. They are far-reaching questions with which this joint standing committee, and ultimately, the parliament of this state, will need to come to terms. I trust my remarks and observations about the work of the Police Integrity Commission, and to some extent, that of the Royal Commission into New South Wales Police Force – the subject I will confine myself to – are helpful and relevant to the committee's deliberations. The briefcase I brought with me is on the carpet and I come from the east, but I am neither arrogant nor patronising. I do not wish to be thought of as a carpetbagger, but simply as someone who is here to assist. The issues I will discuss today concern the different models that have been identified for anti-corruption agencies; the oversight and accountability arrangements of the PIC; its performance and effectiveness; and its powers and practices. Under the latter heading, I will deal with the PIC's discretion to hold public and private hearings; the rights of witnesses called before the PIC; the powers of the PIC to compel witnesses to give evidence at hearings; and the control of the courts over the exercise of the PIC's power for the purpose of protecting the rights of witnesses and those subject to investigation. In that regard, I will also refer to the role of the Inspector of the Police Integrity Commission.

The committee has expressed an interest in the range of models available for anticorruption agencies in Australia and abroad, and I will commence my remarks by discussing the issues of organisational effectiveness and performance. Justice Wood gave detailed consideration to the different models for dealing with police complaints

and corruption in his first interim report of February 1996. He reviewed four different models: the complete self-regulation model; the complete external investigation model; the internal investigation with external oversight model; and the combination of internal and external investigation model. I had thought I would skip a few pages of my submission; however, it seems we might all be assisted by covering what I have prepared.

The complete self-regulation model does not allow for the existence of an external investigative or oversight body. Therefore, it is not germane to the committee's questions. However, it is worth reviewing some of the weaknesses of this model to ensure a complete and balanced treatment of the subject. Justice Wood was unequivocal about the inappropriateness of this model as a means for dealing with police complaints and corruption. He stated in his interim report -

In Australia and most other Western democracies, complete self-regulation of police complaints and corruption investigation is considered unacceptable . . .

For the latter half of this century, it has been suggested that some form of independent external scrutiny is a necessary element in ensuring public confidence in police accountability.

He concluded -

There is now little argument about whether or not there should be independent civilian involvement in the resolution of police complaints. Current debate centres upon the form such external scrutiny should take.

Having heard the previous submissions, it appears that it is a continuing debate for some, or all. At the other end of the spectrum is the complete external investigation model. As its name indicates, all investigations into police corruption are carried out by an agency entirely external to the Police Service. The model has some strengths: it affords the highest degree of independence in investigations into police corruption and, in theory, should inspire the greatest level of public confidence. However, Justice Wood expressed caution -

Little systematic analysis has been conducted of the consequences of the transfer of responsibility for police complaints and anti-corruption away from police control to an external agency.

The internal investigation with external oversight model was, when the interim report was released, the system operating in most Australian states. I refer to this in my submission. The committee may study it; however, I am sure its members are thoroughly familiar with the model. I also refer to developments of that type of model outside Australia – England, Wales and New York – but I will not mention those now.

I will now address what the royal commission recommended to the New South Wales government. In analysing the strengths and weaknesses of the internal investigation with external oversight model, Justice Wood concluded that it allowed for some level of independent scrutiny, thereby increasing public confidence in police accountability. Another advantage was that because the Police Service retained prime responsibility for investigating complaints, pride is preserved through the role played in self-regulation and accountability for misconduct and corruption.

Justice Wood recommended the fourth model, which involves investigation by police, a watchdog to oversee that where necessary and an investigative role by that watchdog in certain types of complaints and/or corrupt activity. The PIC was originally referred to as the Police Corruption Commission, but was later renamed the Police Integrity Commission in the act of parliament which constituted it. The PIC arose from the recommendation of the royal commission, with the principal functions of detecting, investigating and preventing serious police corruption.

The royal commission recommended that the PIC should be able to conduct an investigation of its own motion, without needing to wait for a complaint to come to it. It recommended that it have the full range of coercive power necessary to detect and investigate serious police corruption, being the powers that the royal commission had, and indeed, more power than the royal commission had, because it did not have telecommunication interception powers, which the PIC has. As I have said, ultimately, those recommendations were accepted by government and by the parliament.

The need for a purpose-built agency dedicated to fighting serious police corruption was ultimately reflected in the objects of the act of parliament which constituted the PIC. I venture to suggest that you may be assisted in hearing from me what you can read in the act if you want to. The act states -

The principal objects of this Act are:

- (a) to establish a body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct, and
- (b) to provide special mechanisms for the detection, investigation and prevention of serious police misconduct and other police misconduct, and
- (c) to protect the public interest by preventing and dealing with police misconduct . . .

I will not take you to the functions of the PIC, save and except to summarise them as detecting, investigating and preventing police misconduct with a statutory requirement that it turn its attention principally to serious police misconduct.

The structure of the PIC as far as the conduct of investigations is concerned utilises a multidisciplinary approach in which solicitors, police investigators, intelligence analysts and researchers, and other disciplines all work together. By the same act of parliament which constituted the PIC, it was prevented from employing New South Wales police officers or former New South Wales police officers, for good reason. I will not trouble you with telling you why, because it will be self-evident to you, having read the interim report of the royal commission. I will not go into any more detail about the work that the PIC is doing at the moment.

Some of you will recall that at the parliamentary committee's working group in the chamber of the legislative assembly in Sydney in September last year, matters were raised concerning the essentials of effective external oversight organisations. I would like to revisit some of those, albeit in passing, as a means of concluding my remarks on the different models for anti-corruption agencies. Principally, I believe it important

to accept that there is no model that can be applied off-the-shelf, as it were. What may be regarded as the immutable characteristics of any effective external oversight and investigation model are all dependent, to varying degrees, upon the context and environment in which that particular agency operates on day one, and on day 101, and on day 1,001, because that context and the environment may be different on day two from what it was on day one. Decisions regarding the precise nature of the powers, focus, resources, and so forth, need to be made after detailed consideration of the nature and extent of the corruption one is endeavouring to counteract. Some of the questions that may be considered are these: Should the agency have the power to hold hearings? If so, should it have the discretion to hold those hearings in public or private? Should the agency play an educative role with regard to corruption prevention, or only an investigative role? Should the agency have the power to intercept telecommunications? If so, should have its own dedicated capacity to do that, or should it share that facility with some other law-enforcement agency? What degree of externality or separateness should the agency have to that, or to those, it is overseeing? For example, should it have seconded staff from the agency or agencies it is overseeing? As I said to you, we do not employ New South Wales police officers. We have a professional working relationship with the internal affairs branch of the New South Wales Police Service. As I said on another occasion in a different place, that needs to be understood as a very demanding and sensitive relationship, and we and they must at all times have utmost in our minds that it is an arms-length professional relationship. The level of effectiveness of the agency will depend upon how thoughtfully and accurately those questions that I asked a minute ago, and the many more that, no doubt, you can come up with, have to be answered.

I turn now to the oversight of the PIC. A number of questions posed by the committee seek a comment on the issue of oversight for the ACC. The issue of accountability of the PIC was considered expressly by Justice Wood in the first interim report. He concluded that it should be open to public review and accountable to the parliament of New South Wales. He recommended that the position of Inspector of the PIC be established. That latter recommendation was accepted, and part of the act which constituted the PIC contains provisions about the role of the inspector. From some of the things that I heard earlier today, it may be of assistance to you if I remind you that his principal functions are to audit the operations of the commission for the purpose of monitoring compliance with the law of New South Wales; to deal with, by reports and recommendations, complaints of abuse of power, impropriety, and other forms of misconduct on the part of the commission; and to assess the effectiveness and appropriateness of the procedures of the commission relating to the legality or propriety of its activities. He can commence to exercise one, all or some of those functions if something is referred to him, or on his own motion if he wants to. It is entirely a matter for him.

He can investigate any aspect of our operations or any aspect of the conduct of any of our officers. He is entitled to full access to the records of the commission, and to take copies. He has a proactive role, and from day one I saw the desirability of his having the opportunity of working covertly if he wished to do so. Therefore, he does not need to ask me for records relating to a matter. He can access them instantly on our electronic network and no-one will know about it, save and except, of course, that with information technology being what it is today, and with the very real need for audit trails to always be available, I could, if I wanted to, get somebody in my information technology area to breach a direction that I had previously given him, but I would not do that. Therefore, opportunities exist under the PIC act for persons who

have a grievance against the commission to go to the inspector. In dealing with complaints from aggrieved persons, the commission as a matter of course informs those persons of their rights to make a complaint to the inspector. He does what he wants about it. If he asks questions or expressly asks for documents, those requests are complied with. The parliamentary Joint Standing Committee on the Police Integrity Commission does not have a role in dealing with complaints. It refers complaints made to it to the inspector. Its success as an independent anticorruption agency is tied to the perception and reality of the inspector's independence and his power to effectively oversee the commission's work. This clearly demonstrates to the community of New South Wales that the PIC is, and can be held, accountable for what it does and how it does it.

I turn now to general issues about effectiveness and performance measurement. I started this address by stating that issues of effectiveness and performance measurement have currency among external oversight and investigation agencies. Indeed, they are matters the PIC is continuing to address, and it will always do so because of the dynamics in which those matters must be seen to live. They are not static - nor should they be seen to be; otherwise, their value is lost. My knowledge of similar organisation is that they regard those indicators as being in the same dynamic situation. I note that the questions under the second theme in the "Themes and Questions" document which the committee circulated before this open hearing refers to such issues.

Although the Police Integrity Commission and the New South Wales Police Service are concerned with detecting and investigating serious police misconduct, some important differences exist between the focus of the two agencies. These have implications concerning the way the two should be measured and their effectiveness evaluated. Some of the investigations conducted by the PIC to date have been resource intensive and complex; nevertheless, they had no immediate prospect of criminal prosecutions. Each case had the potential for improvement in the Police Service through identifying service-wide problems which had left the door open to acts of serious police misconduct. There was a clear public interest in an independent body undertaking the investigation.

Measuring the PIC's performance and effectiveness in this kind of work solely on the basis of the number of prosecutions arising is simply not valid. What value does one place on an investigation that achieves no prosecutions, but considers and resolves allegations of impropriety by police in awarding the security contracts for the Olympic Games? The issue had a higher level of interest in New South Wales, and was one of the issues investigated by the PIC under operation Warsaw. What value does one place on an audit of internal police investigations which led to no prosecutions, but flagged critical shortcomings in the standard of police internal investigations? If these deficiencies are rectified, the audit will almost certainly lead to organisation-wide improvements in the Police Service's standard of internal investigation and a greater number of corrupt officers will be detected and prosecuted. Such an audit was very recently published and presented to the New South Wales parliament by the PIC under the operation known as Dresden.

That is not to say that the number of prosecutions is not a valid indicator of performance in respect of investigations - it clearly is. Troubles begin where quantitative indicators, such as that number, are seen as the sole indicator. A quantitative and qualitative combination of valid indicators is required.

I move now to powers and practices. I know from the previously circulated "Themes and Questions" document that the joint standing committee has a particular interest in the powers and practices of the Anti-Corruption Commission as far as they relate to the following: compelling witnesses to appear before the commission or its officers and to answer questions put to them; protection for the rights of witnesses; and whether the ACC act should be amended to allow for public hearings. I am a New South Wales, not a Western Australian, lawyer. Therefore, what I say about the ACC act is to be accepted with that qualification. I note from my examination of the act, together with the committee's fifth report headed "Amending the ACC Act", that the act establishes a hierarchy of powers such that the ACC may conduct preliminary inquiries during which it may request any person to supply information, whether documentary or non-document. The committee observed that this power may be "interpreted as permitting the ACC to compel evidence from a person at an interview conducted by the ACC or its officers". The scheme under the ACC act has similarities with, and some significant differences from, the regime which applies to the Police Integrity Commission. This involves public or private hearings, and a special investigator. We have one but not the other.

The PIC may conduct a preliminary investigation but it may not require the production of a statement of information from any person, whether as part of a preliminary or full investigation, except if that person is a public officer. If that person is not a public officer, the information is obtained as evidence during the course of a hearing.

I repeat that it is not my intention to offer anything in the nature of advice in answer to the questions posed. I certainly do not wish to become embroiled in any, albeit pleasant, discussion about how much corruption, if any, there is in Western Australia, and which particular piece of string of which length one needs to extract from which particular pigeon hole to measure it.

I move to the question of public and private hearings. The PIC has at its disposal a range of powers which may be exercised for the purposes of, or in connection with, an investigation. Among those is the power to hold hearings. Our act says that a hearing can be held "for the purposes of an investigation". A hearing is a module within an investigation. One does not have the investigation in one place, and hold a hearing somewhere else when the investigation is finished. The hearing is a module of the investigation. We can have a hearing in public or in private as decided by the commissioner - namely, me.

The hearing represents parts of the investigative process, as I have said. In determining the manner in which a hearing is to be held, I am required, as a matter of law, to have regard to any matters that I consider to be related to the public interest. A variety of considerations may be relevant to determining where the public interest in a particular matter lies. There are some reasons that I will suggest to you now, and there are others: Firstly, to allay public disquiet about lack of appropriate action in response to a crisis in public confidence, thereby helping to restore public confidence in the Police Service. I will not take you to what the Minister for Police said during the second reading speech on this matter but what he did say reinforces the validity of that reason.

Another reason that it may be in the public interest for a hearing to be a public hearing is to dispel suspicion and mistrust about the use of the investigative processes which involve the use of compulsive powers, to demonstrate that the investigative process generally, and the exercise of compulsive powers in particular, is conducted fairly, properly and with integrity, and thereby to engender in the public confidence in the operations of the commission and confidence in its recommendations. This is especially important when the matters under investigation are usually characterised by the cloak of secrecy. Always remember a police officer who is involved in corrupt conduct is an expert in detection and counter surveillance.

Another reason that it would be important in certain circumstances to have a public hearing is to inform and enlighten the public about the nature and extent of police corruption that is under investigation, encouraging potential informants to come forward with relevant information. Another reason is to deter police officers from engaging in police misconduct. Another reason through the use of electronic surveillance is to demonstrate to other witnesses the futility of lying in the witness box in the Police Integrity Commission.

One of the reasons that in the public interest a hearing should be held in private is to avoid potential prejudice to the administration of justice. A section in our act states that we can have a hearing in private, not that we must, if to hold it in public might prejudice the administration of justice. Another reason would be to ensure the safety of witnesses and other persons who may be in physical danger if they were to give their evidence in public. Another reason is to avoid unnecessary damage to reputations, which is a very important consideration. It is a large area that would take a long time to discuss meaningfully. However to refer you to some remarks of a former Judge of Appeal in New South Wales, then Mr Justice Mahoney, in the matter of the Independent Commission Against Corruption against Chaffey and others. Its citation will be in the paper that will be distributed. The act of parliament setting up the ICAC is very much like the act of parliament setting up the PIC. He had this to say in relation to ICAC -

There are competing public interests here. It is undesirable that apparently respectable people holding positions of public responsibility should be subjected to the ordeal of facing serious allegations from witnesses who begin the hearing at least with no bank of credit as it were, allegations which might seriously affect or even destroy the career of their subject and which can only be met by a simple contest of oath against oath. On the other hand, particularly having regard to the charter of this Commission in exposing corruption in public office, it may be that some allegations are so serious and go so deeply to the heart of the administration of the law in this State that it would be unconscionable for the Commission to take, of its own accord, the decision to suppress them rather than allow them to be made and contested in the public forum.

Another reason for holding a hearing in private might be to preserve the privacy of confidential arrangements, to avoid prejudicing an ongoing investigation where it is necessary for there to be a hearing to find out what the evidence is of one witness so that the investigation, of which the hearing is but a module, can be progressed according to the operational plan that takes that evidence into account. It is also likely to be counterproductive to the commission's ability to perform its statutory functions, and therefore against the public interest, for particulars of confidential methodologies

used by the PIC or used by other law enforcement agencies, to be disclosed. A simple example would be how a particular listening device was secreted in a particular hide in particular premises.

There is no presumption in New South Wales that a hearing in the PIC must be held in public or in private. That is a clear consequence of the decision in the ICAC and Chaffey case that I mentioned a few moments ago. The then Chief Justice of New South Wales, presently the Chief Justice of the High Court of Australia, described the effect of the amendment that had been made to the ICAC Act as leaving hearings, public or private, as being an open matter, subject to that discretion.

I turn now to the giving of evidence. The PIC can summons a person to appear before the commission at a hearing and give evidence. If the person does not turn up, the person can be arrested. That is a potential contempt and the person can be referred to the Supreme Court. A witness is not entitled to refuse to answer any questions or produce any document or any other thing on the ground that the answer or the production may incriminate or tend to incriminate him, nor can the witness rely on any other ground of privilege, such as client-legal privilege. The only exception is where the answer or the production would reveal a communication between a legal practitioner and the person for the purpose of providing or receiving legal professional services in relation to that particular appearance before the commission or a reasonably anticipated appearance of that person before the commission.

Balanced against the power of the commission to compel the giving of evidence is the protection that an answer made or a document or other thing produced after objection by the witness at a hearing is not admissible in any civil or criminal proceedings in evidence against that person, but there are some exceptions. The evidence can be used in disciplinary proceedings; it can be used in proceedings that are in the nature of the commissioner's confidence, when the commissioner does not have confidence in the police officer; and it can be used to prosecute a witness for an offence under the PIC Act, including perjury or contempt under the PIC Act.

Like witnesses appearing before a special investigator appointed by the ACC, a witness appearing before the Police Integrity Commission is entitled to be informed of the general scope and purpose of the hearing. However, in circumstances in which it could seriously prejudice a PIC investigation, the person does not have to be informed of the general scope and purpose, and I think the Anti-Corruption Commission Act does not provide for that. Something which is important for members to be reminded of is that an agency in New South Wales called the Legal Representation Office was set up during the course of the royal commission and continued thereafter. When somebody is served with a summons to come to one of our hearings, a notice to produce a document or statement of information, we attach a statement advising that person that if they would like legal advice and/or representation, they should go to that office which has been specially set up. My experience is that it has better enabled people to know what are their legal rights and for those legal rights to be safeguarded.

