



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

**ANNUAL REPORT
JUNE 1997 – DECEMBER 1998**

**Seventh Report
In the Thirty-Fifth Parliament**

May 1999

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**Seventh Report
In the Thirty-Fifth Parliament**

Presented by
**Hon. Derrick Tomlinson, MLC and
Mr W. Thomas, MLA**
Laid on the Table of the Legislative Council and the Legislative Assembly on
13 May 1999

ORDERED TO BE PRINTED

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Deputy Chairman	Mr W. Thomas, MLA
Members	Mr R. Bloffwitch, MLA Dr E. Constable, MLA Hon. J. Cowdell, MLC Hon. M. Montgomery, MLC Hon. N. Griffiths, MLC Mr M. Trenorden, MLA

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CHAIRMAN'S FOREWORD

The Joint Standing Committee on the Anti-Corruption Committee was established by resolution of the two Houses of Parliament to monitor and report on the functioning of the Anti-Corruption Commission (ACC). While that is the primary responsibility of the Committee, the Legislative Assembly Standing Orders under which it operates, charge the Committee with broad responsibility for monitoring and reporting to Parliament on the prevention of official corruption.

Between its first meeting on 18 June 1997 and 31 December 1998, the Committee met on fifty-seven separate occasions and produced six reports. A review of those reports reveals that in its first year of operation, the Committee attempted to understand the powers of the ACC and its accountability to Parliament, to clarify the Committee's own responsibilities to Parliament and the ACC and to establish a working relationship with the ACC so that each might meet its obligations without interfering with or frustrating the functioning of the other.

In its first two years of operation, the powers of the ACC have been refined progressively by decisions of the Supreme Court. At the same time the Police Union has campaigned to have the functioning of the ACC radically modified to make its procedures transparent and more directly accountable. In doing so, it has challenged the effectiveness of ACC's investigations.

The Committee is constrained in responding to these issues. By its own terms of reference, the Committee cannot involve itself in operational matters of the ACC and by terms of the *Anti-Corruption Commission Act 1988*, it may have access only to that information which the Commission is willing to divulge or to have published. Without access to material such as the Miller Report, which is the focus of Police Union disputation, the subject of continuing Supreme Court challenges and the basis of a decision which imposed a significant limitation upon the ACC's powers, the Committee has found itself unable either to defend the ACC or to support the grievances. The Committee's concerns about these constraints upon monitoring the effectiveness of the ACC were canvassed in its third and fourth reports to Parliament.

We have learned that difficulties of these kinds are not peculiar to this Committee, nor to the nature of the ACC and its enabling legislation. Other Parliamentary Committees in Australia which have oversight functions for agencies similar to the ACC have similar experiences. They have shared those experiences at meetings of a national working group which this Committee was instrumental in establishing. Some of the issues raised were reported on in the Committee's first report and are revisited in this report.

To try to understand how competing demands of confidentiality and accountability are handled in other parts of the world, in July-August 1988, the Committee travelled to Washington, New York, Los Angeles and Hong Kong. A comprehensive overview of the organisations we visited is presented in this report.

The primary interest of the Committee in these visits was police integrity, since that had been the focus of much of our first year's work. Although there are common themes in the management of police integrity, we found quite different emphases in each of the organisations, conditioned in some respects by the cultural, social, legal and political contexts in which they functioned, but

determined strongly by organisational preference. Even with these observed differences, we found universal commitment to the value of integrity training. Each of the organisations visited acknowledged the need for supervision and control, but emphasised that integrity is not imposed only by external discipline, but rather by the commitment of individual officers to honesty and organisational codes of fair practice. These values are maintained most effectively by careful selection of recruits and continuing integrity training.

In the coming year, the Committee intends to review integrity training within the Western Australian Police Service. We also intend to broaden the scope of our work to consider the extent of public sector corruption and to scrutinise the effectiveness of anti-corruption procedures in the contracting out of public sector functions.

I am pleased to present this report of the first eighteen months of the operation of the Joint Standing Committee on the Anti-Corruption Commission.

HON. DERRICK TOMLINSON, MLC
CHAIRMAN

1. INTRODUCTION

The Joint Standing Committee on the Anti-Corruption Commission (“the Committee”) is a joint standing committee of both Houses of Parliament comprising eight members drawn in equal numbers from each House. It was constituted by the Legislative Assembly and the Legislative Council on Wednesday, 18 June 1997.

The following members were appointed to the Committee at the time of its establishment –

Hon. Derrick Tomlinson, MLC

Mr W. Thomas, MLA

Mr R. Bloffwitch, MLA

Dr E. Constable, MLA

Hon. J. Cowdell, MLC

Hon. M. Montgomery, MLC

Hon. N. Griffiths, MLC

Mr M. Trenorden, MLA

The Committee elected the Hon. Derrick Tomlinson, MLC to be Chairman of the Committee and Mr Bill Thomas, MLA to be Deputy Chairman. They retain these positions.

Membership of the Committee did not change during the first eighteen months of its operation.

The Committee secretariat is provided by the Legislative Assembly and comprises a Research Officer and Clerk to the Committee. Administrative assistance is provided by the Secretary/Stenographer located at the Legislative Assembly Annexe.

This is a report on the work of the Joint Standing Committee on the Anti-Corruption Commission from its inception to the end of the December 1998, a period of just over eighteen months. The purpose of the report is to outline the functions and powers of the Committee and its activities during the reporting period.

2. FUNCTIONS AND POWERS OF THE COMMITTEE

The Committee’s functions and powers are prescribed in its Terms of Reference contained in the Standing Orders of the Legislative Assembly. As the name of the Committee suggests, one of its principal functions is to monitor and review the performance of the functions of the Anti-Corruption Commission (“the ACC”). Its Terms of Reference also give the Committee responsibility for oversight of the whole framework of public sector accountability and programmes to prevent public sector corruption in Western Australia.