A committee is interested in whether the control of courts over the exercise of powers by the ACC is sufficient, or adequate even, to protect the rights of witnesses. So far as the PIC is concerned, like most other agencies of government, it is amenable to judicial review. There are remedies in the nature of prerogative writs, and I will not bore members with the history of that. I have already mentioned the role of the inspector. I immediately say, holding my head up, that no challenge has yet been

made to the Supreme Court against an exercise of power by the PIC. Although complaints have been made to the inspector, none has been upheld. This may or may not serve as an adequate indication that the commission has exercised and is exercising its powers appropriately, but it would be remiss of me not to mention it. The commission is conscious of the risks posed to witnesses such as unnecessary damage to reputation, which I have already mentioned. Even if a hearing is conducted in public, because the public interest requires it, that risk may nevertheless still continue. There is something we can do about it. We can prohibit the publication of that particular part of the evidence, we can give the witness a code name or we can do other things that may accommodate a balance between what the public interest requires as a whole in relation to the hearing and what the public interest requires insofar as that aspect of the evidence of a particular witness is concerned.

It is important to note that the PIC observes the rules of procedural fairness, in relation to not only witness, but also everyone who may be criticised in a report which we make to Parliament or people who might otherwise have their rights, interests and legitimate expectations affected by publication of that report. We give them an opportunity to make submissions. Evidence that is critical of them needs to be tested by them. Other matters deal with the procedural fairness aspects of it. However, it is important to mention it. I acknowledge that the circumstances in which a witness may resist giving evidence - that is, a witness may say, "I do not want to give evidence" and is supported by the law in that - are extremely limited so far as the PIC is concerned. That is a telling sign of just how gravely the New South Wales Parliament viewed the seriousness of the problem of corruption within the New South Wales Police Service. It had been exposed during the royal commission, and it was clear at the conclusion of the royal commission that that exposure would need to take place at least for some time. In my respectful opinion, these are the types of public interest factors which must be taken into account when considering issues such as the structure and powers of any investigative agencies. The PIC takes the approach that police misconduct and corruption appear in a variety of circumstances. The Parliament of New South Wales has equipped the PIC with a variety of tools in order to fulfil its statutory charter to investigate that misconduct. Some of those powers are far more intrusive than others. They need to be handled very carefully and sensitively and at all times in accordance with the law. Provided that appropriate and careful deliberation is given to every proposed use of a special power, the risk that the rights of witnesses and others will be unnecessarily overridden or abused can be accommodated and adequately and sufficiently dealt with. PIC scrutinises everything internally by way of an application to me for an exercise of a power. Professionals deal with what they are internally accountable for. Covertly and sometimes overtly the inspector has his watchdog role. Mr Chairman, I am conscious of your saying to me that I have exceeded my limit. Although I have denied that I am a carpetbagger, I will say no more.

CHAIR—I would never say that you have exceeded your limit. It has been a very worthwhile contribution. I will forgo the Chairman's privilege of asking the first question and invite questions from members of the committee.

Mr BLOFFWITCH—Do you think the parliamentary inspector has made a difference? Are you well accepted by the Police Force and the public in New South Wales? Do you think the inspector plays a role in that?

Judge Urquhart—In any law enforcement agency there will always be a feeling that the watchdog should not be there. For a time, lawyers - I come from the profession of the law - thought that only lawyers could investigate recalcitrant lawyers. That can be applied to whatever occupation, profession or pursuit in life we wish. I am sure that good police say to themselves, "Because we are good, we really do not need the watchdog." The discerning ones, however, realise that it is also a good management tool. However, it is a continuum. I would not be arrogant enough to suggest that the PIC is well received by all police.

Mr TRENORDEN—When you set up a Star Chamber or, in your words, an institution with special mechanisms, how serious is the conflict? Is that conflict between the standing laws and courts and your role? Is that something to worry about?

Judge Urquhart—I do not understand what you mean by conflict between us and the courts.

Mr TRENORDEN—The laws of the land have been put there over many years. You have already said quite rightly that there are special arrangements because it is a special circumstance. To me there seems to be a conflict between that special activity and the standing laws.

Judge Urquhart—There is no conflict, because the act of parliament that sets up the Police Integrity Commission, or these special agencies, gives those agencies the special powers. For example, the common law may have said that a person cannot be compelled to say something which will incriminate him. However, my act says that that does not apply, because that is what parliament has decided, so there is no such conflict at law.

Mr TRENORDEN—There is a conflict in practice. Is there a balance between your role as the manager - that is, when, how, and if investigations will occur - and managing the law; that is, those things you talked about towards the end of your address about public and police perception?

Judge Urquhart—That is a question that goes into the management area. It is very important in any organisation, whether it is a partnership of two people running a plumbing business or BHP, that at all levels where management has a role to play, it is good management. Good management is management that knows not only when to delegate, but also when to take a hands-on role. The smaller the agency the more the ability to have a hands-on role. In an agency of a law enforcement-type, there is also a temptation for the hands-on role to be taken when it should not be. We also have internal checks and balances such as the PIC's annual operations advisory group, so that I can be removed into a situation where I am not constantly making decisions in an investigative area in which I do not have expertise. They are checks and balances of a management-type nature, and I have not found myself in any conflict situation.

Mr THOMAS—I am concerned about your comments on public hearings. Under the ACC act in this state, and from my recollection about the PIC act in New South Wales, essentially the ACC and the PIC are investigative bodies and their job is to investigate and assemble evidence and then give it to somebody else to deal with. If it is a criminal matter, it will go to the DPP and the courts; if it is a matter within the public sector it will go to the commissioner, or whichever is the appropriate authority.

My concern is that public hearings will not aid investigation, and they may lead to people being pilloried in public for reasons which have to do with the standing of the organisation or, in the broader sense, with politics, rather than the detached, objective investigation of a situation by the courts, or whatever is appropriate. We have had a situation in this state in the past year in which the ACC has been subject to fairly trenchant and, in many cases, uninformed criticism in the media. If the ACC were allowed public hearings it might be tempted - I am not suggesting it would - to hold public hearings with high profile witnesses to stage a media stunt and get attention - favourable as it would see it - to improve its ratings. I am concerned that if there were a capacity for public hearings, that right might be invoked for organisational and political reasons rather than for the detached investigation of evidence.

Judge Urquhart—The answer to the member's question lies in the word 'discretion'. Once we arm anyone with a discretion, there will be the risk that it will be exercised inappropriately. I raised the concept of an investigative agency. True, we do investigate, but we also have the function of preventing police corruption, and one needs to bear that in mind. The member's principal concern depends upon who is given the power to exercise the discretion. If the discretion is a good one to have, it is a good one to give to someone, and one cannot say that it should not be given to someone, but because of the danger that one day someone may exercise it inappropriately, we will never give it.

Mr THOMAS—I cannot see that investigations will ever be enhanced by public hearings. That seems to be the primary point. If that discretion does not exist, it will not prejudice the capacity to investigate, and the body will fall back on other things, which I accept.

Judge Urquhart—I understand what Mr Thomas is saying. However, because public hearings are part and parcel of an investigation, they will have an investigative aspect as well. That is something we cannot ignore either. It is not simply a hearing for the sake of having a hearing. No doubt there will be an operational plan in which the hearing has a role to play. Mr Thomas is asking what is there to prevent that role from being a waving of the flag role and nothing more. That depends to whom the power is given.

CHAIR—Regrettably I will need to call a halt to questions at this stage because we are exceeding our time. Judge Urquhart, thank you very much for your presentation. You will receive a transcript of your evidence, and we ask you to read it carefully, correct any errors it may contain, and return it to the clerk.

I bring to the committee's attention a matter concerning the release of the written submissions. The written submissions are evidence to the committee and can be released only when the committee reports to parliament or resolves otherwise. It will be necessary for the committee to resolve that copies of the witnesses' written submissions be released to the public immediately following the witness appearing before the joint standing committee. If the committee so resolves, then privilege will attach to the written submissions so released.

Resolved (on motion by Hon Derrick Tomlinson):

That copies of the witnesses' written submissions be released to the public immediately following the witness appearing before the joint standing committee

[12.18 p.m.]

O'CONNOR, MR TERRY,
Chairman, Anti-Corruption Commission,
66 St George's Terrace,
Perth, examined:

Mr O'Connor—Before I commence the paper I have prepared, of which I have provided a copy for all members, I will take the opportunity of commenting on a couple of things said by preceding speakers. Mr Dean made a number of, I suppose, predictable assertions. However, I was surprised by his statement that the union believes that all allegations of corruption should be thoroughly investigated. I say that I am surprised, because the union has directed its members that they should not respond to ACC requests for interview unless they receive a notice compelling them. Of course, as Mr Dean has noted, the ACC cannot do that in the case of an investigation. He also asserted that the ACC is the most powerful such body in Australia. Patently that is not correct. As Judge Urquhart indicated, the PIC has greater powers; it can compel witnesses, which we cannot do. Mr Dean also made some reference to the problems that the union has had with the ACC and seemed to assert that a lot of shortcomings had been demonstrated by actions taken by the union. The union has taken a number of actions against the ACC and, with the exception of the action with respect to the Miller inquiry, all of those actions have failed. He also said that junior investigators were given the powers of the ACC. That is simply not true. No junior investigator can exercise any of the powers of the ACC. The commission in accordance with its charter has delegated the right to use any of its powers to its three most senior employees. They are the only people who can use those powers. Finally, his complaints about what happens with the information that is collected by the ACC and given to the Commissioner of Police are obviously matters that should be taken up with the commissioner and not with the ACC or this committee.

Mr Ayton has said a number of things with which I agree. In general terms, some of his comments were helpful. However, his criticisms of the ACC are in many respects an outrageous distortion of the facts. One significant fact he did not mention is that he has grievances against the commission, and indeed has followed up on those grievances by complaining to this committee. Some of his criticisms need to be seen in that context.

The ACC accepts that the aftermath of the Miller inquiry was a debacle and accepts that it was at fault. Those events occurred three years ago. We obviously regret them and accept that we made a mistake.

The other two matters Mr Ayton referred to were outrageous misrepresentations made by the Police Union that he has simply adopted without worrying about whether they are true. The ACC did have an involvement in the so-called Kalgoorlie matter. The fact is that the sting operation to which he referred was being run by the internal affairs unit; it was not being run by the ACC. Therefore, his criticism of the ACC in that respect is unjustified and unfair. The prosecution of the officer in charge of the armed robbery squad was again undertaken by the internal affairs unit. A search of the squad was conducted as a result of an inquiry being undertaken by the ACC quite unrelated to the drugs discovered. Police management at the time were concerned that

if the ACC executed a search warrant, which was the intention, there would be a huge industrial problem. They specifically requested that the search be carried out by the internal affairs unit. Regrettably, the ACC agreed to that process and we have heard about the subsequent events. The discovery of the drugs in the officer's locker was unexpected and the internal affairs unit dealt with that matter. It prepared the brief. The DPP did not proceed with that prosecution because the Police Union lawyer produced statements from other armed robbery squad officers that they also had access to the locker and that any one of them could have put the drugs there. The DPP did not proceed for the specific reason that he was unable to excluded beyond reasonable doubt that someone else may have placed the drugs there.

Mr Ayton also made two other outrageous claims. Firstly, that there was disquiet that the ACC does not have the fortitude to take on high levels of government. I absolutely dispute and reject that. The second allegation was that the ACC starts with a predetermined result in mind and works to get that result. These are outrageous slurs and I challenge Mr Ayton to produce some evidence. In fact, I challenge him to provide that evidence to the Premier and to invite the Premier to establish a special inquiry into the matters under the Public Sector Management Act. The ACC will support the establishment of such an inquiry. Having got those issues off my chest, I will proceed with my formal paper.

Implicit in the topic for this hearing by the committee, namely the effectiveness of the Anti-Corruption Commission, is that the committee has some notion of what an "effective" ACC might have achieved or done. On the other hand, the themes and questions paper circulated by the committee suggests a misunderstanding of the powers and functions of the ACC such that the committee's view of an effective ACC is unlikely to be attainable because the ACC does not have the powers and authorities to permit it to be effective in the way now apparently envisioned.

It is important for everyone to understand what the ACC can and cannot do. The ACC cannot prosecute criminal offences; it cannot direct agencies or authorities to institute disciplinary actions; it cannot direct agencies or authorities to change or modify practices and procedures to avoid the opportunity for criminal or corrupt conduct by those they employ; it cannot audit agencies to ensure that they have effective practices, procedures and controls to minimise the opportunities for corruption or to see whether existing practices, procedures and controls are adhered to; and it cannot embark on an extensive education program to change attitudes in the public sector.

To paraphrase the recital of the ACC act, the commission receives allegations of corrupt or criminal conduct and provides for the way in which the allegations are to be investigated, and no more. Having received the result of the investigation, it passes the information to an appropriate authority or agency to deal with in whatever way it thinks fit if that is appropriate. The role of the ACC only needs to be thus spelt out for people to realise that it can be only one element of a much larger strategy to minimise corruption in the public sector. The ACC and like bodies are treating only the symptoms of the disease not the disease.

In a society which tolerates cricketers taking payments from bookmakers, radio commentators being paid for positive comment and International Olympic Commission delegates receiving gifts and hospitality from cities bidding for the Olympic Games, it is obvious that accepted standards of behaviour are under attack. It is not surprising, therefore, that around the world we are seeing examples of

corruption, and criminal and improper conduct among public officers. The tragedy of WA Inc is but one example. The public sector is after all a reflection of society itself. This cancer cannot be eradicated by treating the symptoms. Although treatment of those symptoms is a vitally important part of the cure, it is only part.

We need a number of things if we are really serious about fighting improper conduct in the public sector. The following occur to me as some things that are needed -

- (1) Clearly, community education is important.
- (2) The implementation of controls, practices and procedures which minimise the opportunity for people to engage in improper conduct.
- (3) A supervisory structure, within each agency, which ensures that failure to adhere to practices and procedures is quickly identified and addressed.
- (4) An internal audit function to check on compliance and whether other controls and procedures need to be adopted.
- (5) Strong disciplinary action by management whenever failure to adhere to mandated procedures is identified.
- (6) A structured and effective approach to dealing with and protecting people who expose corrupt, criminal or serious improper conduct.
- (7) An agency, such as the ACC, to take responsibility for the investigation of allegations of corrupt, criminal or serious improper conduct with power, where appropriate, to report publicly on the facts disclosed in an investigation and to conduct public hearings. I will say more about that later.
- (8) A prosecuting authority to consider the evidence collected by the investigation agency and to determine whether prosecutions should be launched; and, if so, to conduct the prosecution.
- (9) A mechanism to ensure that agencies and authorities consider evidence of serious improper conduct collected by the investigative authority and institute appropriate disciplinary procedures.

The role of the ACC, when looked at in this context, is only part of the fight against improper conduct in the public sector. Thus, in considering a topic such as the effectiveness of the ACC, all we should be considering is whether the ACC is effective in providing for the manner in which allegations of corruption, criminal conduct or serious improper conduct are investigated and reported on where some evidence of such conduct is discovered.

In the context of those remarks, I will now address the questions posed by the committee. I will then move to pose the questions that I believe should have been asked by the committee and endeavour to answer them.

I refer first to the extent of corruption in Western Australia. I have assumed that when this question speaks of corruption, it is speaking of the matters within the jurisdiction of the ACC; namely, corrupt conduct, criminal conduct, criminal involvement or serious improper conduct. Leaving aside the Police Service, the commission believes

that the extent of such conduct in the public sector mirrors the situation in the general community. It is no better and no worse.

The commission has referred briefs to the Director of Public Prosecutions and is currently investigating other matters which it expects will result in at least three briefs to the DPP for that office to consider whether criminal charges should be laid against public officers, other than police officers. Other matters have been investigated by the police in respect of which the ACC has had an oversight role, and which have resulted in prosecutions of public officers other than police officers. Having said that, the commission does not believe endemic or systemic corruption exists within the public sector. However, the situation is different within the Police Service. The commission believes significant problems exist in the Police Service, mainly centred on the self-appointed elite, the detective cohort, or what used to be called the criminal investigation bureau. By and large, the great majority of uniformed officers are hard working and honest people.

Regrettably, for a number of detectives it is not possible to reach the same conclusion. Among detectives, a widespread disregard of standard operating procedures appears to be permitted because, in many areas, supervision is, at best, perfunctory. Many detectives appear to spend significant parts of their working day engaged in other than police work; for example, the long lunch seems to be a regular institution. Many appear to have inappropriate relationships with criminals, which relationships are not in accordance with standard operating procedures.

Even more worrying is that there is evidence to suggest that a not insignificant number of detectives are engaged in criminal or corrupt conduct and a larger number, if not themselves actually involved, are either incredibly naive or turn a blind eye to what is going on. It is not clear whether people turn a blind eye because of their concern over the consequences if they do not report inappropriate conduct or for some other reason. It appears that many officers who would resent its being suggested that they are unethical, nevertheless adhere to the police code of silence and will not report or give evidence about misconduct, including criminal conduct, by their colleagues.

It is relevant that in a recent survey in the public sector, including the Police Service, 59 per cent of the police officers who responded disagreed or disagreed strongly with the proposition 'within my organisation I believe reports of serious misconduct can effectively be made in confidence'. Further, only 57 per cent of police agreed or agreed strongly with the proposition that they were likely to report issues of serious misconduct. Forty-three per cent could not agree with those propositions.

It is also of concern to the Anti-Corruption Commission that there appear to be attempts by police officers to intimidate Anti-Corruption Commission witnesses. None of this should come as any great surprise, given that such conduct has occurred within other police forces within Australia and overseas. The reasons for and solutions to the problems among detectives are obviously the subject of another paper.

This is one of my hobbyhorses. I am convinced it would be a significant step forward if all detectives were compelled to wear police uniforms except when it was obviously inappropriate. There is no doubt that currently detectives can get away with inappropriate conduct because they are not identifiable as police officers.

While significant reforms of the Police Service have occurred, and those reforms I am sure will continue, it is important that the honest police, who are in the majority in the service, not only embrace those reforms but also work to rid the service of those whose behaviour does not meet the ethical standards that are required.

The second theme was the cost effectiveness and performance effectiveness of the Anti-Corruption Commission. The questions under this theme exemplify the misunderstanding of the role of the Anti-Corruption Commission and the eradication of improper conduct in the public sector. I could say that a number of public officers have been dismissed, prosecuted, resigned or disciplined both during and following Anti-Corruption Commission Investigations and that a number of police officers are facing prosecution or dismissal due to the actions of the Anti-Corruption Commission. However, I do not think that is what the committee has in mind. The questions are all predicated on the unspoken assumption that, on its own, the Anti-Corruption Commission can prevent corruption in the public sector. For the reasons I set out earlier, I do not believe that is the case and that those questions are appropriate. As far as cost effectiveness is concerned, obviously the commission believes it is cost effective when measured on the performance of its statutory obligations.

During the first three years of operation, with its extended jurisdiction, the commission received some 1,250 matters. Of those, 947 have been dealt with and the files closed. Operating expenses for those three years were \$13.8 million. At a meeting last year with the National Crime Authority, the Independent Commission Against Corruption, the Parliamentary Joint Committee on the Police Integrity Commission, the Crime Commissions of Queensland and New South Wales, and the ACC, there was a long discussion about the problems of developing appropriate performance measures for bodies such as ours. We all acknowledged we were having difficulty in developing appropriate measures. A working party was established as a result of that meeting, and we hope it will come back with some measures that will give some insight into the way their agencies are operating.

The third topic was the powers and practices of the Anti-Corruption Commission. The ACC is in the extraordinary position of being given power to conduct a preliminary inquiry to determine whether investigatory or other action should be taken in response to an allegation. For the purposes of such inquiry, the commission can compel witnesses to supply information and to produce documents. If after it has carried out a preliminary inquiry the commission concludes the allegation has some substance and requires a full investigation, as far as evidence from witnesses is concerned, it is limited to compelling a public servant, not a member of the public, to provide a statement of information. That is all. It seems to be an anomalous position and, of course, I have made a number of submissions to this joint standing committee on that.

I set out in appendix 1, which I will not go through, the document that I submitted to this committee justifying an extension of the commission's powers. In the past, I have said publicly I do not believe it is appropriate to conduct investigations in public. That was before the commission had endured the campaign of vilification conducted by the union and its lawyer. This campaign would not have been effective were it not for the fact that it was enthusiastically joined by *The West Australian*, which dishonestly published allegations made on behalf of the Police Union that it knew, or should have known, were not true. Although, with the arrival of a new editor at *The West Australian* there is good reason to believe the paper will be more responsible when it comes to reporting matters involving the ACC, I raise this issue because I believe the

campaign has been successful in producing public and political support of the ACC. More important, the Police Union campaign, aided by a sycophantic media, has unsettled honest police officers and, at best, made them uneasy about speaking to the ACC and, at worst, made them positively uncooperative.

It also creates an environment in which it is more likely that witnesses will be intimidated by people who are being investigated. At present, however, with the assistance of the media, the union has managed to create the perception in the minds of some that the ACC is unfairly targeting honest and hard working police officers at the behest of criminals. Nothing could be further from the truth. I believe that if the public and many honest police officers in the WA Police Service knew some of the matters which the commission has uncovered they would be horrified. Regrettably the types of things uncovered in the Wood and Fitzgerald royal commissions are occurring here in the Western Australia Police Service.

We have seen the Police Union assert that because officers are not charged following investigation they are innocent. The police know better than anyone that before a person can be charged the prosecutor must be satisfied that the charge can be established beyond reasonable doubt. In many cases if the standard of proof were only on the balance of probabilities, a charge would be laid. It is necessary that the public hear the evidence and are able to form their own view about whether persons being investigated are innocent of any wrongdoing. It is perhaps relevant to note that there have been, I believe, no prosecutions arising out of the Wood royal commission other than for misleading the commission. Despite that, because the commission uncovered significant evidence of serious misconduct by police officers, it was the catalyst for a change in public and police opinion. Following the revelations of the commission, the community demanded that changes be made to the New South Wales Police Service.

As I have come to the firm view that it is vital in the fight against corruption that the community understands what is occurring in the public sector, particularly within the Police Service, the ACC should be constituted in much the same way as the Police Integrity Commission and Independent Commission Against Corruption in New South Wales, and the Criminal Justice Commission in Queensland. In other words, I believe that the ACC should have power, where it considers it appropriate, to conduct open and public hearings, with persons being investigated having the right to be represented and to cross-examine witnesses. This would not mean that all investigations conducted by the commission would be public. Indeed, I believe that the vast majority would not be public. However, there are some cases in which the evidence should be publicly aired. This will permit the public to be informed of the things that are occurring and will, I believe, create an environment in which the majority of officers, whether public officers or police officers, who are honest and ethical will support, and indeed insist on, change.

Operational accountability and the redress of grievances against the Anti-Corruption Commission: I understand the commission was constituted on the basis that the three members of the commission, who are part time, represent the interests of the community, are able to oversee the organisation and deal with complaints against it. The members are independent persons nominated by the Chief Justice, the Chief Judge of the District Court and the Solicitor General. The members of the commission are indifferent to whether an external agency will deal with complaints against the commission. We believe that people with complaints can go to the courts if a breach of the act is alleged, to the police if a criminal offence is alleged or to the Public

Sector Standards Commissioner if a breach of standards is alleged, or seek the appointment of an inquirer under the Public Sector Management Act in other cases. In addition they can go to the Joint Standing Committee on the Anti-Corruption Commission. However, if parliament believes that another body is needed to deal with complaints, the commission has no problem with that.

The commission is opposed to detailed oversight by another agency; that is what the three members of the commission are appointed to provide. Further, the cost to the commission of meeting the demands of such a body would be prohibitive. Already our budgetary position is tight. We estimate that meeting the needs of the joint standing committee requires the equivalent of one full time officer. Complying with the demands of an agency to conduct a detailed oversight of investigations would require several people.

The first question that should be asked by the committee is whether the ACC effective in providing a manner by which allegations of misconduct within its jurisdiction are investigated. As I said earlier, I believe the ACC is effective in discharging its core responsibilities. It is important to appreciate that the commission is not resourced to investigate, and does not investigate, all the allegations it receives. Since its inception on 1 August 1997, the commission has considered in the order of 1 250 allegations. For much of that time the commission was still building up its personnel and physical resources. At full strength it has only 20 investigators on staff. This compares with more than 30 investigators in each of the macro task force, the outlaw motorcycle gangs inquiry and the mortgage brokers inquiry set up by the WA Police Service. When viewed in that context, clearly the ACC can undertake only a limited number of inquiries. Further, the inquiries the ACC undertakes are by and large more complex and time consuming. In one investigation the commission's investigators interviewed in excess of 120 witnesses. It is routine in ACC investigations for investigators to interview between 20 and 40 witnesses.

In considering the effectiveness of the ACC it should be recognised that the commission has been hampered by the lack of a full range of investigative tools that similar bodies have, such as a telephone intercept capacity and appropriate compulsive powers. The commission examines every allegation received and determines whether or not investigatory or other action should be taken. As the act contemplates, the majority of matters that the commission decides should be investigated are passed to other agencies to investigate. The commission receives and reviews reports of all those investigations, whether conducted internally or externally. In some cases, if we are dissatisfied, we will take over an investigation from an external agency.

The commission maintains strongly that in so far as statistics provide any guide to judging the effectiveness of its work, the statistics of matters inquired into and found to be without substance are as important as other statistics. The commission has dealt with hundreds of matters that have been found to be without substance. The commission has sent 15 full briefs of evidence to the Director of Public Prosecutions. Of these, nine prosecutions have been instigated involving eight police officers and one other public officer. A number of briefs delivered to the DPP are still with that office awaiting decisions. The commission has experienced, and continues to experience, lengthy delays in receiving responses from the office of the DPP. Although these delays are unsatisfactory, there is nothing the commission can do about them. The problem is exacerbated by some DPP officers who appear to be

reluctant to believe that police officers, whom they have been presenting for years as honest, reliable and ethical witnesses, may have been engaging at the same time in criminal conduct. Short of finding another body to advise on ACC matters involving police officers, it is difficult to see how these problems can be overcome.

Should the ACC's duties be broadened? There is a case to be made for broadening the role of the ACC. For instance, education is a very important element in combating corruption. This would involve educating not only the public sector, but also the community. There are clear resource implications for that but an effective program will obviously require additional resources as we could not do that within our existing budget.

We also believe that the ACC should be empowered to compel agencies to modify or implement controls, practices and procedures designed to minimise the risk of corrupt or criminal conduct. If the ACC were to undertake an auditing role, as opposed to identifying problems following an investigation, again additional resources would be required. Although not a major issue, the ACC should be able to direct an agency to institute disciplinary proceedings against an officer when it reports on facts found by an investigation. At times agencies prefer to deal with matters administratively when, at least from an outsider's perspective, to do so would appear to be merely sweeping things under the carpet. It would be more appropriate for agencies to avail themselves of the disciplinary procedures contained in the Public Sector Management Act.

Should the powers of the ACC be enhanced? I have briefly covered this aspect earlier in the paper. I have repeatedly argued that the nature of corruption is such that an agency like the ACC should have the same powers as equivalent agencies in other jurisdictions. The restrictions on the commission significantly inhibit its powers and effectiveness. The commission has made a number of submissions and representations to the committee and I do not propose to cover them again. However, in appendix 2 I have set out an updated list of amendments which we believe should be made to the Anti-Corruption Commission Act, which follow on from the previous report of the committee on the amendments that the ACC was seeking. In addition to the amendments I have flagged in this paper, I believe the commission should have the capacity to hold public hearings on occasions.

CHAIR—In your paper you make the point that the commission does not believe there is endemic or systemic corruption in the public sector and that the situation is different in the Police Service. With that judgment in mind, and also being conscious that we have a Parliamentary Commissioner for Administrative Investigations, a Public Sector Standards Commissioner, an Auditor General, the power under the Local Government Act for inquiries into local government and the power of the Police Service to investigate criminality including public sector corruption, should the ACC be restricted to the investigation of corruption or serious improper conduct in the Police Service?

Mr O'Connor—I think not. However, there is a case to be made for reducing the scope of matters that the ACC must oversee. It is desirable to have an agency external to the police who can oversee investigations of powerful people, such as members of parliament and senior officers of the public service. A complaint from somewhere like the Shire of Wiluna, with a population of 150, that someone has been stealing petrol is not a matter that should be referred to the ACC; however, under the current act we must consider that matter.

Mr THOMAS—Mr O'Connor, you made what I believe is a new submission. It is the first time I have heard you say that the ACC should have a capacity to conduct public hearings.

Mr O'Connor—It is a change of position by me. Previously I have asserted strenuously that the right of individuals to have their reputations unsullied by allegations outweighs everything. I have now come to the conclusion that there is an even greater public right, and interest, in some cases, to know what has happened. My change in view has been brought about because, as I said earlier, the commission's actions and investigations are commented upon publicly on a number of occasions by, for example, the Police Union, and the facts are grossly distorted. We are not in a position to respond and tell the true story, and the public is therefore misled into believing that the ACC has done something wrong, but that is not the case.

Mr THOMAS—I suggest this illustrates the problem that I raised with Judge Urquhart earlier. I made the point that I was reluctant to empower the ACC to have public hearings because of a fear that for the purposes of protecting the reputation or improving the public standing of the commission, or whatever, there would be a temptation to structure hearings in order to create a media circus or media event. I am not suggesting you would do that, but the very next time, when you come to the table, you say, 'We now want public hearings, and the reason we want public hearings is that the organisation has been getting a bad run in the press, and we want the capacity to correct that.' I can understand your frustration, and I agree with your analysis of a lot of the media coverage that has been given, but if the determination of whether or not you are to have public hearings is to be based on the organisation's ratings, then that will possibly not be on the detached investigating and assembly of evidence role that the organisation should be continuing on with, irrespective of its public ratings. It should not become a media event.

Mr O'Connor—I agree that it should not become a media event and it should not be driven by whether or not the commission seeks to improve its public standing, but I believe you can make a strong case for the public to be entitled in certain cases to know what is happening. I would not ever envisage that we would have a public hearing in respect of one allegation against one individual. I could not conceive of it. I could conceive of it only where there was systemic corruption involving a number of matters, and often, but not always, involving a number of individuals. That would be the only circumstance in which I would envisage it. That is what Wood did for New South Wales and what Fitzgerald did for Queensland. We have been on the back foot because we see some disgraceful things occur in the Police Service, but the public do not know about them and the Police Union is in a position to completely misrepresent what is happening, and we cannot do anything about it. As a consequence, the public has an entirely wrong view of the Police Service and a wrong view of the Anti-Corruption Commission.

Mr TRENORDEN—I have heard your interpretation of the actions of the Director of Public Prosecutions and I have also seen some publicity where the Director of Public Prosecutions has made some comments. Is there a need for us to look at a different interaction between the ACC and the Director of Public Prosecutions? As a total amateur, I thought that process would be relatively smooth. If you are conducting an investigation, you need to be in a position to place information before the Director of Public Prosecutions, and that should be a straightforward process, but it seems from

my vantage point that it is not. Is some activity or some change required in the relationship between the ACC and the Director of Public Prosecutions?

Mr O'Connor—There are two problems. The Director of Public Prosecution's office is a busy office, and it has a number of police matters and other matters that it has to deal with, and we come in as well. I accept that, like all agencies, it is under pressure and probably would like to have more resources, so there is that difficulty. The other problem is that the office of the Director of Public Prosecutions deals day in and day out with police officers. They are the DPP's principal clients. If we suddenly produce a brief against one, or a number, of the people with whom the DPP's officers have been dealing over the years and whom the DPP prosecutors have been putting up as honest, reliable and decent witnesses, it is human nature to have the reaction, 'I cannot believe this; this simply cannot be true.' Whether that is part of the reason that we get delays in getting responses, I do not know, but we have had matters go to the Director of Public Prosecutions where we have been waiting for literally months and months to get a response. On one matter we have probably been waiting for more than 12 months. I am at a bit of a loss to understand what the problem is, but I can see that it could be argued that with police prosecutions, someone else should do the prosecutions.

Hon J.A. COWDELL—I was unsure of the ACC's stance with regard to an independent oversight of operational matters. Obviously the parliamentary committee does not and cannot perform that function, but an inspector general may. I note that your comments ranged from 'the ACC's attitude was indifference', to an argument that 'it would cost us seven extra staff that we do not have'; therefore, the implication is that it should be hit on the head on that basis. You then made a comment that seemed to imply that we should not try to use another agency to do that on the cheap either. Can you clarify that attitude?

Mr O'Connor—There are two elements, and I apologise if I did not make it clear. There is the question of complaints against the ACC about improper conduct. Obviously from time to time people make a complaint, and we say, 'That is an allegation of criminality; go to the police and get them to investigate it'. If people believe that the ACC has in some way or other acted in a criminal fashion, such a complaint can be dealt with easily by the police. There are also other complaints, perhaps about unethical conduct, or something like that. The ACC's position is if the Parliament decides that someone independent of the commission should investigate those complaints, that is for the Parliament to decide. We do not oppose that. What we are concerned about is that if we had an inspector who had the capacity to monitor and be involved in ongoing investigations, that would have a resource implication for us, and we do not see the value of that, because we had thought that the three-man commission - which, as I said, is a part-time commission - was supposed to provide that level of oversight of operations, and we do not, therefore, believe that the resources are justified. However, we are very happy for someone else to investigate allegations of wrongdoing, or whatever. Does that answer the question?

Hon J.A. COWDELL—Yes.

Hon N.D. GRIFFITHS—In answer to Mr Trenorden's question about the relationship between the ACC and the Director of Public Prosecutions, you said, among other things, that you are at a loss to understand what the problem is. Have you

raised that matter with the Director of Public Prosecutions; has the Director of Public Prosecutions given you an explanation; and if so, what is it?

Mr O'Connor—I said I am at a loss to know what the answer is. I know what the problem is. The problem is that we do not get our work back as promptly as we would like. Yes, I have spoken to the Director of Public Prosecutions, and on individual cases the answer is always, 'We are getting to it', or, 'It is difficult, and we have other things ahead of it', and that sort of thing. We have also spoken to him about the attitude of officers to the prosecutions against police, and he is aware of the fact that for some of his people the idea of prosecuting police whom they have been putting up as witnesses is very unattractive.

Hon N.D. GRIFFITHS—Earlier, Mr Ayton made observations about corruption in the public sector - I think you were here when he made those statements - and I asked him a question about it. He made reference to corruption indicators, of which there were many. I asked him a question about those indicators, and one of the indicators to which he referred was a recent report by the Auditor General, I think, which referred to a number of practices not being followed by public sector agencies in matters of contract and supply. I am not quoting Mr Ayton precisely, but I think that was the tenor of his remarks. Do you agree with the proposition being put forward by Mr Ayton; and, if so, how do you marry that with your observation about public sector corruption as distinct from that part of the public sector which is the Police Force? If not, why do you not agree?

Mr O'Connor—I did not understand Mr Ayton to say what you are attributing to him. What I understood him to say was that one can see indicators of things happening which indicate a potential for corruption as opposed to corruption. Whenever irregularities occur, there is the potential for corruption. That is why I have highlighted the problem with police officers not complying with standard operating procedures. When they do not comply with procedures, two things happen: There is the potential for corruption, but it does not necessarily happen - that is one thing that police officers should realise - and the other thing is that there is the potential for criminals to make false allegations against them, which they find hard to defend because they have not complied with proper procedures. To say that procedures have not been followed is not to say that there is corruption; it merely says that procedures have not been followed, but it does create the potential for corruption. Does that answer the question?

Hon N.D. GRIFFITHS—It is an answer.

CHAIR—I am getting signals for further questions. However, it is two minutes past one. Therefore, I will end this session. Thank you, Mr O'Connor. As you know, you will receive a copy of the transcript to correct and return.

Proceedings suspended from 1.03 p.m. to 2.11 p.m.

[2.11 p.m.]