Under Standing Order 415B the Committee’s functions are as follows –

- (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 resolution 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 terms of reference 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.

The Committee has far-reaching power to conduct inquiries within its Terms of Reference and to report to Parliament. Under Standing Order 415G the Committee has the power to –

... send for persons, papers and records, to adjourn from time to time and from place to place, and, except as hereinafter provided, to sit on any day and at any time and to report from time to time.

With respect to the ACC, however, the powers of the Committee are circumscribed by Standing Order 415C, which provides –

The Joint Standing Committee shall 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.

3. MONITORING AND REVIEWING THE ANTI-CORRUPTION COMMISSION IN THE PERFORMANCE OF ITS FUNCTIONS

In carrying out its function to monitor and review the performance of the functions of the ACC, the Committee has seen its task as being to ensure, within the limitations imposed upon it, that the ACC is publicly accountable through Parliament for its activities and operations.

The Mechanisms of Accountability Employed by the Committee

The Committee relies upon the following mechanisms in undertaking this task –

- *Committee meetings*

The Committee meets frequently to address matters which come within its Terms of Reference. Over the first eighteen months of its operation the matters addressed by the Committee have principally concerned the ACC and the Act it administers.¹

- *Inquiries and reports to Parliament*

The Committee inquires into matters arising out of the operation of the ACC Act and the work of the ACC. The Committee reports to Parliament upon the completion of those inquiries and with respect to other matters which come within its terms of reference.

Since its inception the Committee has prepared six reports to Parliament, four of which specifically addressed matters to do with the ACC.²

- *Periodical written reports from the ACC and meetings with the ACC*

The Committee has a formal *in camera* meeting with the ACC every three months. One week before these meetings the Committee receives a written confidential report from the ACC. Through these reports the ACC keeps the Committee updated on how it is performing its functions under the Act and provides information on its activities and operations during the reporting period. In these reports the ACC may also respond to specific requests for information from the Committee. The meetings which follow receipt of the report give the Committee the opportunity to clarify and seek further information about matters arising from the ACC's written reports. Other matters may also be discussed at the meetings.

The Committee held its first periodical meeting with the ACC on 17 December 1998. Originally the meetings were scheduled on a bimonthly basis, but it was subsequently decided that quarterly meetings would be sufficient. The Committee has held four periodical meetings with the ACC, the last being held on 9 December 1998.

As required, the Committee may also request meetings with the ACC to discuss matters arising out of a particular inquiry or other specific matters. Apart from periodical meetings, the Committee met a further five times with the ACC during the reporting period. These meetings were all held *in camera*.³

- *Statistical information supplied by the ACC*

Included in the ACC's periodical reports to the Committee is a general statistical summary of the matters which have come before the Commission. The Committee is in the process of establishing a database using this information so it can conduct its own analysis of complaints received by the ACC and how they are dealt with. The information supplied by the ACC relates to all cases which

¹ A schedule of Committee meetings is appended to this report (Appendix 3).

² Chapter 6 of this report discusses the reports made to Parliament by the Committee.

³ A schedule of meetings with the ACC is appended to this report (Appendix 4).

have come before it since it was established on 1 November 1996 or which it took over from the Official Corruption Commission ("the OCC"). The Committee has not sought information about cases which were finalised by the OCC. The information includes data about the conduct complained of, the agency of the accused and the action taken by the ACC.

On the basis of the information supplied to the Committee, the ACC has received 926 complaints from its establishment to 31 October 1998, the end of the last reporting period in 1998. The three tables which follow set out some general statistics regarding the ACC's work based on the material supplied to the Committee.

The statistical information in Table 1 regarding the category of the conduct complained of is not sufficiently detailed for the Committee to make an assessment of the seriousness of the matters which go before the Commission. Nonetheless, it shows that just over half (55%) of the complaints considered by the Commission have concerned criminal matters, about one third (32%) have concerned serious improper conduct, with the remainder either being outside of its jurisdiction or not containing a specific allegation (13%).

TABLE 1

TOTAL COMPLAINTS RECEIVED BY THE ACC DURING THE PERIOD 1 NOVEMBER 1996 - 31 OCTOBER 1998 BY CONDUCT	
Corrupt conduct	58
Criminal involvement	24
Criminal conduct	427
No specific allegation	11
Outside jurisdiction	104
Serious improper conduct	302
Total	926

The ACC, which was created out of concern over very serious allegations of high-level political corruption, is a body which deals not only with such cases, but with corruption generally throughout the public sector. Table 2 shows that most cases which go before the ACC relate to public officers within the Police Service (364 complaints). Local governments accounted for 149 complaints and all other State Government Departments accounted for 273 complaints.

TABLE 2

TOTAL COMPLAINTS RECEIVED BY THE ACC DURING THE PERIOD 1 NOVEMBER 1996 - 31 OCTOBER 1998 BY THE AGENCY OF THE ACCUSED	
Government Departments	273
Hospital Boards	12
Local Government	149
Other	43
Police	364
Person outside Jurisdiction	17
Statutory Authorities	66
No data supplied	2
Total	926

Table 3 shows that between 1 November 1996 and 31 October 1998 the ACC received and finalised 605 cases. Of those cases 36 (5.95%) resulted in criminal charges being laid and 59

(9.75%) in disciplinary action being taken. In referring to these figures, the Committee acknowledges that, while monitoring the rate of prosecutions is important, it is in itself not a very useful measure of effectiveness.