**ALLEN, MR MURRAY JOHN,
Parliamentary Commissioner for Administrative Investigations,
Level 17, 44 St Georges Terrace,
Perth, examined:**

Mr Allen—The difficulty being the first speaker after lunch is that the most interesting things were said either this morning or at lunch and some of the members may not be interested in what I have to say! I begin my submission with the question about the extent of public corruption in Western Australia. As some people suggested this morning, it seems that we simply do not know enough to answer the questions posed by the committee, whether we are talking about corruption, serious improper conduct or something else. This lack of knowledge is despite the intentions of both the Royal Commission into Commercial Activities of Government and Other Matters and the Commission on Government. The WA Inc royal commission noted there was comparatively little evidence of illegal or corrupt conduct in this State, but expressed concern about the widespread nature of what it called "improper conduct". The Commission on Government tried to gain an understanding of the extent of allegations of various types of misconduct. It obtained data about complaints and allegations from the Western Australia Police Service's internal affairs unit, the official corruption task force, the public sector's investigations unit, the Department of Local Government and the Ombudsman's office. This data was included in the report in the form of a table representing the number of complaints received over several years. Although it did not say so in the report, I suspect the Commission on Government recognised that the exercise did not produce anything meaningful.

Looking at the number of complaints to my office does not provide any helpful information. We receive about 4,000 complaints each year, half of which regard police. However, it would be wrong to conclude that all are about corruption, or even serious and improper conduct. My office deals with maladministration, a term which is not defined in the Parliamentary Commissioner Act and can mean almost anything, ranging from a delay in answering correspondence or an officer having what is perceived to be a supercilious grin when dealing with a customer through to the serious issues about the improper exercise of power.

The Anti-Corruption Commission is now the central collection point for certain types of allegations and is obviously a step in the right direction for compiling useful statistics. The system whereby my office is required to notify the Anti-Corruption Commission of any allegations is good in theory. The Anti-Corruption Commission publishes certain statistics in its annual report about the matters of which it was notified and those statistics help us gain an understanding about the categories and totals. The interesting points in its 1999 annual report were that the total number of notifications it received fell between 1998 and 1999; serious improper conduct notifications fell both as an absolute number and as a percentage of the total; allegations of criminal conduct far exceeded complaints about improper conduct in both years; and the number of corruption allegations increased both in numerical terms and as a percentage over the two years. It is not safe to draw too many conclusions based on such limited data; however, I wonder whether the predominance of notifications of corruption or criminal conduct over serious improper conduct reflects a lack of preparedness to report something that is perceived to be only

improper rather than something much more serious. Alternatively, it may be that something that is only improper is harder to recognise than something which is clearly criminal or corrupt. In other words, the reporting of misconduct is the key to understanding its extent.

My office has recently undertaken some research in conjunction with the Police Service and Edith Cowan University which was designed to examine how police officers identify and assess the seriousness of misconduct and the factors that influence their preparedness to report misconduct. The research was prompted by similar exercises in a couple of other States and was principally motivated by a desire to see whether any issues need to be addressed through training or other intervention. It was also important to have a base line against which the results of future surveys could be compared for judging the success of training and other exercises designed to raise awareness of ethical issues and the need to report unethical conduct. About 1,500 survey forms were sent out to sworn police officers and about 350 were returned. The interviewees were given 10 factual scenarios which had been formulated to illustrate either criminal or professional misconduct of varying degrees of seriousness, ranging from the very minor to the very serious. For each scenario, the interviewee was asked to answer several questions -

Do you think the average police officer would consider the conduct to be misconduct?

If not, why?

If yes, do you think the average police officer would consider the misconduct to be professional or criminal misconduct?

On a scale of one to seven, how would average police officers rank the misconduct in terms of seriousness?

Would the average police officer report the misconduct?

If not, why?

If yes, who would the report be made to?

Now I must emphasise that the research was not intended to be, and is not, an attempt to gauge the extent of corruption or improper conduct in the Police Service. Quite different research would be needed to do that. I will not attempt to summarise the quantitative and qualitative results of the survey in any detailed way as a report will be published about that in the future, but some key issues of relevance to today did seem to emerge. Firstly, there is a significant difference in what is seen to be misconduct. In three of the 10 scenarios more than 50 per cent of the respondents thought that there was no misconduct at all. There were differences in whether the conduct was thought to be criminal or professional misconduct. In two of scenarios only about 50 per cent thought it was criminal and 50 per cent thought it was professional. It is interesting, but it may be totally coincidental, that the two that had the most even split involved physical assaults. Even among those who thought that the average officer would perceive the conduct as misconduct, only one scenario existed where more than 50 per cent thought that the average officer would report the misconduct. Overwhelmingly, those who thought the average officer would report the

matter thought that the officer would report it to the immediate supervisor or officer in charge of the unit - 97 per cent -rather than to any external agency. Indeed, a significant reason put forward for not reporting at all was a concern that it might end up with an external agency, which quite interestingly included the police internal investigations area, which was seen as an external investigative agency.

I again should emphasise that the object of the research was not to assess how many rotten apples there might be in the barrel. The Police Service is to be commended on its preparedness to be involved in the research and to develop strategies to address some of the issues identified, and they and my office will be working on that in future. We expect to conduct similar research in other public sector areas and in the Police Service in future to see whether similar issues and factors are present. The important point for today's purposes is that the extent of reported misconduct, whether it involves corruption, criminal conduct or just serious improper conduct, cannot be accurately estimated until there can be confidence that suspect conduct will be reported. It seems to me that we are not at that point yet.

I turn to questions about cost effectiveness and performance effectiveness. I do not think I am in a position to make particularly insightful comments about this aspect of the ACC. I notice from the annual report that of the 169 unique cases received and finalised in 1998-99, in 34 cases criminal charges were laid or disciplinary action taken. It is not possible to draw conclusions from that about the performance of the ACC without knowing the nature and seriousness of the charges or the disciplinary action, or whether those actions were as a result of an ACC investigation or as a result of an investigation by the police public sector investigation unit. I agree with comments made by other speakers that is wrong to judge the performance or effectiveness of an organisation like the ACC only on its record of gaining scalps. I can understand some commentators may wish to do so.

In the early days of the Australian Securities Commission, the organisation I know a bit about, there was such a tendency by the media and others and a preoccupation with some high profile investigations. Organisations like the ASC and the ACC will always need time to get themselves organised in terms of having the right mix of staff, systems and procedures as well as needing a longish lead time to complete complex investigations. In addition, and again this point was made by other speakers this morning, there are more ways to influence attitudes and behaviour in the public sector than by counting scalps. Anecdotally, I am certainly able to say that the level of awareness in the public sector about the need to be conscious of honesty and ethical issues and reporting obligations is increasing. One would be disappointed if that were not so, given the coverage of events in the public sector in the 1980s and the money spent and time devoted since then to addressing those issues via such things as the WA Inc royal commission, the Commission on Government, the creation of the Office of the Public Sector Standards Commissioner and the Information Commissioner, the rebirth of the OCC as the ACC, and the continuing efforts of the Auditor General and my own office.

I think it is fair to say that of those developments, the arrival of the ACC on the scene has been the most controversial and has attracted the most publicity. I have no doubt that the ACC's efforts have had an enormous and beneficial impact on the level of awareness and standards of propriety in the public sector. I do not think that at this stage it can be measured, but I do not think that it should be underestimated for that reason.

I now want to say something about the powers and practices of the ACC. I do not accept the view that is so often put about that the ACC is some sort of super investigator with investigative powers that exceed those of any other sort of investigative agency. Certainly, compared with the traditional investigative agency that most people understand - the Police Service - the ACC does indeed have extensive powers. It has been a feature of law enforcement in a number of contexts for the past 20 or 30 years that new investigative bodies have to be created with powers that police officers can only dream about. These bodies have been created where it has been perceived that the seriousness of the matters to be investigated, and the difficulties of obtaining the necessary evidence by the traditional means are such that a new investigative animal is needed. Just a few Australian examples are the CJC, ICAC and the PIC in New South Wales, the NCA, the ACCC and ASIC, and of course, the ACC. We should look at not only organisations that are seen as law enforcement bodies. There are many other examples in the WA public sector itself of bodies and office holders who have powers that are more or less as coercive as those of the ACC. I will not go into detail today, but anyone who is interested should look at the powers of a fisheries officer under the Fish Resources Management Act, the Medical Board under the Medical Act, and the Registrar of the Veterinary Surgeons Board under the Veterinary Surgeons Act.

I am not arguing that all those bodies and office holders, whether they are in the law enforcement area or not, should not have extensive investigative powers that are coercive in nature. The nature of the conduct under investigation and the difficulties of gaining evidence by other means will often be such that only coercive powers are likely to generate the evidence. The organisation I am most familiar with is the Australian Securities and Investments Commission. ASIC is a body that has very extensive coercive powers in relation to requiring the production of documents and requiring persons to attend for examination and provide answers to questions, even where the answers may incriminate and may override such usual protections as legal professional privilege. Those powers were considered essential if the organisation was to have any hope of uncovering and successfully taking action against corporate fraud.

I would argue today that the difficulties of identifying and gaining evidence about corruption, criminal conduct and serious improper conduct in the WA public sector are no less and justify at least the extensive coercive powers that the ACC has, and more. I also add that when ASIC was new, considerable concern was expressed about the powers that it had and the way that it exercised them - not unlike the ACC. Those concerns eventually led to a senate committee conducting an extensive examination of the powers and their exercise. Fortunately, in my opinion, those powers were not watered down, and 10 years on there is virtually no controversy that I am aware of about the nature and extent of the powers. It is worth noting that virtually all of ASIC's investigative powers can, and have been, delegated to relatively junior officers who exercise them regularly. There is no controversy about who should exercise the powers and no suggestion that only commission members or special investigators or other very senior people should be able to utilise them.

Against that background I must say that I am somewhat bemused by all the attention that has been paid to the ACC's powers. In particular, I have some real difficulties with the recommendation of this committee in its December 1998 report that there should not be a distinction between the ACC's preliminary investigation powers and the powers available in a 'real' investigation, with which I agree, but that the power

presently available in preliminary investigations to require the attendance of a person and to require answers to questions should not be available when the ACC is conducting a "real" investigation.

Frankly, I cannot think of a single better way to nobble the ACC in its efforts to conduct its investigations in an effective way. Without that power, the ACC would be forced to utilise special investigators with royal commission powers for all significant investigations. That would not be cost-effective in the long run. The ACC must be staffed by personnel who are capable of conducting investigations themselves and have access to powers needed do so. I have absolutely no reason to believe that existing staff members do not have that ability, but they are unnecessarily limited in their powers. In other words, the ACC and its staff should have powers now restricted to special investigators; that is, to hold hearings and to compel evidence on oath. The protections which currently exist with special investigator hearings should apply equally to the hearings I would like to see conducted by the commission members or staff of the commission.

On the question of whether hearings should be in private or public, I was very interested in the contributions of Mr O'Connor and Judge Urquhart this morning. In my opinion, rarely would circumstances arise in which a public hearing would be appropriate. I recognise that organisations such as the Independent Commission Against Corruption and the Police Integrity Commission regularly hold public hearings. However, in my opinion privacy is needed to provide a measure of protection for the informant or other witnesses and the person against whom the allegation is made, and not to prejudice future proceedings. More importantly, private hearings allow the investigation to proceed without information being made available for future witnesses or suspects about the nature and strength of the case against them. They allow the investigator to do the job without showing his or her hand unnecessarily. I appreciate that there are arguments to the contrary. Public hearings can increase the awareness of the community about the issues involved and may generate unsolicited evidence. They may also be a means by which extra pressure can be brought to bear on individuals who are likely to be embarrassed into being more cooperative by the public disclosure of material - a technique which the Wood royal commission perfected. On balance, I am not persuaded that public hearings as a general rule are preferable to private hearings. However, that is not the real issue, which is whether the ACC or other like-bodies should have the power to hold public hearings if they so wish. In my opinion, it would be a rare case indeed for a public hearing to be held.

I now refer to the final points of operational accountability and redressing grievances. My views generally on this subject will be well known to some members of the committee as a result of earlier correspondence. I will today summarise a few key points.

Whenever a meeting of people involved in the oversight of law enforcement agencies is held, inevitably someone asks the rhetorical question originally asked by Cicero in Roman times: Who will watch over the watchers? Nobody said it this morning, so I thought I would say it this afternoon! An assumption is that law enforcement bodies like the police definitely need someone to oversight them, but there seems to be some debate about whether, and in what form, there will always be a need to have somebody watch over the watcher. Various models are available to guide our thinking. Obviously, there is the Parliamentary Commissioner for the Criminal Justice

Commission in Queensland and, as Judge Urquhart explained, an Inspector for the Police Integrity Commission in New South Wales. Both those jurisdictions have a parliamentary committee with responsibility to monitor the work of the organisation concerned.

I hold what might be seen to be a somewhat old-fashioned approach to this issue; namely, in my opinion accountability for some officers in the public sector should be to parliament. I refer to the organisations which are themselves seen as accountability agencies, and I include in that list organisations such as the Auditor General, the Director of Public Prosecutions, the Solicitor General, the Anti-Corruption Commission, the Ombudsman, and perhaps some others. How Parliament chooses to hold those agencies accountable is up to parliament. There are committees such as this one, and estimates committees.

There may be some capacity to make parliamentary rules about the way an organisation should behave; for example, section 56 of the ACC act enables parliament to make rules and prescribe procedures to be adopted by the ACC in performing its function. To my knowledge, that power has not been exercised. A similar power exists in relation to the Ombudsman under the Parliamentary Commissioner Act. All these organisations are accountable to the Auditor General in financial matters. Ultimately, a royal commission can be convened to examine perceived problems in their administration, or, as is the case of members of the ACC, people can be removed from office by the Governor or both houses of parliament on specified grounds.

It is apparent from the terms of reference of this committee, and for the reasons the committee has set out in various reports, that it does not see that it could or should act as the agent of operational oversight of the ACC. I can understand those reasons, although I do not necessarily accept them. I said a moment ago that my view on the oversight point might be seen to be old-fashioned. Certainly, the tide of opinion seems to be that organisations such as the ACC should be subject to operational oversight of one form or another. Obviously this committee has made that sort of recommendation, and I note that Mr Boucher agreed with the committee's views in the job he performed recently in relation to the ACC. If it is true that my old-fashioned view is not acceptable and that some form of external oversight should apply, the easiest to deal with the three areas the committee identified - namely, to audit operations, investigate complaints and evaluate the effectiveness and appropriateness of ACC procedures - is the external investigation of complaints.

I was interested to read an exchange between the Chairman of the National Crime Authority and the parliamentary committee responsible for its oversight at a hearing last year. The chairman, Mr Broome, made the point that it is essential that the NCA have an external complaint-handling body properly empowered to fully investigate complaints of impropriety, illegality and so on. He said that the Commonwealth Ombudsman should have been given jurisdiction over the NCA when it was established. He made the interesting observation that the reason the Ombudsman was not given jurisdiction at the time was that concern had been expressed that if a judge were to head up the NCA, it would not be appropriate to have the Ombudsman look over the judge's shoulder. Mr Broome said, in somewhat colourful terms, 'My response to that in very blunt terms is: cobblers. There is nothing the Chairman of the NCA does which involves the exercise of judicial power, and it is a fundamental misconception that because the NCA exercises certain compulsive powers, they are in

some way judicial.' Mr Broome also made an observation which may be of interest to the committee in light of its recommendation for the establishment of a new oversight office in the form of an inspector. He referred to the recommendation of the Australian Law Reform Commission for the establishment of a new body to oversight complaints about the NCA. He said -

It should not be the ALRC's proposed solution for one very practical reason: I do not believe the Government is going to create a new body just to oversight the NCA and to do some work in relation to the AFP. The best way not to have an external complaint handling body is to argue for a new body to do it.

I am not sure whether the committee will agree with that comment. It should go without saying that the ACC should have its own internal complaint-handling process of a formal and sophisticated nature. This should mean that the vast majority of complaints about the conduct of ACC officers or special investigators should be capable of a significant degree of relatively impartial oversight by the three members of the ACC. It is apparent from the second reading speech when the ACC bill was before parliament, as quoted on page 17 of the committee's December 1998 report, that the ACC members were expected to exercise considerable oversight of the special investigators.

I also mention the fact that my office is to oversight compliance by the ACC with the requirements of the telecommunications intercept legislation. I have previously said to the committee that it would not be desirable to have the oversight of the telecommunications intercepts and complaints generally in the ACC in different hands.

With regard to the two other areas that the committee has identified for external oversight - that is, to audit operations of the Anti-Corruption Commission and to evaluate effectiveness and appropriateness of procedures - it is somewhat more difficult to judge just how far such activities would interfere with the operations of the ACC. I was interested in Mr O'Connor's comments this morning on his apparent reluctance to go down that road. I read with some real interest the reports of the meetings between the New South Wales parliamentary committee and the PIC and its inspector, where this topic was touched upon. Although some information was provided of the working relationship between the PIC and the inspector, I suspect that the really interesting stuff emerged in closed hearings, which would give us a better guide as to how it works in practice. What emerges from the reports of those meetings is the close monitoring of the PIC activities and those of the inspector by the parliamentary committee, down to a level of asking about, but not investigating, particular matters, such as how the PIC responded to issues raised by the New South Wales Ombudsman in connection with controlled operations undertaken by the PIC under New South Wales legislation that we do not have in this state. Those reports may well serve as a useful guide for how this committee may consider relating to the ACC, regardless of whether or not there is an inspector or some other oversight arrangement of the ACC.

In my opinion the avenues for judicial oversight of the ACC activities and the protection of the rights of witnesses and suspected persons are quite adequate and appropriate. We have already seen considerable involvement by the Supreme Court in defining or interpreting the boundaries of the ACC powers and jurisdiction. I believe that is desirable because it removes uncertainty. Again, it is worth referring back to

ASIC's experience in the early 1990s when quite a number of proceedings were commenced in the Federal Court to challenge notices issued by ASIC to produce documents or attend for examination. The courts were able to very usefully give directions about the requirements on ASIC as regards the possible breadth of notices to produce documents and the extent to which examinees were required to be given some detail of the nature and scope of the matters under investigation. ASIC was not successful in all those cases and was obliged to alter some of its practices accordingly. That was a perfectly appropriate means of resolving some of the uncertainties and did not, in my view, suggest that ASIC and its powers were somehow illegitimate or that the exercise of them was necessarily done in bad faith.