The majority of cases which go before the ACC are not investigated by the ACC itself. The ACC will investigate the most serious complaints of official corruption or complaints which otherwise require an independent investigation, but in most cases complaints will be referred to the relevant appropriate authority, including the Police Service, to investigate. Indeed, supplementary information to the ACC's written periodical report of 19 August 1998 indicated that 27 cases had resulted in criminal charges being laid to 30 June 1998, of which none were investigated by the ACC.

TABLE 3

TOTAL COMPLAINTS RECEIVED AND FINALISED BY THE ACC DURING THE PERIOD 1 NOVEMBER 1996 - 31 OCTOBER 1998 BY FINAL OUTCOME	
Allegation is vexatious	1
Allegation is not serious	1
Allegation is subject of prior investigation	25
Allegation withdrawn	11
Appropriate action taken	84
Administrative action taken	5
Criminal charges laid	36
Closed - Action taken by Department of Local Government	2
Disciplinary action taken	59
Enquiry	2
Further action not warranted	4
Insufficient evidence	48
Inconclusive	8
Investigation not justified	8
Investigation not in the public interest	1
Matter outside jurisdiction	92
No further information received	4
No further action required	2
No specific allegation	1
Pending	1
Public officer deceased	1
Transferred	49
Unsubstantiated	159
No data supplied	1
Total	605

- *Requests for information*

On a number of occasions the Committee also has made written requests to the ACC for information regarding particular inquiries or other specific matters.

- *Complaints against the ACC or its officers*

From time to time, the Committee receives unsolicited complaints against the ACC or its officers. Its practice, on receipt of such complaints, is to refer them to the ACC with a request for the ACC to report to the Committee on the complaint and any action it may have taken.

The Committee's power to deal with such complaints is limited. Under its Terms of Reference it is prevented from investigating a matter before the ACC, reconsidering a decision made or action taken by the ACC, having access to detailed operational information or becoming involved in operational matters (Standing Order 415C(a)(b) and (c)).

These limitations did not prevent the Committee investigating and reporting to Parliament on complaints made by Det. Sgt Coombs against the ACC, an ACC Special Investigator and others.⁴ The nature and circumstances surrounding Det. Sgt Coombs complaints, however, were extraordinary. The Committee has recommended that an independent and ongoing mechanism other than the Committee is required to deal with such complaints.⁵

Limitations Upon the Committee's Capacity to Monitor and Review the ACC

Quite apart from how the Committee deals with complaints against the ACC or its officers, its capacity to perform its monitor and review function with respect to the ACC is generally constrained by the provisions of Standing Order 415C. Standing Order 415C protects the independence and operational integrity of the ACC, but it also limits the information which the Committee has access to in monitoring and reviewing the performance by the ACC of its functions. The Committee has relied upon the co-operation of the ACC to provide it with the operational information it requires to fulfil its oversight function.

Provision for the Committee in the ACC Act

The Committee has been established by both Houses of Parliament and its powers and functions are prescribed in the Standing Orders of the Legislative Assembly. The Committee is envisaged in the ACC Act through a number of references which are made to a "standing committee", but no statutory provision is made for the establishment of the Committee and its functions and powers are not set out in the Act.⁶

⁴ Joint Standing Committee on the Anti-Corruption Commission, *Report on Complaints made by Detective Sergeant Peter Coombs against the Anti-Corruption Commission, Special Investigator Geoffrey Miller QC and Others*, Perth, 1998. The Report is discussed further in chapter six of this report.

⁵ Joint Standing Committee on the Anti-Corruption Commission, *Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights Under the Anti-Corruption Act 1988*, Perth, 1998. The Report is discussed further in chapter six of this report.

⁶ References to a "standing committee" are made in the following sections of the ACC Act –

- section 3(1), the interpretation section of the Act;
- section 29, *Reports to Presiding Officers, the Minister, other Ministers or a Standing Committee*;
- section 31, *Public disclosure of findings*;
- section 34, *Periodical reports to Parliament*;
- section 52, *Non-disclosure of information* in subsection (7); and
- section 54, *Restriction on publication of certain information or allegations*.

The manner in which the Committee was established reflects the conclusion of the Select Committee on the Official Corruption Recommendations in 1992 regarding establishment of a standing committee to monitor and review the ACC's predecessor, the Official Corruption Commission. In its report the Select Committee said –

For ease of implementation and to facilitate any required changes to its terms of reference or powers as its role evolves, it was considered that creation by resolution was more appropriate.⁷

The Committee agrees that the flexibility achieved under the current arrangements is desirable. The Committee is considering recommending that specific reference be made in the ACC Act to the Committee and its functions without altering the present method of its constitution. The primary mechanism through which the ACC is made publicly accountable is the Committee. It may be appropriate that provision be made in the ACC Act to reflect the fundamental accountability function performed by the Committee with respect to the ACC. The Committee, however, has deferred reaching a conclusion on this matter until it receives a response to changes it has recommended to the ACC Act, and, in particular, its recommendation that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established under the Act.⁸

The Committee's functions are not limited to oversight of the ACC. It is also responsible for oversight of the framework of public sector accountability in Western Australia generally.⁹ During the first eighteen months of its operation, while the work of the Committee was primarily taken up with monitoring and reviewing the performance of the functions of the ACC, it also sought evidence regarding the work of other public sector agencies involved in providing for the accountability of the Western Australian public sector. Witnesses before the Committee during this period included the Commissioner for Public Sector Standards, the Parliamentary Commissioner for Administrative Investigations (the Ombudsman), the Auditor General and members of the Professional Standards Portfolio of the Western Australian Police Service.¹⁰

4. THE SUPERVISION OF ANTI-CORRUPTION AGENCIES IN AUSTRALIA: THE WORKING GROUP OF AUSTRALIAN PARLIAMENTARY OVERSIGHT COMMITTEES

In a number of Australian jurisdictions specialist agencies have been established to investigate and prevent certain kinds of serious crime and/or public sector corruption. These agencies have been granted special coercive powers and significant resources to perform the functions assigned them. They include –

- the National Crime Authority;
- the Queensland Criminal Justice Commission;
- the New South Wales Independent Commission Against Corruption;

⁷ Select Committee on the Official Corruption Recommendations, *Report*, Perth, 1992, p. 5.

⁸ See further, Joint Standing Committee on the Anti-Corruption Commission, *Amending the Anti-Corruption Act 1988*, Perth, 1998.

⁹ See further the Committee's Terms of Reference which are appended to this report (Appendix 9).

¹⁰ A table of witnesses who gave evidence to the Committee is appended to this report (Appendix 5).

- the New South Wales Police Integrity Commission; and
- the Western Australian Anti-Corruption Commission.

Where the jurisdiction of these agencies concerns public sector corruption, they may investigate conduct within government. To ensure that investigations may be undertaken impartially and free from political interference such agencies operate with a degree of independence from government. However, as such agencies may exercise special powers of a coercive nature, each of them is subject to oversight by a parliamentary committee. The Committees are required to monitor and review the performance of the functions of their respective agencies and to report to Parliament. Those committees are –

- the Joint Committee on the National Crime Authority;
- the Parliamentary Criminal Justice Committee which oversees the Criminal Justice Commission in Queensland;
- the Joint Committee on the Independent Commission Against Corruption in New South Wales;
- the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission in New South Wales; and
- this committee, the Joint Standing Committee on the Anti-Corruption Commission.

In September 1997, when the Committee met with a number of its counterparts in other Australian jurisdictions, the establishment of a working group of parliamentary oversight committees was discussed. That suggestion was acted upon and the Parliamentary Criminal Justice Committee in Queensland hosted the inaugural meeting of The Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies on 26 and 27 February 1998.

The purpose of the Working Group is to provide a forum for open discussion between members of parliamentary oversight committees in Australia. As such its proceedings are confidential. Given the similar role performed, and the challenges faced, by each of these Committees, the Working Group provides a useful opportunity for the exchange of information and ideas.

The theme of the inaugural meeting was *The Accountability of Law Enforcement and Criminal Justice Bodies to Parliamentary Committees*. Each of the committees referred to above was represented at the inaugural meeting. The Chairs of each of the committees and a number of guest speakers addressed the Working Group on topics relevant to the theme of the meeting.

Following the meeting a Communiqué was prepared for public release which outlined the value of the Working Group to all participants and summarised the proceedings of the meeting, including short abstracts of the papers presented by the guest speakers.¹¹ The second meeting of the Working Group was held in Perth. The meeting was hosted by the Committee in the Legislative Assembly chamber over 5 and 6 November 1998.

¹¹

A list of participating Committees and guest speakers at the inaugural meeting is appended to this report (Appendix 7).

The theme of the meeting was *The Effectiveness of Standing Commissions and the Relationship Between Parliamentary Oversight Committees and the Agencies they Oversight*.

The meeting provided an exchange of meaningful information among the several committees represented, as had the first meeting held in Brisbane. All those Committees which had participated in the inaugural meeting of the Working Group were again represented in Perth. The Working Group also welcomed the participation of representatives of the Northern Territory and South Australian Parliaments.¹²

The format of the meeting was similar to that of the Brisbane meeting. During the first session, the Chairs of the participating committees addressed the Working Group on topics relevant to the theme of the meeting and questions and discussion followed. In the remaining sessions, a number of guest speakers presented papers on the role, effectiveness and accountability of the ACC and like agencies. The ACC also provided the opportunity to members of the Working Group to visit the Commission's offices at the conclusion of the meeting.

The Communiqué from the meeting concluded with an assessment which confirmed the value to participants of the annual Working Group meetings. It was noted in the Communiqué that –

Invariably, the committees who participated found they faced similar or analogous issues and problems, some of which may have been addressed in other jurisdictions; others which not all the committees may have foreseen; and others still which are known but remain unresolved. The Working Group is a forum through which members of oversight committees can exchange information and experience, allowing each committee to better undertake its oversight role, to find out about or develop effective means of addressing particular issues and to be mindful of future challenges.

The Working Group intends to meet again in September 1999.

5. ANTI-CORRUPTION AGENCIES AND THEIR SUPERVISION: INTERNATIONAL EXAMPLES

Introduction

Corruption within public sectors, including police services, like criminal activity generally, is a universal phenomenon. In many countries the effort to contain and minimise corruption has become more pronounced and vigorous in recent years. In some jurisdictions, including our own, the decision has been made that public sector corruption is such a serious matter that it requires the establishment of a specialist anti-corruption agency with extensive powers and resources to detect and investigate it.

In creating such agencies a number of competing public policy considerations need to be accommodated and balanced against each other: the public interest in detecting corruption and punishing those who engage in such activity has to be balanced against the protection of individual rights; and the agency has to be given sufficient independence to impartially investigate allegations of corruption, while at the same time being publicly accountable for the functions that it performs. That is a difficult balance to achieve. How effectively it has been achieved in Western Australia is a matter which has been and continues to be of concern to the Committee.

¹²

A list of participating committees and guest speakers at the second meeting of the Working Group is appended to this report (Appendix 8).

Between 18 July 1998 and 4 August 1998 the Committee travelled overseas to investigate the mechanisms through which public sector corruption is detected, investigated and prevented in the United States and Hong Kong and how in both the various competing public policy objectives identified above are balanced against each other.

In travelling to the United States and Hong Kong the Committee was aware that each has a system of government that is in many respects different from our own.