The ACC is the newest organisation of this kind in Western Australia, and it has had the fortune or misfortune to examine some particularly contentious issues in its relatively short life. In my opinion it is important that we all do not overreact to what has been a turbulent period. As I said earlier, every organisation and most legislation needs time to settle down and have the wrinkles ironed out. My impression as an outsider in relation to the ACC is that as an organisation it has managed to do that. Its legislation still needs attention. In my opinion the ACC should be allowed to get on with its job.

CHAIR—You drew comparisons between your office and that of the Auditor General, the Public Sector Standards Commission and the ACC. Of those four, the ACC is the only one which is not a creature of the parliament; neither does the ACC have an accountable minister. Do you see that difference necessitating an avenue for operational accountability that may not be necessary for the other three offices that are accountable to the parliament directly?

Mr Allen—It is a good question. I am not sure I know the answer. As to the phrase 'a creature of the parliament', obviously the ACC is a creature of the parliament to the extent that it operates under legislation passed by the parliament. Is it part of the parliament as opposed to the executive arm of government? That is often discussed. It is often said that my office is part of the parliament. Realistically I am not sure that in practice it has much meaning. I am accountable to the parliament in the sense that I report to the parliament, I can table reports in the parliament and I can be removed by a resolution of both houses, but all those things are equally true of the ACC.

Mr THOMAS—It is also a creature of the parliament.

Mr Allen—I thought the chairman was saying the ACC was not a creature of the parliament.

CHAIR—It is different from the other three.

Mr Allen—I do not have an accountable minister in the same way that the ACC does not have an accountable minister. I am not sure that there is a huge amount of difference.

CHAIR—I will put the question in another way. Do you have discretion as to whether you will report matters to the parliament?

Mr Allen—Yes I do have that discretion. I may report matters to parliament if I wish but I do not have to. Obviously I must produce an annual report to the parliament but, otherwise, ad hoc reports are at my discretion.

CHAIR—There is no difference between your office and that of the ACC with operational accountability. Both have administrative accountability through such things as the Financial Administration and Audit Act. That is administrative accountability, and you report annually. With operational accountability you are no different to the ACC?

Mr Allen—That is right. I am one of those people for whom there is no formal complaint handling process or anything of that kind. In my opinion that is a good thing. That is what I was trying to say in my paper. I do not have a problem with that, but I recognise that is a somewhat old-fashioned view that is not necessarily acceptable these days.

Hon J.A. COWDELL—Do you see any overlap in areas of responsibility that could be rationalised? Perhaps I point here to Mr O'Connor's comment this morning that the ACC should deal with criminal and corrupt matters and that improper conduct should be dealt with elsewhere. Are you elsewhere for improper conduct?

Mr Allen—I could be, I believe. Yes, there is overlap. I have said that maladministration can mean almost anything. It certainly can mean serious improper conduct. I agree with Mr O'Connor that there would be matters which come to the ACC's attention which are relatively trivial in the overall scheme of things and which the ACC should not trouble itself with investigating. I understand it would be likely to refer them on to the police public sector investigations unit. If it involves criminal allegations that is the appropriate place to do it. If it does not necessarily involve criminal conduct, but some kind of other improper conduct which is not terribly serious, it could be sent in my direction. There is specific provision in the ACC act now that the ACC can, after consultation, refer the matter to me. To the best of my knowledge that has never happened, certainly not in the past three and a half years. It is an avenue that is possibly there. If what is complained about is an allegation of criminal conduct, it would be pointless sending it to me, even if it is relatively minor criminal conduct. If it is not criminal conduct but improper conduct of some sort, it could realistically be referred to me.

[2.50 p.m.]

O'GORMAN, MR TERRY,
President, Australian Council for Civil Liberties,
Level 7, 193 North Quay,
Brisbane, examined:

Mr O'Gorman— I am the President of the Australian Council for Civil Liberties. I am also a criminal defence lawyer in full-time practice. I have slightly changed the format of my opening statement in order to accommodate the variables of time and not to repeat some of the issues that have been covered. This is an important seminar. It is to address what should be the powers of what is close to a permanent standing royal commission; namely, the Anti-Corruption Commission. A number of very specific questions have been posed by the joint standing committee. As a person from the east, I have looked at the Western Australian scene and the constant calls for a police royal commission with a degree of interest. Although today's seminar is to address most other issues than a royal commission, I simply observe that a police service which is subject to the searing scrutiny of a royal commission inevitably emerges the better for the experience. However, as we all know, it is the party in power which decides whether a royal commission is called. The Western Australian Premier, like his conservative counterpart in Queensland in the 1970s and 1980s, Sir Joh Bjelke-Petersen, realises that royal commissions, especially into the police, are unruly horses and have profound political consequences for the Government which calls them. In the absence of a cleansing and revealing royal commission, one must concentrate on how the ACC can be made to work better. I intend to concentrate primarily on the necessity for supervision of the ACC by a parliamentary inspector or a parliamentary commissioner. I will then look at some other issues arising from this morning's discussion.

In my opening statement I will use the term 'crime commissions', but I will use the term very broadly to cover the various forms of organisations in this country, ranging from the National Crime Authority to the New South Wales Crime Commission, the Criminal Justice Commission, the Independent Commission Against Corruption and the ACC in Western Australia. I use the term 'crime commission' to refer to the miscellany of investigative and complaint oversight agencies that have existed in various forms in parts of Australia since the 1980s. The sequence of the establishment of those commissions started with the NCA in the mid-1980s, followed variously by ICAC and the New South Wales Crime Commission, then either the CJC or the ACC, and followed by the Police Integrity Commission, which was set up in the mid-1990s following the Wood royal commission.

With the exception of the Police Integrity Commission - probably because it has not been established long enough - each commission has been dogged almost continually by what I regard as justified criticisms of unaccountability. Supporters of these commissions say that accountability needs are met by Supreme Court review, which is open to those aggrieved by the actions of a commission. However, the grounds available for Supreme Court review are not particularly generous to those aggrieved. More particularly, Supreme Court review is not open in a practical sense to the aggrieved person of ordinary means, as challenges to the investigative powers of these commissions take place in the civil jurisdiction, where a loss means that the challenger must carry not only his or her own considerable legal costs, but also the

costs of the commission that he or she has dared to challenge in court. This acts as a serious and very real disincentive to everyone other than the John Elliotts or police unions, both of whom have well-reserved legal fighting funds. I therefore argue that Supreme Court review is largely an ineffective avenue of redress, except for the very well-heeled. Legal aid certainly will not fund such challenges. Attention must therefore be directed to the option of external oversight complaint mechanisms as a means of addressing the often real complaints of excessive power of crime commissions.

Before I turn to this option, I will deal with the contention that the ordinary criminal courts or disciplinary bodies which prosecute after a crime commission investigation and report contain ample mechanisms for dealing with complaints against crime commissions. It must first be recognised that a court prosecution arising from a crime commission investigation is conducted on an adversarial not inquisitorial basis and within significant constraints, at least from the standpoint of ventilating complaints against the crime commission - those constraints being the rules and laws of evidence. If a person is charged with, say, corruption arising from a crime commission investigation, a complaint about the behaviour of a crime commission official during the course of an investigation will be relevant only if it relates to the issue of admissibility of evidence in the actual court hearing. If the complaint does not relate to the admissibility of a part of the prosecution evidence, it simply does not get ventilated in the ensuing court case.

Even more relevantly, the reliance - some, including me, would say a very unhealthy over-reliance - by crime commissions on public interest immunity exemptions, especially at committal hearings, means that evidence which may show misbehaviour that may affect the outcome of a criminal prosecution is frequently suppressed, with the crime commission arguing that to answer a particular subpoena or question will reveal the methodology used in the crime commission investigation. Indeed, this problem is compounded in the recommendation of this committee's report, which was tabled in December 1998, that confidential information be protected from disclosure in legal proceedings. This committee contended that while the interests of litigants are important, given the nature of the work undertaken by the ACC and the potentially serious consequences which may flow from confidential information held by the commission being disclosed during legal proceedings, such information should be precluded from disclosure during such court proceedings. Unfortunately, this is a far too simplistic and, with respect, superficial examination of the issue. Perhaps this is because the committee was not told of the problems leading to miscarriages of justice that could result from such an approach.

I will examine the issue from a practical standpoint of an actual Queensland case. A person was charged with a particularly brutal murder. In the eyes of the public, and no doubt some of the investigators from the relevant Queensland crime commission, he was an unattractive figure. He was a member of what many police and crime commissions ominously refer to as outlaw motorcycle gangs - something many of the rest of us less emotively and less pejoratively refer to as motorcycle clubs. The principal evidence against him was that of an informant who eventually gave evidence on trial that he was threatened by police that he would be implicated in the murder if he did not cooperate. Whether the police made that threat I am unable to say. It was within the police power to deal with that contingency by secretly tape recording the informant. For reasons best known only to themselves, they chose not to do so. On the original bail application, the prosecution contended that the informant's typed police

witness statement represented a strong case against the accused as he was alleged to have confessed to the murder to the informant. He was denied bail on that basis. Six months later at the committal hearing it emerged that the informer had said exactly the opposite from his police-prepared statement on the day before the police statement was taken. On the day before the informer had said under oath at a Criminal Justice Commission investigative hearing that the accused had not confessed to him about the murder. The initial bail court hearing was not told of the existence of this radically different statement, and when it came to light as a result of aggressively-directed defence subpoenas at committal he was immediately released on bail having served six months in jail already. Later, after a two week Supreme Court trial, he was acquitted after the jury retired for a mere hour. No-one was ever brought to account for this episode. The police blamed the prosecutor, and the prosecutor blamed the police. If this committee's recommendation is implemented, more of this type of miscarriage of justice will occur. The Anti-Corruption Commission should be required to be answerable in court by way of subpoena or otherwise in the same way as the ordinary police officer is answerable. The ACC should be required to produce documents and answer questions in court. If a genuine, as opposed to a specious, objection can be made out, the High Court has made it abundantly clear in a number of cases that subpoenaed material which contains legitimately sensitive and properly confidential material can be viewed by a magistrate or judge who can then decide whether the material the crime commission objects to producing should be revealed.

The point should be made loudly and clearly that because a crime commission such as the ACC is on about rooting out police and public sector corruption, individuals and operatives within the commission are not above engaging in their own form of malpractice or bastardry. The longer a crime commission is in existence, the more likely the personal failings and institutional pressures which cause such practices are likely to emerge. While one, especially civil libertarians, wants police corruption and malpractice stamped out toughly and out, it is not to be at the expenses of procedural fairness and fairness generally, including fairness to police officers.

Before I move on to the necessity of an effective external watchdog, I urge this committee to rethink its proposal to excuse the ACC from producing so-called confidential information to a court. What is truly and validly confidential will be protected by existing court public interest immunity rules. What is not should be revealed in a court, so that all of the evidence can be before a jury.

On the question of making the crime commission accountable, the Australian Law Reform Commission in its report titled, 'Integrity: but not by trust alone', recommended three or four years ago that the National Crime Authority, the original and archetypal Australian crime commission, be subjected to a form of CJC-style oversight. We heard from Mr Allen a short time ago what a wonderful job the NCA has done in bureaucratically white-anting that very sensible proposal. The NCA has successfully to date bureaucratically lobbied against the implementation of this most sensible and moderate reform. Anyone who has ever tried to make a complaint against the NCA knows what a closed shop it is in that respect.

An instructive model for oversight of the crime commission is that introduced in Queensland in 1997. For what follows I apologise to Judge Urquhart, because I learned at lunch that his inspector model came in 12 months before Queensland's; but Queensland is slightly different. Queensland does not have a perfect model; it can probably be improved on. However, it is a darn sight better than the stand-alone

parliamentary committee oversight model that operates here and until recently operated in respect of the CJC in Queensland. The name of the oversight entity is the Parliamentary Criminal Justice Commissioner. I prefer the term 'inspector' as it is less of a mouthful. The Queensland model provides that a particular person must not be appointed as the inspector unless the person appointed is supported by the members of the relevant parliamentary committee unanimously or by a majority of members but not just a government majority. The inspector, after agreement as to appointment by the parliamentary committee, is formally appointed by the Speaker as an officer of the parliamentary service. By way of administrative support for the inspector, officers of the parliamentary service can be made available to the inspector. If asked by the parliamentary committee - and I stress 'if asked by the parliamentary committee' - the Speaker may engage lawyers and others to provide the inspector with services, information or advice. This category of term contract or fee-for-service adviser has to take an oath of secrecy.

The inspector has various functions as effectively required and directed by the parliamentary committee. This is an important innovation. It protects and preserves the very important oversight role of the supervising parliamentary committee. It goes a long way to make the committee's oversight role quite real in a practical sense. The inspector can be required by the parliamentary committee to conduct audits of the commission including operational filings. Importantly, the inspector can inspect files of current sensitive operations to see if the way the commission is currently exercising a particular investigative power is appropriate. The inspector can also examine a particular current or completed commission investigation file to decide if the matters under investigation are appropriate for the commission to handle or whether the matter is more appropriately investigated by another law enforcement or similar agency. The inspector can access operational files of the commission to which the parliamentary committee is deemed by statute to be denied access to investigate complaints or concerns about the activities of the commission. The inspector is obliged as required by the parliamentary committee to independently investigate allegations of possible unauthorised disclosure of information which the enabling act says is to be treated as confidential. Further the inspector, as required by the parliamentary committee, is to inspect the register of confidential information kept by the commission to verify the commission's reasons for withholding information from the parliamentary committee and to review reports given by the commission to the parliamentary committee to verify their accuracy and completeness. Importantly, the inspector cannot be made by the parliamentary committee to reveal to it various categories of information generally described as sensitive.

The powers and the position of the parliamentary inspector have been operational in Queensland for only two years. However, they have the real potential to effectively deal with a problem which has dogged parliamentary oversight committees since the establishment of the first committee - the Joint Committee on the National Crime Authority; namely, to ensure that the parliamentary committee can properly perform the job and not be snowed by the crime commissioner with claims of, 'We can't answer your questions because they deal with highly sensitive matters and we don't really trust you.' An investigation by the inspector is closed to the public unless the parliamentary committee authorises it to be open, and a decision in that regard must be made by a majority of the parliamentary committee. The inspector cannot be civilly or criminally sued unless the Supreme Court first decides that there is substantial ground for claiming that the inspector has not acted in good faith or has acted negligently. In my view, this strikes a reasonable compromise. Regrettably, in

the Queensland model there is a total prohibition on the inspector's being called to give evidence or to produce any document in any court, including the Criminal Court. While I recognise that considerable - indeed great - care must be taken to protect the parliamentary inspector against having to reveal sensitive information in court, in a criminal case especially I can see no reason why the ASIO approach cannot be taken. I refer to the leading case of Alistair, in which the defence alleged that ASIO had set up the accused. The High Court subpoenaed ASIO to produce what ASIO said was highly sensitive information. ASIO was directed to produce apparently relevant information about an ASIO informer and crown witness. The court said that it would decide its relevance. The court found that ASIO had come close to lying to it and that it was very relevant information to the defence. The court said that the test from now on would be that if sensitive information, once examined by the court, is seen to be 'on the cards' relevant to an accused, it will release it to the defence.

The next question is how Queensland's parliamentary inspector model has worked. While I strongly support the role of Queensland's parliamentary inspector and consider that its first appointee - Julie Dick - is a good appointment, enabling legislation creating the position does not provide for her to submit an annual report to Parliament. In that regard, delegates should note the distinction between the situation in Queensland and what Judge Urquhart has said about the counterpart body in New South Wales. Presumably, this is because her position is an adjunct to the operations of the supervising parliamentary committee to the CJC.

Julie Dick's position was created out of a Queensland political storm, the details of which need not be outlined here. Her work did not engender much controversy until about two months ago. She then published a report, as her legislation required her to do, into a complaint by an ex-Queensland police officer and now One Nation parliamentarian that the CJC had publicly leaked details of an investigation it was conducting into this parliamentarian. The investigation was triggered by the fact that at a Government House function the parliamentarian boasted about how, as a police officer, he had witnessed another police officer using assault tactics to extract confessions from various suspects. Apparently one of the Government House staff reported this illuminating piece of intelligence to the CJC, which then, through its parliamentary committee, directed Julie Dick to conduct an investigation.

During the CJC investigation, details of what was supposedly being investigated by the CJC were, according to a complaint made by the parliamentarian, leaked to the local newspaper, the *Courier Mail*. Julie Dick was directed by the CJC parliamentary committee - on which the complaining parliamentarian sat - to investigate the leak complaint. She committed the cardinal sin of doing what her statute required her to do. Apparently she called a *Courier Mail* journalist who had written stories of what the CJC was doing in investigating a complaint based on what the parliamentarian was boasting of at Government House. For her sins, she was the subject of a *Courier Mail* editorial two months ago, which self-righteously thundered that she had no business asking journalists questions and that her statutorily-mandated questioning of journalists behind closed doors was a misdirected use of resources. The *Courier Mail* made the now familiar claim of a number of journalists that there is one law for them and another for the rest of us in pronouncing that the media should not be subject to the parliamentary commission's star chamber. The *Courier Mail* went on to demand that the position of parliamentary inspector be abolished. I recount this, not to rubbish some journalists in their claim to protection from all sorts of scrutiny while they proudly demand scrutiny of everything and everyone else, but rather to point out that

a *Courier Mail* editorial written in self-justificatory pique does not mean that the new Queensland parliamentary inspector model is not working. In my view, it means the opposite.