Until recently, Hong Kong was a Crown colony administered by a British appointed Governor. In 1997, the People's Republic of China resumed sovereignty over Hong Kong and it became a Special Administrative Region of China. Historically, Hong Kong had differed from most other British colonies in that democratic institutions had not been developed to any great extent. Some change occurred after the ratification of the Sino-British Joint Declaration in 1985, which provided the basis for the transition to Chinese sovereignty. Under the declaration, China agreed to maintain for a period of at least 50 years following the handover Hong Kong's capitalist economy and lifestyle. The declaration included a commitment to the protection of certain rights and freedoms and continuing development of some form of representative government.

Like Australia, the United States is a representative democracy and a federation. However, whereas our political institutions are based on a parliamentary system founded on the principle of responsible government, through which the executive is drawn from and responsible to the legislature, in the United States, both federally and in the States, the executive is entirely separate from the legislature. The United States system of government is founded on a more distinct separation of powers between the three branches of government, the executive, legislature and judiciary, than exists in our system. Local governments also exercise considerably more autonomy than is generally the case in Australia and perform many functions which here are performed by the States.

The manner in which the integrity of the public sector is supported and corruption contained in the United States and Hong Kong reflects the institutions and culture of both places. The differences provide useful points of contrast with how we deal with public sector corruption in Western Australia and elsewhere in Australia. There are also parallels between the forms and types of corruption which exist in the United States, Hong Kong and Australia. In the United States and Hong Kong, however, the use of independent investigative agencies dedicated to the control of public sector corruption has a longer history than in Australia. In the United States, for instance, the New York Department of Investigation has been in existence for over 125 years. In Hong Kong, the Independent Commission Against Corruption is one of the best known examples internationally of such an agency and has been credited with reducing significantly the level of syndicated corruption there since it was established in 1975.

Apart from the general information the Committee sought about the mechanisms of corruption control in the United States and Hong Kong, it also focussed its inquiry on a number of more specific themes. These included –

- the methods and resources used by anti-corruption agencies in the United States and Hong Kong to detect, investigate and prevent public sector corruption;
- the accountability of specialist anti-corruption agencies in the United States and Hong Kong;
- the protections afforded individuals the subject of investigation for alleged corrupt or improper conduct by anti-corruption agencies in the United States and Hong Kong;

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- the detection, investigation and prevention of police corruption in the United States and Hong Kong; and
 - police recruitment, training and education in the United States and Hong Kong.

Each of these themes was relevant to inquiries the Committee was undertaking or which it intended to undertake. Following its return, the Committee completed reports on amending the ACC Act and the operational accountability of the ACC and the protection of rights under the ACC Act. In the coming year, one of the matters the Committee will inquire into is police recruitment and integrity training and education in Western Australia.

In the United States the Committee had meetings with officers from a range of anti-corruption agencies and police forces and the Chairman of the United States House of Representatives Committee on Government Reform and Oversight. Meetings were held in Washington DC, New York and Los Angeles. In Hong Kong the Committee met with officers of the Independent Commission Against Corruption and the Hong Kong Police Force.

United States Department of Justice

The United States Department of Justice is one of fourteen federal executive departments. Its chief officer is the Attorney-General of the United States, who is appointed by and directly answerable to the President. The Department of Justice represents the United States in court, provides legal advice and opinions to the President and the heads of other executive departments and is responsible for investigating and prosecuting federal crimes, managing federal prisons and enforcing immigration law.

From within the Department of Justice the Committee met with representatives from the Public Integrity Section, the Office of the Inspector-General and the Federal Bureau of Investigation.

Public Integrity Section

The Public Integrity Section is part of the Criminal Division of the United States Department of Justice. It was created in 1976 to perform a general oversight and coordinative role with respect to corruption cases within federal jurisdiction involving public officers from all levels of government. The section does not investigate and prosecute all corruption cases, rather it investigates and prosecutes cases which it would be inappropriate for the United States Attorney's Office to undertake directly.

The Public Integrity Section was created within the Department of Justice to provide an independent mechanism through which cases which might involve a conflict of interest can be impartially and independently investigated. The Public Integrity Section further administers the Independent Counsel provisions of the *Ethics in Government Act (1978)* (US). The purpose of the Independent Counsel Provisions is to allow for the impartial and independent investigation of allegations of wrongdoing by high-level members of the Executive Branch of government such as the President, the Vice-President, high ranking officials on the President's staff and members of the Cabinet.

It was explained to the Committee that under the United States Constitution the Executive branch of the federal government is wholly responsible for the investigation and prosecution of federal crimes, including corruption cases. Consequently, potential conflicts of interest arise where allegations of corruption concern senior members of the Executive and members of the investigation and prosecution arms of the Department of Justice. Concern over the Executive

being responsible for the investigation and prosecution of its own senior members and officials prompted the creation of the Public Integrity Section and the Office of Independent Counsel. The proximate cause was the Watergate scandal (1972-1974) and the apparent lack of independence of the Special Prosecutor appointed by the Attorney General to investigate allegations against the President and certain members of his re-election campaign. The concern to create an independent and impartial process to deal with corruption cases involving members and officers of the Executive branch of government reflected in the creation of the Public Integrity Section and provision for the appointment of Independent Counsels is also reflected in the establishment of the ACC.

The process through which an Independent Counsel may be appointed is designed to test whether the relevant allegations are sufficiently serious to warrant appointment of an Independent Counsel and to ensure the independence of the office where that is the case. Prior to appointment of an Independent Counsel, the Attorney General must inquire into the allegations to establish that certain threshold determinations as to the sufficiency of the allegations are met – a two phase process with an initial inquiry occurring in the first instance, followed by a preliminary investigation. If at the end of a preliminary investigation the Attorney General finds that an Independent Counsel should be appointed then he or she does not make the appointment. That can only be done by a panel of three federal appellate judges chosen by the Chief Justice of the United States Supreme Court for the purpose of appointing an Independent Counsel. Persons who hold office in or are employed by the federal government cannot be appointed to the Office of Independent Counsel.