I urge members of the committee and the Premier to read another editorial in *The West Australian* of 17 January this year. It is headed, 'Who is to watch the watchdogs?' It thundered in a completely different tone from Queensland's *Courier Mail*. It strongly argued for the establishment of a parliamentary inspector, noting that there have been three separate calls in three years in Western Australia for the establishment of such a position; namely, by the government-initiated Commission on Government in 1996, a Liberal Party-chaired joint parliamentary standing committee in 1998, and the government-appointed Boucher inquiry in 1998. As a committed believer in the role of parliamentary committee supervision of crime commission watchdogs, I ask Mr Court to appoint a parliamentary inspector now. Why will he not do it? He says it is not needed. However, on three occasions different committees that should be sympathetic to him have recommended it.

Some of the issues raised by Mr Dean and Mr Ayton deserve comment. It should be noted that when people become police officers they surrender certain of their civil liberties. However, I do not include the right to a fair trial in that. I have heard with some interest complaints that there is no presumption of innocence by the ACC and that the ACC does not give the Police Service all the evidence it has gathered. My experience is that when the police are investigating the rest of us, they behave in a similar manner. As a criminal defence lawyer, I do not often see police officers conducting an investigation by extending the target of the investigation the presumption of innocence, nor do I see very often police officers being prepared to make available to an accused, let alone his lawyer, all the evidence they have.

On the issue of incrimination, particularly having to answer questions at ACC hearings, I take up a point the Ombudsman made. It is my submission that there is a world of difference between the way corporate regulator the Australian Securities and Investment Commission works and the way permanent standing royal commission criminal investigations such as the ACC, the CJC and so on work. Corporate regulators operate essentially in the civil sphere. It is true that some of its evidence finds its way to the Director of Public Prosecutions to be used in prosecutions. However, I submit that there is a world of difference between the way that ASIC uses its regulatory powers to conduct civil inquiries into corporate problems and the way the ACC and similar bodies conduct criminal investigations.

In my view and the view of some others, investigative hearings have been overused, particularly in Queensland. In his landmark royal commission report, Commissioner Fitzgerald recommended that investigative hearings should be able to be held only if a Supreme Court application has been made. That unfortunately was not made law. I think a number of people in Queensland now regret that. I certainly urge the Anti-Corruption Commission to consider that as an alternative. However, investigative hearings - and by that I mean hearings to which people are made to come to the Anti-Corruption Commission, be questioned and be made to answer questions, even if they are incriminated - should be the subject of application to the Supreme Court so their necessity can be justified.

I also see the role in such applications for something called a public interest monitor. The public interest monitor is a new Queensland development which again, without

going into the detailed history of it, was established to deal with applications for listening devices. It had been a concern in Queensland for some time that when law enforcers in that state were applying for listening devices they were going into the judge's chambers. The hearings were held behind closed doors - it was just the judge, the law enforcement agency and the agency's lawyer. For reasons that are historical to Queensland, in 1997 a public interest monitor was appointed. He is a barrister in private practice, with no criminal practice experience, who is asked on a fee-for-service or sessional basis to be present at the Supreme Court chambers to, in effect, argue in a public interest mode or in a devil's advocate role whether a listening device should be issued; and, if so, under what terms and conditions. If the investigative hearing is to go by way of Supreme Court supervision, my argument would be that the application for permission to hold an investigative hearing should also be accompanied by a role for a public interest monitor.

I refer to the issue of how we deal with police once they have been charged with disciplinary offences. Although I accept this is slightly outside the brief - I will spend only a short time on it - it raises some important questions. In policing in Australia in the past decade we have moved away from a situation in which, when charged with disciplinary offences, an officer could be dismissed. Until recently there was a model whereby those disciplinary charges would be heard by either a District Court judge or a tribunal. In recent years we have seen the emergence of the loss of the commissioner's confidence model. Although I can understand the reason for the emergence of the loss of the commissioner's confidence model, as a civil libertarian, I consider it to be fair to police, if they are to be dismissed, that they be dismissed only after a full hearing, whether it be before a tribunal or a District Court judge.

I refer now to some matters that Mr Dean raised this morning about the reluctance of police to do their job because of fear of the ACC. Mr Dean knows that I have an interest in police, both as a defence lawyer and as having had two brothers as policemen. With the greatest respect to Mr Dean, he either borrowed that line from the Queensland Police Union after the Fitzgerald inquiry, or it is a universal line police union spokesmen use. It was certainly used widely by the Police Union in Queensland after the Fitzgerald royal commission. In reality, I have seen a considerable improvement in Queensland police, both as a result of the Fitzgerald royal commission and of the operations of the Criminal Justice Commission. Police union spokesmen should take a leadership role. If that role is to push the line that police are looking over their shoulder and will not do their job, that will be a self-fulfilling prophecy. If, on the other hand, police are told that the ACC is there to look after the crooks in uniform, I daresay that the Western Australian police will in due course see a degree of improvement that certainly I have seen in the Queensland police.

Public hearings can be held in two categories. Certainly the CJC in Queensland has held public hearings in a positive way. A dispute occurred in Queensland about liquid waste being dumped in various public places. It was quite properly the subject of a public hearing. It did not adversely affect the individual reputations of people concerned, because the person who convened the hearings did not allow the persons to be referred to by name. They were referred to by either position or initials. On the other hand I saw in the early days of the CJC a quite flagrant misuse of public hearings. One of the earliest hearings the CJC undertook was into whether certain prison officers at the Brisbane women's prison were, believe it or not, running a prostitution racket. What occurred there was very unfair to a number of prison

officers. A number of officers were publicly named by people whose allegations, when they were subjected to scrutiny, simply could not be proved. Those prison officers' reputations were irretrievably damaged.

More recently, some public hearings were conducted by the CJC into some police corruption, both on the Gold Coast and the Whitsunday Islands. Although I have the utmost respect for the outside investigators who were brought in to conduct those hearings, I was left with an uneasy feeling that they did not particularly fulfil any valuable role. I was also left with the uneasy feeling that it made it much more difficult for the police officers who were charged to get a fair trial. It must be recognised that the High Court has said in effect that it will not stay trials on the basis of unfair publicity. All it will do is delay them and get the fairest trial possible under the circumstances.

I fall on the side of public hearings being held only rarely and only then effectively to indicate in the broadest terms what is occurring with a particular issue. There is a very real risk, particularly after hearing the difficulties that Mr O'Connor faced here, that if public hearings are held, they will almost inevitably turn into a combination of media circuses and exercises by the ACC in self-justification.

I have looked from afar with some puzzlement at the inability of the Police Commissioner and others in this State to acknowledge that a matter has been referred to the ACC. As someone who opposed the establishment of the CJC and who has had to learn to live with it, I have not seen any problem in Queensland with the Police Commissioner publicly acknowledging that a matter has been referred to the Criminal Justice Commission. I see no reason that a similar comment cannot be made by the commissioner here or by Mr O'Connor.

I finish by touching on the role of the research and coordination division of the Criminal Justice Commission. I urge the committee to examine that research and coordination division's role. It takes the issue of investigating complaints against police beyond looking at the individual police officer and whether he or she has or has not done wrong and has attempted to take the files from the complaints division of the CJC to try to extract some policy issues arising from a pattern of complaints. The research and coordination division of the CJC has recently announced that a much greater percentage of police are now prepared to report on other police. If a research and coordination division did not exist, I do not expect that fact would be published. Also, the Criminal Justice Commission has recently published an analysis of complaints made to the CJC of assaults by police on citizens. It has attempted to analyse the age of police against whom most complaints of assaults are made and the circumstances under which those complaints have been made. Those reports published by the research and coordination division are a very good tool for the Queensland Commissioner of Police and his senior executive service to examine in making changes to the Queensland Police Service.

CHAIR—You drew attention to disciplinary action, as opposed to criminal prosecution. That is something Mr Dean raised this morning when he used the term 'administrative action'. The crime commission in Western Australia, the ACC, in a criminal prosecution must undergo several tests. Firstly, it must undergo a test of scrutiny by the public prosecutor as to whether it will sustain a successful prosecution, not whether it indicates guilt or otherwise. If the answer to that test is yes, the matter then goes to the court. Again, the robustness and veracity of the evidence is tested.

That is different from disciplinary action, particularly for police officers. A lack-of-confidence action may be taken simply at the discretion of the Commissioner of Police if an officer is found guilty of conduct which causes the Commissioner of Police to lose confidence in him or her. If prosecution of disciplinary matters were to follow the model that you suggested, by amending our Police Act to say that a disciplinary procedure must go before a tribunal or a judge and go through the same test as a criminal prosecution, would there remain a need for a crime commission parliamentary inspector if the test is undergoing prosecution?

Mr O'Gorman—I think you would. A parliamentary inspector would ensure that the ACC is doing its job properly generally and - to precis it - would not snow this committee in its report to the committee. The point I was making about police disciplinary proceedings - as I understand some of the complaints that Mr Dean has made today, and I might have factually misunderstood them - is that police are susceptible to being dismissed by the commissioner without a hearing on the basis of an investigation conducted by the ACC where a police officer's lawyer is not able to robustly cross-examine. If my understanding is factually correct, that is fundamentally unfair to police. Although I am combative with police - I hope reasonably combative - it is important that police be given procedural fairness, particularly in disciplinary matters which can result in the loss of their jobs. I can understand, having regard to the Fitzgerald and Wood commissions, the reason for the concept of the loss of the police commissioner's confidence. However, weighing up what is happening, no police officer should ever be dismissed unless a full hearing has taken place where his or her lawyer can properly test and challenge all the evidence. Does that answer your question?

CHAIR—Yes, it does.

Mr TRENORDEN—I enjoyed your dissertation but my ears pricked up at one point when you referred to some prejudices of mine. I wonder whether I understood you correctly. You alluded to the Australian Securities and Investments Commission and said its operation was somewhat different. I was lifted by what you said as I agree with you. Is it my biased perception that the ASIC is run by bean counters and our ACC is run by lawyers; or is it more complex than that?

Mr O'Gorman—Some people would say that anything run by lawyers is worse than anything being run by bean counters.

Mr TRENORDEN—I am being serious in the question though.

Mr O'Gorman—I take it seriously. The point I was trying to make, with respect to Mr Allen who asked why people complain about the powers the ACC have when the ASIC and its precursors have had those powers for years, was that they had those powers in a civil context where people cannot go to jail and cannot lose their liberty et cetera. To make the jump from saying that no-one complains anymore about the ASIC so why should anyone complain about the ACC is, if I understood Mr Allen's point correctly, to miss the point that the ACC can involve itself in a process which can result in jail for a police officer and the consequent loss of his or her job; therefore, it is comparing chalk with cheese.

Mr TRENORDEN—Yes, but is there an implication in what are you saying - not what Mr Allen was saying - that one of the problems is that the organisations that have been set up go to the legal conclusion quicker than they perhaps need to?

Mr O'Gorman—Yes. ASIC's powers are similar to the tax man's powers. His attitude is that people should not worry about procedural unfairness, he issues a default assessment and you have to prove that it is wrong. That might be all right when dealing with corporate regulation and the collection of tax because, if you trace it historically, the tax man was given the power; then the corporate regulators said they would take the same powers; and then the law enforcers transmuted it and took it into the criminal arena. We must acknowledge that all the ASIC does is corporately regulate in a civil context. To jump that into the criminal arena is, in my view, a mistake.

Mr TRENORDEN—I take your point but in what you are saying there would seem to be an option. Again, going on what has been said about open hearings, there may be a format that, if correctly run, could allow an examination of the proposal of a public hearing without seeking the views of too many people.

Mr O'Gorman—I fail to see it. My concern about any public hearing, whether used in Judge Urquhart's terms of a module as part of an overall investigation, is that whatever marginal gain which might be achieved by way of acquiring extra criminal intelligence, it is significantly lost by the failure of a person to be able to get a fair trial later. I am of the view that post the Fitzgerald inquiry in Queensland, some of the conservative politicians who were tried and went to jail should never have been tried because they never received a fair trial because of public blood lust mood.

Mr TRENORDEN—Following on from that but in a different direction, this committee travelled some years ago to Hong Kong, New York and Los Angeles and there was a view in two of those places that police officers should be paid salaries well above those of the average public servant. However, there is a public interest in police unfairly losing their jobs; that is, it is better to have a process where police officers have only one chance and, even if it is unfair and perhaps they are not guilty, they must go in the public interest. Do you see any balance in that?

Mr O'Gorman—I do not agree. Police must be treated fairly and if they are not treated fairly, how on earth can we expect them to abide by the proper procedural protection processes when they are investigating the rest of us? There is a strong case for police to be better paid but I do not think anyone will take any notice of me on that matter.

Hon N.D. GRIFFITHS—Mr Dean might.

Mr O'Gorman—He might, but I do not hold the purse strings. In terms of dismissal, the reality is that police should be subject to full procedural fairness. However, having said that, one of the things about which I have been critical of the Criminal Justice Commission is not putting the same stings on police that police put on the criminals out of uniform. Why do we not see more police being brought in from other states as covert operatives so that they can act as criminals to catch the criminals in uniform? That is done widely in the United Kingdom, where they have more police services than one can count, and in the United States. This is one of the problems with policing in this country. I do not know whether it is a mind-set of police commissioners or

whether they are just not willing to do it. It could be done well by police from other states who know how police and criminals think. If good covert police operatives can catch good criminals out of uniform, why can they not catch the criminals in uniform? I do not see any commitment in any of the Australian police services for that tactic to be used.

Mr THOMAS—You mentioned that you had some difficulty understanding the problem we have in this state about it being notified publicly that a matter is before the Anti-Corruption Commission. For example, if the Commissioner of Police refers to a matter, he must say it has gone to an external agency rather than name the ACC, which I agree is an absurd situation. The reason that provision was put in the legislation is that there was a time during the days of the Official Corruption Commission - it is the same legislation and the same provision - when people would make a complaint about a political opponent and then leak it to the press that that person was being investigated by the OCC for corruption. That fact, in itself, could be damaging to people. Therefore, the provision was inserted to discourage malicious complaints and the publicising of them. If you have any suggestion whereby we could (a) retain that protection but, (b) get around the absurdity of matters that should be in the public arena being able to be notified, I would appreciate it.

Mr O'Gorman—That problem has occurred in Queensland with the CJC. On the eve of almost every local government election, these sorts of comments were made by people who were seeking office or seeking to remain in office. Interestingly, in the last local government election just held it was not an issue. Whether it has run out of steam and people who make complaints and then publicise them on the eve of a local government election are seen for what they are, I am not sure, but it seems to have been solved in Queensland.

Mr THOMAS—Solved by the passage of time rather than by any legislative -

Mr O'Gorman—Solved, I think, by the passage of time because it has been seen to be a stunt. Certainly in the early days of the CJC and in the early days of the Goss Labor government, I recall that the then conservatives, who were in opposition for the first time, I think, in about 30 years and were trying to find their feet, used a tactic of making a complaint to the CJC about a Labor government staffer and then running to the press saying, "We have done this." It became a problem, but I think with the effluxion of time it has all but stopped. I have sometimes toyed with the idea of whether it should be an offence for the person who has made a complaint to advertise the fact that he or she has made that complaint. After listening to Mr O'Connor, if I understood him properly, if the Police Union says that the ACC is crucifying yet again one of its members, then if it has started the play, maybe Mr O'Connor should be able to play the game. Maybe it should be an offence for a person to publicly advertise the fact that a complaint has been made. However, if that is to be so, what does one do with the person who simply goes to the newspaper and leaks it? I am not sure of the answer. The CJC has been operating in Queensland for 10 years and - I say this with some hesitation - it certainly was not a problem in the last local government election or in the last two or three state elections.

CHAIR—Mr O'Gorman, thank you very much. You will receive a transcript of your evidence. Will you please read it, correct it and return it to the clerk as soon as possible.

Proceedings suspended from 3.46 p.m. to 4.01 p.m.

[4.01 p.m.]

MATTHEWS, MR BARRY ELDON,
Commissioner, Western Australia Police Service,
2 Adelaide Terrace,
Perth, examined:

CHAIR—As you were not present earlier in the day, it is necessary for me to advise that this is a properly constituted hearing of the Joint Standing Committee on the Anti-Corruption Commission. The proceedings are being recorded by Hansard.

Mr Matthews—I will first talk about the extent of public corruption in Western Australia. In addition to the Anti-Corruption Commission, the Western Australia Police Service, through its internal affairs unit and the public sector's investigation unit, investigates allegations of corruption against police officers and other public sector employees. Over the past three years, the Police Service had approximately 6.8 million contacts with the community through reported offences, telephone calls to the police operations centre and traffic contacts. These contacts gave rise to 4,644 complaints, 612 of which fell within the parameters of the ACC reporting requirements; that is, they related to allegations of corruption or serious improper conduct. Investigations by the internal affairs unit has resulted in 62 charges against police officers. The public sector investigation unit investigated 261 complaints against public sector employees between 1996-97 and 1998-99, resulting in 320 charges being preferred. Even when the figures provided by the Anti-Corruption Commission are also considered, there is no indication that corruption in the public sector is rampant. Nevertheless, corruption at any level cannot be tolerated. It is a cancer on the public sector, virulently spreading in an environment where complacency and lack of accountability pervade an agency's culture. A policy of tolerance is not acceptable; proactive anticorruption strategies are imperative. Failure to attack corruption will serve only to demonstrate that Western Australia has not learnt from the Wood and Fitzgerald inquiries, which were held into the New South Wales and Queensland police forces. Police corruption should be the community's greatest concern. Unlike other members of the public sector, police officers are empowered to carry firearms, enter premises, seize property and use force. They also have access to information, criminals and drugs. The extensive powers exercised by police and the trust reposed in police officers means the community is entitled to be served by only those officers with the highest integrity and honesty. While corruption may not be systemic in the Police Service, or endemic as the Wood and Fitzgerald inquiries demonstrated, officers operating in certain areas become more vulnerable to corruption. The area of criminal investigations is undoubtedly one such area, requiring the utmost vigilance.

Despite the existence of the internal affairs unit, in which I have complete faith, the Anti-Corruption Commission plays an important role in ensuring that allegations of police corruption are effectively investigated. First, some members of the public, and even some police officers, will not report allegations of corruption to the internal affairs unit because of the mistaken belief that, as the unit is part of the Police Service, it is not independent and impartial. I am concerned that corruption might go undetected because complainants lack sufficient confidence in the unit to report it. Second, the Anti-Corruption Commission has extensive powers which are not available to the internal affairs unit, enabling the commission, through a special

investigator, to conduct more exhaustive and far-reaching investigations. It can compel witnesses to attend and answer questions, and the Anti-Corruption Commission Act provides penalties for giving false evidence. Third, in some circumstances, the Anti-Corruption Commission has worked in conjunction with the internal affairs unit. This enabled greater resources and wider powers to be devoted to an investigation than if the internal affairs unit were to undertake that investigation alone.

In terms of the second area of interest to the committee; that is, the cost effectiveness and performance effectiveness of the Anti-Corruption Commission, I am not privy to the budget the government has seen fit to allocate to the Anti-Corruption Commission, nor is it appropriate that I comment on it. When assessing the performance effectiveness of the Anti-Corruption Commission, it is important to understand the role assigned to it by parliament. The Anti-Corruption Commission Act empowers the ACC only to investigate and report on corruption. The appropriate agency is then required to take the necessary action to discipline or remove corrupt officers from the public sector. Matters are referred to the Director of Public Prosecutions where there is sufficient evidence to support criminal charges. Some members of the community and the media seem to be labouring under the misapprehension that the Anti-Corruption Commission and the Police Service are solely responsible for eradicating corruption. The community has an important role to play in ridding the public sector, particularly the Police Service, of corruption. Every person who has information about corruption has a responsibility to report it. The Anti-Corruption Commission and the Police Service have a responsibility to properly investigate those reports.

Every chief executive officer, including me, who receives information about corruption, has the responsibility of ensuring appropriate action is taken, as does the DPP, where there is sufficient evidence of criminal conduct. The media have a responsibility to fairly and objectively report on corruption issues. The Police Union and other public sector unions have a responsibility to support initiatives designed to eradicate corruption. The Police Union in particular, can make a major contribution to the reform of the Police Service by supporting anticorruption strategies and instilling in the work force a culture that will not tolerate corruption. Corruption is the community's responsibility, and those entrusted with the task of ridding the public sector of corruption require the community's support. It is my personal experience that corruption is insidious, difficult to detect and very hard to root out. I have encountered great difficulty in removing those officers in whom I have lost confidence. As Commissioner of Police, entrusted with the responsibility of maintaining public confidence in the Police Service, I need the power to quickly and effectively deal with those officers about whom I have real concerns. The power afforded me under section 8 of the Police Act 1892 to remove officers in whom I have no confidence is essential if I am to rid the Police Service of those lacking in integrity and honesty. Corruption cannot be effectively dealt with by solely relying on the power to take disciplinary action or instigate criminal charges against corrupt officers. There is little point in the ACC referring information to me if I do not have the power to act on the information at a management level.

To judge the ACC's effectiveness by solely having regard to the number of criminal convictions resulting from its investigations is to misunderstand its function and underestimate its impact. Corruption by its very nature is opportunistic and thrives where there is lack of scrutiny. The mere existence of the ACC has had a deterrent

effect. The presence of the ACC has increased the awareness of police officers of the need for accountability and compliance with standard operating procedures. More significantly a number of police officers who have been subject to investigation by the ACC have been disciplined, charged with criminal offences, or have resigned. The ACC is but one component of the strategy to address corruption within the Police Service.

The Police Service itself recognises the need for education and training, and to this end the standards development unit focuses on matters such as ethical guidelines, a charter of rights, service philosophy and the development of strategies for continued improvement of ethics, integrity and professional conduct so as to contribute towards a process of cultural change.

In terms of the third area of interest, the powers and practices of the Anti-Corruption Commission, it seems to be an anomaly in the ACC act that the ACC has the power to compel witnesses to attend and answer questions in the course of a preliminary inquiry under part 3, but is denied those powers for the purposes of investigation under part 4. The ACC would appear to be in the unenviable position of having extensive powers to determine if a matter is worthy of investigation, only to be denied those same powers when it comes to actually conducting an investigation. If corruption is to be fully investigated, then the ACC must be armed with the appropriate powers. It is neither always timely nor cost effective to require the ACC to appoint a special investigator to conduct every investigation solely to enable witnesses to be compelled to appear and answer questions. The extension of these powers will not compromise the rights of witnesses if witnesses are afforded the same protection available under part 3 and during special investigations under part 4.

I can also see considerable benefit in the ACC being given the power to hold public hearings. In some circumstances the public interest is best served by the public being made aware of the nature of matters under investigation. This is particularly the case when there is misinformation, inaccurate and selective media reporting of certain matters. Having said that, I do not support the ACC being compelled to hold public hearings on every occasion. The protection of vulnerable witnesses and the potential damage done to a person's reputation will, in some cases, mitigate against the matter being the subject of a public hearing. For the same reason that I support the power to hold public hearings, I would welcome consideration being given to amending sections 52 and 54 of the act. In the past I have, on occasion, been unable to correct inaccurate media speculation and inform the public of matters in which they have a direct interest. Where the public interest is best served by publication of certain information, that capacity should exist. The fight against corruption is often better served by an informed public providing their support.

In terms of the fourth area of interest, operational accountability and the redress of grievances against the Anti-Corruption Commission, those with legitimate grievances against the ACC should have access to a retired judge who could head an oversighting body. It is imperative however, that the introduction of an oversighting body not render the ACC ineffective. The experience of the Police Service and other law enforcement agencies around Australia and overseas has been that oversighting bodies are often used as a vehicle to make false complaints, which are designed to derail and delay investigations and intimidate investigators. Careful and detailed consideration is required to ensure that any proposed oversighting body does not intrude into operational matters and unreasonably interfere with the ACC's primary function. The

public interest will not be best served and public money well spent if the ACC is bogged down defending itself against malicious complaints while corruption persists unexposed. In establishing an oversight body it should be remembered that the courts provide an avenue for redress where the ACC acts without power or errs in the exercise of its power. Furthermore, any criminal conduct can be investigated by the Police Service and breaches of standards investigated by the Public Sector Standards Commission, upon referral from the overseeing body. The ACC is by no means above the law. In my view the joint standing committee on the ACC also has a role to play as a reporting mechanism to advise parliament and the community on the scope and level of corruption in the public sector.

CHAIR—Thank you very much, commissioner. In particular, thank you for the numbers that you introduced in the paper: 6.8 million contacts and 4,644 complaints. That puts the whole matter in perspective.

Mr Matthews—Correct.

CHAIR—Were the figures for police officers investigated by the internal affairs unit - 62 charges - and people investigated by the public sector investigations unit, that is other than police officers - 320 charges - for quite different reporting periods? Were they for the same year?

Mr Matthews—I understand it was for the same year. That puts it in perspective in terms of 4,700 police officers and a public sector of 120,000.

CHAIR—It certainly does. With regard to section 8, while it is a matter within the Police Act and not the ACC, loss of confidence notices have been served on police officers as a result of reports of ACC investigations. When a report of an ACC investigation is received, what action is taken by the Police Service before a decision is made on the officer?

Mr Matthews—Firstly, the report is received by the internal affairs unit which goes through it and checks it for its validity - any errors in it or whatever - and then they provide a summary of the report to my office. After examining that over the relative period of time, depending on the number of people involved and the area and time of the allegations, I then have to come to a view on whether I believe there are reasons for loss of confidence in terms of the individual officers named in the report. Assuming that I do come to that view, I then ask those officers to give reasons within a time period, under an agreed arrangement between the Police Union, the Police Service and the minister, to respond and give reasons why I should not lose confidence in them to remain in the Police Service. In effect, it is a natural justice provision that provides the opportunity for (a) the officer to respond to the allegations, and (b) to put forward material that has not been provided by the ACC or the professional standards unit to argue why they should remain.

Effectively, notwithstanding the allegations in the report, it is to persuade me to come to a different view regarding the officers remaining in the Police Service. Having received those responses, I must weigh up the initial report received against the responses and make a determination on whether I should recommend to the minister the removal of the police officers from the service. I see section 8 as a managerial action as distinct from a disciplinary action.

CHAIR—Before you make the decision, as I understand what you have just said, the police internal affairs unit exercises an oversight function of the investigation or the evidence presented to it by the ACC.

Mr Matthews—Correct, although oversight is probably the wrong word. They analyse the material and endeavour to summarise it in a form which can be easy understood, given that some of these matters extend over a number of years and are very complex.

CHAIR—Does that analysis extend to a test of the robustness of the evidence?

Mr Matthews—Yes, I think it does. There is no point in the professional standards unit putting something up to my office if it is not convinced it is worth my consideration.

CHAIR—What is the nature of the material that is received from the ACC? Is it merely a report, or do you receive other evidence?

Mr Matthews—The report I receive and consider is a fairly lengthy report prepared by the ACC with a covering summary by the professional standards unit.

CHAIR—The material looked at by the internal affairs unit in preparing that report for you —

Mr Matthews—It could be a mass of telephone intercepts and documentary evidence. I have the ability to examine all that material. If anything is raised in the initial report or in the response by the officers against whom the loss of confidence process has been brought to bear, I have the ability to access whatever the professional standards section has.

CHAIR—The important point is that supporting evidence is available to the internal affairs unit to test before it comes to you.

Mr Matthews—Yes.

CHAIR—It was said earlier today that the ACC will send to the Police Service incomplete material. Is that your experience?

Mr Matthews—I am not able to say that everything that the professional standards unit gets from the ACC is the complete information that it has. I honestly do not know the answer to that question.

CHAIR—If you were not satisfied, are you able to ask the ACC for more information?

Mr Matthews—Yes. If I am not satisfied that enough material was provided to make a decision regarding whether I had confidence in the officer, my first call would be to go back to the assistant commissioner in the professional standards portfolio and get whatever material they had. If I am still not satisfied, I would invite the ACC to provide further material. If at the end of the day that was refused, and I was left with a doubt, I would have to exercise that doubt to the benefit of the officer.

Hon N.D. GRIFFITHS—Commissioner, you made reference to the role of this committee in concluding your observations; namely, that we have a job in advising on the scope and extent of corruption in the public sector. How are we supposed to do that if the Anti-Corruption Commission does not know the extent and scope of corruption in the public sector, and nor does anyone else it seems?

Mr Matthews—The difficulty you face, and which faces all people who examine the extent of corruption, is that it is dangerous to rely only on complaints. The Wood royal commission demonstrated that. It was only when it went into a lot of covert operations that a lot of the corruption came out. That is the nature of corruption. I have no idea of the extent of corruption either in the Police Service or the wider public sector. That is the nature of corruption. It operates, and needs to operate, under the cloak of not being discoverable.

Hon N.D. GRIFFITHS—In his evidence this morning, Mr O'Connor made a number of observations. I refer to his written submission which he read. He referred to the ACC on page 5 as follows -

The Commission believes there are significant problems in the Police Service, mainly centred on the self-appointed elite, the detective cohort, which used to be called the CIB.

He went on to say -

Among detectives there appears to be a widespread disregard of Standard Operating Procedures, permitted because in many areas supervision is, at best, perfunctory. Many detectives appear to spend significant parts of their working day engaged in activities other than police work, e.g. long lunches. Many appear to have inappropriate relationships with criminals, which relationships are not recorded in accordance with Standard Operating Procedures.

Further -

. . . there is evidence to suggest that a not insignificant number of detectives engage in criminal or corrupt conduct and a larger number, if not themselves actually involved, are either incredibly naive or turn a blind eye to what is going on.

Do you agree with those observations? If so, what are you doing about them? If you do not agree, where did you disagree?

Mr Matthews—Those are his words. I do not agree on the information available to me. It is not clear whether he is talking about conduct which occurred five, 10, 15 or 20 years ago or the current situation.

Hon N.D. GRIFFITHS—With respect, he used the words "there are", so he is talking about the present.

Mr Matthews—I have a bit of difficulty with the current situation. My response is that if there is this evidence, as the commissioner he must tell me about that. I cannot do anything about that if it is locked up in the ACC within the mind of the chairman. I

have been provided with reports regarding past allegations. Some have been acted upon, and some are in the process of being acted upon. If he has information on the extent of corruption stated in those comments, I would expect to be receiving those reports so I can take steps. I cannot do that if it is only in his mind.

In terms of the second aspect of that matter - namely, the willingness of police officers to effectively turn a blind eye - I must acknowledge that the police culture, and this is not peculiar to WA as it exists in other places around the world, has tended not to report illegal or corrupt conduct observed or made known. There is a range of reasons for that. The police culture does not encourage it. Things can be done in the Police Service. One of the most important things is to try to change the culture to encourage honest police officers to come forward. The most powerful weapon against corruption in the Police Service is an honest police officer who speaks out about it. It is the classic saying that if good men do nothing, evil will flourish. Although it is a bit sexist, as we have men and women in the Police Service, it requires officers to have the courage to come forward and be supported by the agency, the union and their colleagues. Ultimately, the service will be badly damaged by allegations of corruption.

Mr TRENORDEN—I have a number of questions. The first three relate to matters leading up to section 8. You have indicated in part that you may not be able to answer those questions, but I would appreciate it if in some time in the future you could have a go at them. Is the ACC information which arrives in your office in a good format for the Police Service to use?

Mr Matthews—I have not had difficulties with the format in which it arrives. I am obviously aided by a summary that is provided by the professional standards unit. I come to this service with 34 years policing and I have done a lot of investigative work. Very often when you are investigating you never get information succinctly laid out; you must effectively take a lot of raw information and process it in your mind to arrive at various conclusions that are able to be logically drawn from that raw information. That is part of being an experienced police officer. Undoubtedly, even subconsciously, I go through that process and run my rule over it to see whether it all makes sense and ask if there is some sort of setup and whether we could be going down a wrong path with false information. At the end of the day of course I am human and can get it wrong, but I believe I apply a reasoned and experienced judgment in arriving at certain conclusions. I do that not only with the information that I get from the ACC, but I also rely on the responding officers, who very often will have a biased view on the information, to put forward their perspective of it. They are provided with the same information that I am and are able to comment on and draw out what they see as inconsistencies and falsehoods in it. They certainly do that, I can tell you. They send me reams of stuff. So I am reasonably comfortable that I have sufficient material, which is all biased - we are all biased in various perspectives - to make an assessment of it and arrive at a judgment.

Mr TRENORDEN—The information does not arrive in too legalistic a format?

Mr Matthews—I am of course a barrister and solicitor in New Zealand, so I do not have great problems with that.

Mr TRENORDEN—Your internal investigators would not be.

Mr Matthews—I do not think that the material is too legalistic. There are occasions when the law must be applied to it, but generally speaking the information is about activities that are alleged to have occurred or not. There is not a great cloak of law around it.

Mr TRENORDEN—Is there a capacity for your internal affairs officers to check back with ACC investigators?

Mr Matthews—Yes, absolutely.

Mr TRENORDEN—Does that occur?

Mr Matthews—Yes.

Mr TRENORDEN—It seems to me strange that at the end of the process which you outlined, the final say rests with the minister, who strangely would have no information in that whole process from the ACC to your making the decision that some officer has lost your confidence. Is it not strange that the matter heads off to a minister?

Mr Matthews—I think the answer is yes for the very reasons you have indicated. In a number of the other Australian jurisdictions the commissioner makes that determination, and his decision under the powers of the relevant Act is then open to some sort of review process. Here it is the way the act is, and I am complying with the act.

Mr TRENORDEN—Earlier today on several occasions it was indicated that the ACC Act could be changed so that the ACC could take a more advisory, pre-emptive role on corruption. Would you have any opinion on or objection to the ACC going to the Police Force and making comments on police systems or training?

Mr Matthews—I do not have any problem with that. I obviously get feedback from the commission members when I meet with them. They put perspectives of their observations and opinions. Ultimately the management or running of the Police Service is mine and mine alone. It would be foolish to ignore advice and bona fide beliefs on what needs to be done. Ultimately I make the decision. Naturally I would be guided by various commentators, and there are an amazing number who want to help me do the job.

Dr CONSTABLE—You commented that the mere existence of the ACC is having a deterrent effect. Could you give us some idea of the evidence you have for that interesting comment?

Mr Matthews—I suppose I have probably spoken to most of the police officers in the State during my tours around the State. Two things really come through. One is that they are all aware of the ACC and its role. A number of them have a mistaken view of the ACC and what it can or cannot do, but they are certainly aware that its function in essence is to attack corruption and that a target of that attack, if I may put it that way, would be the Police Service in the sense of those officers acting corruptly. I am concerned about the perception, however, that the vast majority of officers, who are honest and hardworking, have a unrealistic fear of the ACC. I am trying to turn that around because, as I have indicated, it is most important in combatting corruption to

have honest police officers. That aspect is working against the Police Service. I want honest police officers, when they see corrupt activities or suspicions or allegations of corruption, to be reporting them to the professional standards unit, me or the ACC and standing up and effectively being counted. As to whether it has had a deterrent effect, I believe it has because people are aware that there is a body with quite extensive powers to investigate and which is engaged in the investigation, along with the professional standards unit, of allegations of corruption or criminal conduct.

Dr CONSTABLE—How often do police officers report corruption or behaviour that is concerning them? What is the mechanism for them to report that? I would think that there needs to be some protection so that the person can be protected when coming forward and reporting that sort of behaviour.

Mr Matthews—It is a challenge for any police agency. The police culture is very introspective and inclusive in its members. It values very strong loyalty, which of course can be an endearing feature of the culture, but where a corrupt officer, a predator, is abusing that trust, which we engender and give to most of the Police Service, for their own personal gain, it requires officers to examine the whole question of what is meant by loyalty. The loyalty is misplaced if they are protecting colleagues and friends, if those people are indirectly attacking the integrity of the Police Service. It requires a regime and culture that encourages officers to come forward and be provided with support and protection by their colleagues. I have seen misplaced loyalty occurring in New Zealand. However, people have stood up and been counted and have given evidence of corruption and criminal activities by colleagues, former friends. It is amazing that there is nothing more likely to lose officers' friends in the Police Service than to do that. Most people have a misplaced sense of loyalty and are not putting the organisation ahead of themselves or their colleagues. It is difficult to change and something that we as a Police Service need constantly to be working on. We need to support that with things like witness protection and other strategies. At the end of the day very often people who have come up, stood up and been counted and exposed corruption, do not remain in the Police Service because it is too difficult an environment in which to do that. That is very sad, because these are the people we need in the Police Service, whether in Western Australia, New Zealand or wherever.