It was noted that the resources available to an Independent Counsel are virtually unlimited and the office carries with it substantial powers, including the power to compel evidence, subject to a use immunity. The Attorney General can remove an Independent Counsel for “good cause”, though in practical terms it is very difficult for the Attorney General to do so. Comments to the Committee suggested that the provisions under which an Independent Counsel operates and the resources available to the Office potentially can lead to long and open-ended investigations.

The Independent Counsel Chapter in the *Ethics in Government Act* is subject to the *Independent Counsel Reauthorisation Act 1994* (US), under which the Chapter will cease to have effect five years from the date of the Reauthorisation Act. Unless the Chapter is reauthorised by Congress and the President later this year it will come to an end.

Among further comments made to the Committee, the Committee was told that the measure of success for an investigation should not be prosecution, but rather how successfully the matters under investigation are resolved. An investigation may reveal sufficient evidence to pursue a prosecution, but it may also reveal that a person is innocent of the allegations against him or her and this is an equally successful outcome.

In terms of the conduct of investigations, the point was made that investigations are usually prejudiced by being held in public, though under the American system, even where investigations are conducted in secret, witnesses are not bound by secrecy.

The Committee was briefed by Mr Joe Gangloff, Principal Deputy Chief of the Public Integrity Section.

Office of the Inspector General

The Office of Inspector General of the Department of Justice (“the OIG”) is an independent integrity mechanism which operates to promote and ensure effectiveness, efficiency and integrity within the Department. Its jurisdiction does not extend beyond the Department.

The OIG of the Department of Justice is one of a number of cabinet level Inspectors General. All cabinet level Inspectors General are appointed by the President, subject to the confirmation of the Senate. Removal similarly is by the President, subject to Senate confirmation.

The OIG has authority to conduct investigations into allegations of misconduct by Department of Justice employees and the Department's contractors and grant recipients. The OIG also performs audit and inspection functions with respect to the programmes and operations of the Department.

It was pointed out to the Committee that the scope of the OIG's authority allows for not only a law enforcement approach to be taken with respect to corruption and misconduct through which allegations against individuals are investigated, but also a broader investigative approach designed to address systemic problems within the Department.

The OIG investigates complaints of criminal misconduct and administrative misconduct; but it may also initiate its own investigations and audits. Similar to the ACC, the OIG can require that an investigation is undertaken by another section or agency within the Department. Matters may be referred to another section or agency as a "monitored referral" and the section or agency must report back to the OIG. The Committee was told that the policy of the OIG regarding administrative misconduct is to investigate serious matters and those involving high-level employees. Approximately 70% of the matters investigated by the Office concern criminal matters.

The OIG is answerable not only to the Department of Justice, but also the Congress and reports to both the Attorney-General and the Congress. It is not merely an executive office. The purpose of the dual reporting requirements is to ensure the independence of the OIG. Like the Office of Independent Counsel, the purpose of the OIG and other Inspectors General is to provide a counterweight to the power of the Executive. While the nature of the Office is not entirely consistent with the separation of powers between the branches of government, it is consistent with Congress's role of scrutinising and investigating the activities of the Executive, a role Congress now performs less itself through relying on independent offices like the OIG. In practice, however, the Committee was told the OIG is viewed by the Congress as not being sufficiently independent of the Department of Justice and it has not received the support in budgetary terms that it would have liked. While the size of the Department of Justice has increased substantially in the recent past, the resources available to the OIG have not increased commensurably.

Where the OIG conducts an investigation into allegations of misconduct on the part of an employee of the Department of Justice, its functions do not extend beyond investigation. Upon completion of an investigation concerning an administrative matter, the Office will refer a report on the investigation to the manager of the relevant department for that manager to take disciplinary action if appropriate. The manager may be required to notify the OIG of any findings and action taken. Where investigations reveal evidence of criminal conduct the matter is referred to federal prosecutors in the Department of Justice who are then responsible for making a decision as to whether a prosecution should proceed.

Persons the subject of an adverse report cannot have disciplinary action taken against them on the basis of the report. Such persons are entitled to full due process rights and have the opportunity to respond to any adverse findings. Where a report concerns a criminal matter then the subject of the report has the protection of the various provisions of the Bill of Rights in the US Constitution.

Through this meeting and others held by the Committee in the United States the significance of the rights guarantees contained in the Constitution became evident. Whenever the issue of the

rights of an accused was raised it was emphasised in response that overarching the criminal justice process in particular, and to a lesser extent the conduct of administrative investigations, are the due process and other protections afforded individuals under the US Constitution.¹³

Among those is the Fourth Amendment to the US Constitution, which protects against unreasonable searches and seizures.¹⁴ Neither the police nor another government investigatory agency can arrest a person or conduct a search without consent or probable cause. Outside certain exceptions, a search cannot be conducted without a valid warrant issued by a magistrate or judge. The Fourth Amendment has been interpreted to extend to wire tapping and electronic surveillance.¹⁵ The Fifth Amendment constitutionally enshrines what we in Australia refer to as the privilege against self-incrimination and prevents a person being compelled to give evidence against themselves during a criminal prosecution or where otherwise questioned by an agency of government regarding criminal matters. Moreover, the amendment contains a due process clause and the requirement of indictment by a grand jury.¹⁶ Included in the Sixth Amendment are provisions entitling a person subject to a criminal prosecution to a speedy and public trial by an impartial jury and representation by a defence counsel.¹⁷

The OIG, as with other government agencies in the United States with which the Committee met, responded when asked that it is through the Constitution and the Courts that the rights of an accused are protected in the United States. Each agency was conscious of the limits imposed on them by the Bill of Rights and had developed processes and mechanisms to ensure that they operated within those limits. From what was said to the Committee, it was apparent that those limits did not prevent or inhibit the effective and vigorous investigation of public sector corruption or the successful prosecution of individuals engaged in such activities, though it did impose the

¹³ Most of those protections are part of what is known as the United States Bill of Rights, which is constituted by the first ten amendments to the Constitution. Those amendments were ratified and adopted on 15 December 1791.

¹⁴ The Constitution of the United States of America – Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

¹⁵ *Katz v United States* 389 US 347 (1967).

¹⁶ The Constitution of the United States of America – Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

¹⁷ The Constitution of the United States of America – Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

discipline of carrying out those functions in a manner consistent with the principles underlying the Bill of Rights as interpreted by the Supreme Court.

The ACC cannot make findings or recommendations regarding criminal matters. It is up to the Director of Public Prosecutions to determine whether a prosecution should proceed on the basis of evidence assembled by the ACC and it is through the judicial process that guilt or innocence is determined. Nor can the ACC make findings of guilt against a person the subject of allegations of serious improper conduct or recommend that certain action be taken against a person accused of engaging in such conduct. That is a decision for the relevant appropriate authority to make following the completion of an investigation by the ACC.¹⁸ Like the OIG, the ACC is primarily an investigative agency. It does not, however, perform a broader preventative function comparable to that undertaken by the OIG in addressing the systemic causes of corruption within the Department of Justice.

With respect to the rights protections afforded an accused, neither the Western Australian State Constitution nor the Federal Constitution contains a Bill of Rights¹⁹. The ACC, however, is subject to judicial oversight. In Australia, the principles of *ultra vires* at common law provide protection for certain individual rights and freedoms. The Courts, on the basis of these principles and through the process of judicial review, perform the function of maintaining the rule of law to ensure that neither the government nor its agencies transgress those rights and freedoms, except where Parliament has passed a law which clearly overrides them.²⁰

The Committee was briefed by the Hon. Michael Bromwich, Inspector General of the United States Department of Justice.

The Federal Bureau of Investigation – Public Corruption Unit

The Federal Bureau of Investigation (“the FBI”) is the major investigative arm of the Department of Justice. Its origins lie in a force of Special Agents created within the Department of Justice in 1908. It was from this force that the FBI evolved, receiving its present name in 1935. The Bureau is responsible for investigating violations of federal criminal law. Additionally, it conducts background investigations into persons being considered for important federal government positions and investigates internal security matters. It also assists other law enforcement agencies through providing services such as fingerprint identification, laboratory examinations, police training and crime information.

The Committee was informed that the FBI devotes considerable resources to investigating public sector corruption in the federal government and also in State and local governments. The FBI tends to only investigate more serious corruption cases. It relies on a number of factors when determining whether to take on a corruption case. These include –

18 As made clear in a recent decision of the Western Australian Supreme Court, *Parker and Others v Anti-Corruption Commission*, unreported decision of the Full Court, delivered 31 March 1999, Library Number: 990162B. This case is discussed further in the summary of the Committee’s Fifth Report, *Amending the Anti-Corruption Commission Act 1998*, at pp. 39-41 of this report.

19 The Australian Constitution does contain a limited number of rights guarantees including, in terms of the criminal justice process, the right of an accused to trial by jury where a trial proceeds on indictment (Section 80 of the Constitution). There is, however, no requirement that a trial should proceed on indictment.

20 In relation to the role of the judiciary in Australia in controlling agencies like the ACC see further Michael Barker QC, *Controlling Corruption, Controlling the Controller: Judicial Oversight of the Anti-Corruption Commission (WA)*, a paper delivered to a seminar conducted by the Australian Institute of Administrative Law (WA Chapter) on 17 September 1998.

- the extent of corruption within a department – the FBI is much more concerned to investigate systemic corruption than isolated instances of corruption;
- the level of corruption – where corruption extends into the higher levels of a department then the FBI is more likely to investigate; and
- whether the agency itself has requested an FBI investigation.

Where the FBI has received a request to conduct an investigation, it may be undertaken unilaterally or jointly. The FBI is prepared to conduct joint investigations so long as a joint operation will not compromise the investigation overall and the FBI's professional standards are maintained.

In discussing law enforcement corruption, it was noted that the nature of corruption in law enforcement agencies had become more serious: police officers are now more likely to be themselves competing with criminals than accepting individual payoffs to allow certain criminal activity to continue. Drug related law enforcement corruption was an area of particular concern. Specific information on such corruption was supplied to the Committee.²¹

It was explained to the Committee that the FBI conducts investigations into past and present cases of public corruption, but that the success rate in historical cases is not high. The nature of historical cases is such that conventional investigative techniques must be relied on and it is difficult to assemble sufficient evidence for a prosecution to proceed. The success rate is only about 20%. In present public corruption cases, however, the FBI is able to rely on more sophisticated covert investigative techniques involving undercover work and utilising various surveillance and recording devices. Covert operations are very successful. Evidence collected in such cases has great value in court and is difficult to counter. The FBI has long experience of using covert techniques and carefully analyses cases after completion to identify what works and what does not.

In determining whether the use of such intrusive methods of investigation is warranted the FBI relies on a predication test: do the facts and circumstances suggest a person may be corrupt. The predication standard increases where higher level officials are involved. The protocol involved in making such a determination is very elaborate and requires careful and thorough documentation. The FBI cannot go on a fishing expedition. Very stringent rules apply to such operations. Investigations are conducted within the Attorney General's Guidelines, which prescribe what can and cannot be done when conducting covert investigations. In addition, the courts have interpreted a high level right to privacy on the phone. Conversations can only be listened to where there is probable cause. Other calls are not listened to. Nor can a person be trapped into performing a criminal act. It was pointed out to the Committee that if the investigative process is tainted then the case will be lost in court.