Hon J.A. COWDELL—Is there an appropriate division at the moment between the IAU and the ACC in dealing with corruption in this State? I raise the questions for a number of reasons because a number of points have been made at the hearing today, including the suggestion that there may be a growing overlap in duplication between the bodies as the ACC expands its investigative capacity and whether resources could be reallocated. There has also been a suggestion today that the internal affairs unit has become almost non-functional, or that there is a growing distrust between the internal affairs unit and the ACC and that perhaps these cooperative exercises are less than beneficial in terms of results.

Mr Matthews—I think the justification for the ACC over and above the professional standards or internal affairs units is from a public perspective. There has been valid criticism throughout history - in probably all agencies throughout the world - that the police cannot investigate themselves. Unfortunately, in some instances, that has proved to be correct. Various countries, states and territories have moved to an independent agency to carry out the same function as those which should have been carried out by the internal affairs unit within the police service, and at least to provide

that element of assurance to the public that it is not mates investigating mates, if I can put it that way. It is true that there is an element of duplication in that both bodies are investigating and are tasked with investigating criminal behaviour or corrupt activities on the part of the Police Service - if I can ignore the role of the ACC in its wider role of looking at the rest of the Public Service. That can be overcome by a clear delineation of who is doing what.

Under section 14 of the Act, the Police Service is bound to report cases which require investigation to the commission, and it does that. There will be joint operations on occasions. There have been occasions in the past when some of them have been performed badly. Part of the reason for that is that there has not been a clear memorandum of understanding of the exact role of the ACC and the internal affairs unit. There are opportunities to improve that relationship by clarifying when there is a joint operation and having an agreed process of who will collect what, who will do the analysis, how it will be presented and who has responsibility for what. That has not existed in the past and that has been a cause for concern which has led to some of the investigations being less thorough than they could have been. It is important that there be a close arrangement between the professional standards unit, particularly the internal affairs unit, and the ACC to ensure that both bodies have a clear understanding of the extent of corruption and the allegations that have been made against the Police Service so both bodies can focus on the end goal, which is a clean Police Service in which allegations can be brought to notice and followed through. If there is a difficulty in the relationship - I have not detected that to any large extent - I believe it is manageable. If there is a concern, it can be corrected. Both bodies can work together and, in doing that, avoid the potential for duplication. The ACC will not have the resources to deal with all the complaints and allegations. We have a large professional standards group. I do not foresee the day when we will not need one. We will need to be constantly vigilant. Even if we do not have complaints, we will need to find out for ourselves in a realistic assessment whether we have corruption, so that we do not believe that, because we have no complaints, we have no corruption. There is a real danger of that occurring. We will need to confirm whether that is the case using our own initiative.

Mr THOMAS—Leading on from the point you have just made about the size of the IAU, when this committee was first established in 1997, the ACC was also being set up. It had no investigators at the beginning, and the professional standards portfolio had about 30 people. There were the internal affairs, internal investigations and public sector units. The ACC has grown - it has about 30 investigators - yet there has been no decrease in the size of the professional standards portfolio. More work is being done. Are better results being achieved? There seems to be almost a doubling of the number of people involved in the work done by both the police and public sector generally. I doubt that there is a doubling of corruption.

Mr Matthews—We do not know that of course, and I add that qualifier.

Mr THOMAS—No-one knows that and everyone has made that point.

Mr Matthews—In fact the size of the professional standards unit has doubled. There is a substantial number of officers in that unit. We have higher numbers in both the internal investigations and the internal affairs units. In terms of the internal investigations unit, I am working with the assistant commissioner of professional

standards to look at devolving that to the districts. I see that more as a management role, because part of the difficulty with complaints about behaviour and impropriety in the Police Service must be closely linked to supervision and management. It is the role of managers to ensure that proper standards are being reinforced throughout the service. In terms of corruption, that will always be a centralised unit. Currently, I have not seen a great decrease in the numbers. I do not foresee the time when we can say that there is no corruption in the Police Service. I do not know of any police service in the world that has no corruption. There will always be officers who are either opportunists or predatory.

Mr THOMAS—That much I understand. However, the point I am trying to make is that three or four years ago, 30 people were looking at official corruption in Western Australia and now there are 60. It is a big increase.

Mr Matthews—That question is probably best answered by the Chairman of the ACC. Many of the issues it is looking at are historical. An element of catch-up is involved as a result of allegations which have come forward. Much of the information I get from the ACC is fairly dated. It is currently investigating matters, just as we are currently investigating matters. It may be that we are adopting a more rigorous and thorough approach than was adopted in the past. However, I am probably less able than others to comment on past practices in that sense.

CHAIR—Thank you, commissioner. You will receive a transcript of the evidence given today. Please read it carefully, correct any errors it may contain and return it to the clerk as soon as possible.

[4.49 p.m.]

CHARLWOOD, MR GRAEME DESMOND,
Director of Anti-Corruption Commission Investigation,
66 St Georges Terrace,
Perth, examined:

CHAIR—At this stage any participant can respond to matters which have been raised during the day. I note that the Chairman of the ACC, Mr O'Connor, had to leave because he had business elsewhere. With the permission of the Chair, his place will be taken by Mr Graeme Charlwood. Mr Charlwood, have you received and signed a witness information form?

Mr Charlwood—I have.

CHAIR—Have you read it and understood it?

Mr Charlwood—Yes.

CHAIR—Does any member of the panel wish to respond to anything that has been heard today?

Mr Ayton—I had one thing I would like to have directed to Mr O'Connor; Mr Charlwood may not know the answer. We heard Hon Nick Griffiths read out some of the comments of the Chairman of the Anti-Corruption Commission making allegations about the high level of crime committed by detectives and the blind eye being turned by others to that crime. Would I be correct in saying that these comments - almost word perfect - were made to the former commissioner in either late 1997 or 1998, with certain warnings concerning the requirement to fix that problem? If that is so, are we to believe that nothing has changed; and if so, why not?

Mr Charlwood—The comments you are alluding to were in a letter from the chairman to the then commissioner, Mr Falconer, in December 1997. They flowed from the Miller special investigation. They alluded to certain facts that emerged during that investigation, and the commission brought them to the attention of the then commissioner. Comment was made in that letter also about the then impending investigative practices review and that some of these issues might be addressed in the course of that review, particularly in implementing any recommendations that might flow from that review. Am I right in putting that as the context of your question?

Mr Ayton—I only heard of the context, and I think that must be what we are talking about. The point is that if those comments were true in 1997, it is now 2000.

Mr Charlwood—A lot has been done as a consequence of the comments made in that letter, and subsequent to the investigative practice review, which has changed the environment in investigative areas within the WA Police Service. Some very, very positive changes have occurred in that regard from the commission's perspective. I will pick up on Mr Matthew's comment by saying that there will always be corruption within the Police Service, whether it be the WA Police Service or any other. The comments reflected in page 5 of the ACC chairman's submission are merely a

reflection of that. There are still problems, and the commission is obviously aware of them and is in the process of investigating them.

Mr Ayton—The real reason for my question was that I took the Commissioner of Police to be saying that these things which had been mentioned in 1997 are happening today. The ACC is saying that things have changed, yet the commissioner is saying they have not changed. I am saying there is a deficiency there.

Mr O'Gorman—I ask Mr Charlwood or Mr Leinert whether there is a practice in Western Australia to ask police prosecutors and DPP prosecutors to report to either internal affairs or the ACC allegations made in court by defence counsel concerning misbehaviour by police, whether that misbehaviour is failure to adhere to administrative directions or otherwise? I ask that question because as far back as 1987 in Queensland the committee of inquiry recommended that process be implemented there. It never has been. I suspect if it had been, we would not necessarily have had the 1997 royal commission.

Mr Charlwood—Section 14 of the Anti-Corruption Commission Act provides that certain conduct - that is, criminal, corrupt and serious improper conduct - must be reported to the commission. If one of those classes of conduct emerged during the course of a proceeding the commission's expectation would be that, whether it is a police prosecutor, a DPP or a crown prosecutor, it would be brought to the attention of their superiors. In case of the police, obviously that would be through the Commissioner of Police and the appropriate channels. In the case of DPP prosecutors that would be through the DPP himself. They would then fulfil their obligations under section 14 of the act and report to us. If you were asking whether that happens in every instance, I cannot say with any assurance.

Mr O'Gorman—Do you have any record of whether the DPP is forwarding to you on a monthly basis reports from prosecutors as to allegations that were made, or that they made, as to particular shortcomings in not following administrative proceedings in particular cases? Are you getting that regularly?

Mr Charlwood—They do not come through on a regular basis, but there are certainly instances of that type of report being received.

Mr O'Gorman—Is it not desirable that prosecutors be requested proactively by both the ACC and the internal affairs branch to provide that information and to have some system whereby that information is captured and the trends can be seen before they become so problematic that they are intractable?

Mr Charlwood—From the ACC's perspective we would see that as a positive step.

Mr Allen—I would like to respond to Mr O'Gorman who responded to something I said, just to put it on the record. I do not know whether Mr O'Gorman has practised in the corporate area very much, but it seemed that he did not quite understand what the Australian Securities and Investments Commission does. He made the point that the ASIC's investigative powers were used for regulatory purposes. That is partly true, but by no means is it entirely true. ASIC is a serious law enforcement investigator. Many people are presently languishing in jails around the country because of criminal prosecutions that ASIC has instituted via the commonwealth DPP. ASIC uses its powers of examination regularly in the context of criminal investigations and to

gather evidence that might be used for administrative and regulatory purposes. Certainly criminal investigation is a major part of its work and the powers that are used, although they now do not attract the kind of controversy that they once attracted, are regularly used in the criminal context.

CHAIR—Mr Charlwood, you have answered a couple of questions. Are there matters you would like to respond to from what has been said during the day?

Mr Charlwood—Mr O'Connor asked me to raise two matters and I will raise one matter in my own right. The first is a comment by Mr Dean suggesting that the ACC is withholding relevant evidence in relation to matters that he referred to the Commissioner of Police. The commission absolutely rejects that assertion. The commission, when passing reports on the outcome of investigations to the COP, passes on all relevant information. It also makes available any supporting documentation relative to the information contained in those reports. We have done that from the outset and continue to do that. In relation to a comment made by Mr Ayton that the current failure rate of the ACC is high, in fact, the ACC has a number of matters before the court. Those matters have not been finalised. The commission's view is that it is less than correct to make comments in relation to matters that are still not finalised, suggesting we are a failure.

Mention was made of the image of the ACC within the Police Service. The ACC is trying to address that and to put to bed some of the urban myths that circulate throughout the Police Service in terms of what we do and the way we operate. The ACC, with the consent of the previous commissioner and the current commissioner, has undertaken to present to a range of programs and courses going through the police academy information sessions on the commission. We currently provide those sessions to all recruit, detective and officer development programs. We hope over time to expand those presentations to all programs run by the police academy.

[5.02 p.m.]

LIENERT, MR EDWIN GRAEME,
Assistant Commissioner of Police (Professional Standards),
Western Australia Police Service,
2 Adelaide Terrace,
Perth, examined:

CHAIR—Have you have signed an Information for Witnesses form?

Mr Lienert—I have, and I understand the contents.

Mention was made of the reporting relationships between the Office of the Director of Public Prosecutions and police prosecutions. We do not have a written policy, but we do have a number of practices in place. That arose from the investigative practices review conducted in 1997-98 to look at any deficiencies in that and other areas. It dealt with best practice in investigations. Since then we have appointed brief handling managers to various districts to oversight, monitor and control the quality of briefs. We have a working party liaising between the crime investigation support group and the DPP to discuss shortfalls and so on. The head of police prosecutions in the Court of Petty Sessions (Summary Matters) reports to our Police Service command. The point is certainly noted and will be acted upon.

CHAIR—Mr Dean, do you have any final comment?

Mr Dean—The union would like to see the image of the ACC improved. I note Mr O'Connor's and Mr O'Gorman's comments regarding fear.

Mention was made of withholding information. The complaint was that all relevant information, statements and transcripts are not being handed over. I am still of that belief. The complaint has come from a number of eminent counsels around town.

I do not think we should lose our focus on police responsibilities. They work 24 hours a day, seven days a week protecting everyone in this room. It is extremely difficult for the young officers on the street, but they should be corruption free. However, in some situations, particularly street crime and violence, those areas are rather grey. The figures released by the commissioner show how small the problem is. I am not saying that it is not a problem; it is and it must be dealt with.

A last point that must be made, and it is a pity Mr O'Connor is not here. I am disappointed by his comments about the DPP and detectives generally.

CHAIR—It is my very pleasant privilege to thank everyone for their participation today. The question was asked outside the chamber earlier in the day: is it unusual for the committee to have an open and public hearing? In fact, the standing orders of the Legislative Assembly under which we work make all the committee's hearings open hearings. Any member of the public may attend such hearings. They become closed hearings or in-camera hearings at the request of a witness. Under standing orders, all the committee's hearings are open.

Clearly, the committee meets often with the commissioners of the Anti-Corruption Commission. It meets them quarterly and on an as-needs basis. Because of the nature of many of the matters discussed, those hearings must be closed hearings because of the confidentiality issues. Members of the committee are bound by the same statutory obligations of confidentiality as anyone else who has dealings with the ACC. Hence, much of the information that is shared with the committee by the ACC must be treated as confidential.

While from time to time the actions of this committee, or members of the committee, or the reports of the committee might test the patience of the commissioners, it has a very good working relationship with the commission. The ACC is always forthcoming in providing information to the extent that is possible under the constraints of the act, and sometimes even pushes the envelope of those constraints.

The committee felt that the hearing today was an important opportunity to have a public airing of some of the matters that have been controversial in the operation of the ACC. Today we have heard a great deal about secrecy, accountability and, in particular, operational accountability. We have heard expressions of some degree of frustration on the part of the Police Union and the ACC in their dealings with one another. We have heard some criticism being exchanged between participants in this hearing. However, I compliment everyone who has taken part today. Normally this seat is occupied by Hon John Cowdell, who will attest to the fact that some of the comments made today would normally have led to exchanges across the chamber, which at times borders on being out of control - although he never allows that to happen. Today participants have taken all the criticism in good faith. I am sure the comments were made in good faith and that they have been accepted in good faith.

It is the task of this committee to evaluate the information provided and to draw its own conclusions. Clearly, as we read in the newspapers daily, this is the final term of this parliament and this committee is appointed for the term of the parliament. A new committee will be appointed at the commencement of the new parliament. It was always the committee's intention to write a summative report on the work of the ACC in the time that the committee has had that parliamentary oversight responsibility. A review is also being undertaken of the ACC act, and I am pleased that two of the officers of that review committee have been here today to hear what has been said. Clearly, the legislation is imperfect. The next time Parliament passes perfect legislation will be the first time. The committee has made recommendations for change to the legislation, the ACC commissioners have made requests to change the legislation and we have heard today recommendations for change to the legislation. I am quite confident that our report will respond to all those requests. Whether the Parliament responds to our recommendations is a question for the Parliament to decide.

However, insofar as you have been able to inform this committee and confirm some of the impressions we have gained, and challenged some of the impressions we have gained in three years so far working with the ACC as the parliamentary oversight committee, I thank each of you for your participation and contribution. I thank Judge Urquhart and Terry O'Gorman very much for coming such a long way. I hope you found it worthwhile. The committee has found it more than worthwhile. I wish you a safe journey on your return to both Sydney and Brisbane. I now declare this hearing closed.

Committee adjourned at 5.15 pm

APPENDIX TWO
LIST OF SUBMISSIONS AND PRESENTATIONS MADE ON
5 MAY 2000

Date	Presenter
5 May 2000	Mr Michael Dean President Western Australian Police Union of Workers
5 May 2000	Mr Leslie Ayton
5 May 2000	Anti-Corruption Commission
5 May 2000	Judge P D Urquhart QC Commissioner Police Integrity Commission of New South Wales
5 May 2000	Mr Barry Matthews Commissioner Western Australian Police Service

APPENDIX THREE

COMMITTEE'S FUNCTIONS AND POWERS

Joint Standing Committee on the Anti-Corruption Commission

TERMS OF REFERENCE

On Wednesday 18 June 1997 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission. The Joint Standing Committee's functions and powers are set out as follows under Legislative Assembly Standing Orders 284, 285 and 264 –

284. At the commencement of every Parliament, a Joint Standing Committee on the Anti-Corruption Commission will be appointed by resolution of the Assembly forwarded to the Council for its concurrence.

- 285.**
- (1) It is the function of the Committee –
 - (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988*;
 - (b) to consider and report to Parliament on issues affecting the prevention and detection of “corrupt conduct”, “criminal conduct”, “criminal involvement” and “serious improper conduct” as defined in section 3 of the *Anti-Corruption Commission Act 1988*. Conduct of any of these kinds is referred to in this Standing Order as “official corruption”;
 - (c) to monitor the effectiveness or otherwise of official corruption prevention programs;
 - (d) to examine such annual and other reports as the Joint Standing Committee thinks fit of the Anti-Corruption Commission and all public sector offices, agencies and authorities for any matter which appears in, or arises out of, any such report and is relevant to the other functions of the Joint Standing Committee;
 - (e) in connection with the activities of the Anti-Corruption Commission and the official corruption prevention programs of all public sector offices, agencies and authorities, to consider and report to Parliament on means by which duplication of effort may be avoided and mutually beneficial co-operation between the Anti-Corruption Commission and those agencies and authorities may be encouraged;
 - (f) to assess the framework for public sector accountability from time to time in order to make recommendations to Parliament for the improvement of that framework for the purpose of reducing the likelihood of official corruption; and

- (g) to report to Parliament as to whether any changes should be made to relevant legislation.
- (2) The Joint Standing Committee will not –
- (a) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
 - (b) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
 - (c) have access to detailed operational information or become involved in operational matters.

264. A committee has power to send for persons, papers and records.