The Committee was also told that authorisation for wire taps is difficult to obtain and, once authorisation is received, the process is carefully monitored. Authorisation must be received from the Attorney General and is subject to regular review by a judge. The initial approval process takes about a week, though, under special circumstances, approval can take as little as an hour and a half. The FBI uses about 1000 wire taps a year of which 30% relate to public corruption cases. Most relate to drug and organised crime cases.

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United States General Accounting Office, *Report to the Honorable Charles B. Rangel, House of Representatives: Information on Drug Related Police Corruption*, May 1998.

It was explained to the Committee that operational secrecy is an essential element in FBI investigations. Publicity only occurs once criminal charges have been laid. Before this occurs, a grand jury is empanelled to hear evidence in secret to determine whether a person should stand trial. Agents never speak to the media. That is a function undertaken by prosecutors. As was the case with the OIG, the FBI's functions are limited to investigation. The FBI makes no decision as to whether or not a person should be prosecuted. That is a matter for the appropriate United States Attorney or Department of Justice official. If a case does not reveal sufficient evidence for prosecution then a report may be sent to the relevant department for an internal investigation or administrative sanction.

The investigative function performed by the FBI, like that of the OIG, is comparable to the role performed by the ACC in Western Australia. The Committee observed that while the Department of Justice is responsible for the investigation and prosecution of federal crimes, within the Department there is a clear separation between those agencies responsible for investigation and those responsible for prosecution, though the Public Integrity Section is an exception to this general rule.

The Committee was told that systemic corruption within the FBI itself is very rare, though there are individual cases of corruption. The FBI has relied on an integrity based recruitment policy to protect against corruption. To become an FBI recruit, a person must be at least twenty-three years old; but not older than thirty-seven. The average age is in the low thirties. For many FBI agents, the FBI is a second career. Candidates for recruitment must have obtained an accredited four year degree at college or university. In addition they are required to pass a polygraph test and a drug test. All candidates are subject to a rigorous background investigation. Only one in some 800 applicants is chosen.

The training programme for Special Agents is conducted at the FBI Academy over a sixteen week period. The Committee was informed that ethics is included as one of the major components of the programme and public corruption is one area of specialised training at the Academy.

Oversight of the FBI and its investigations is provided through a number of avenues. Various Congressional Committees have jurisdictions which allow Congress to supervise the Bureau's budget, programmes and investigations and the Attorney General's Guidelines provide a level of control and uniformity in the conduct of investigations. The FBI conducts its own internal investigations and has its own Inspections Division. Investigations by the FBI are also subject to scrutiny by the courts where prosecutions are undertaken as a result of FBI investigations.

The Committee was briefed Ms Karen Gardner, Supervisory Special Agent, Public Corruption Unit, Federal Bureau of Investigation.

Mr Michael Hershman

Mr Hershman has extensive experience in investigating corruption in the public and private sectors. He is a founding board member of Transparency International and Chairman of Decision Strategies/Fairfax International. Transparency International is a not for profit non-government organisation established to counter corruption in international and national business transactions. Decision Strategies/Fairfax International is a private anti-corruption organisation which provides advice and expertise to private organisations and governments.

The focus of the Committee's meeting with Mr Hershman concerned the protection of the civil rights of public officers when investigated for allegedly engaging in official corruption, the prevention of corruption, particularly within police services, and the use of public hearings as an investigative tool.

In response to comments by the Committee regarding the tension between the investigative powers of the ACC and the protection of civil liberties, Mr Hershman noted that where due regard was not paid to the protection of civil liberties not only might injustice result, but investigations themselves may be compromised. He illustrated the point he was making by reference to the response made to corruption revealed in the New York Police Department (“the NYPD”) by the Knapp Commission in the early 1970s.²²

Following the completion of the Knapp Inquiry, a Special Prosecutor’s Office was established. The Office could empanel Grand Juries in each of New York City’s five boroughs to take evidence in secret concerning criminal conduct on the part of police officers. The office was granted substantial resources and pursued corruption in the NYPD aggressively. It suffered from a lack of oversight and showed inadequate concern for civil liberties. While the Office had a high conviction rate in the first instance, a number of cases were overturned on appeal. The Special Prosecutor, Maurice Nadjari, was removed from the office for this and other reasons and another Special Prosecutor was appointed. The office’s staff and budget was gradually reduced. It was abolished in 1985.

Mr Hershman noted in the course of his comments to the Committee that if abuse of power is a concern then giving an external body such as an ombudsman the power to investigate allegations of abuse of power may be an effective means of protecting rights.

In discussing with the Committee the most effective means of preventing police corruption, Mr Hershman noted that high standards of integrity must be expected from all officers and those standards must be enforced. It is also essential to ensure that the right people are employed through appropriate recruitment practices, including psychological profiling. Once employed officers should be subject to continuing integrity education and training.

He went on to say that thorough and aggressive investigation of individual acts of corruption is necessary to effectively combat public sector corruption and referred to the New York Department of Investigation and the Hong Kong Independent Commission Against Corruption as examples of agencies that successfully carry out such a policy. He further commented, however, that investigation is not in itself sufficient to combat corruption. The systemic causes of corruption also must be addressed.

Mr Hershman made the general comment to the Committee that maintaining integrity within an organisation requires the commitment of the senior members of the organisation. Corruption inevitability occurs from the top down.

When questioned about the use of public hearings as an investigative tool, Mr Hershman expressed the view that publicity regarding specific allegations of corruption should only occur where a prosecution is carried out. Public hearings should not be part of the investigative process. He noted that the Mollen Commission had used public hearings, but only after a very careful investigation. The purpose the hearings served was not investigatory, but to expose wrongdoing. Public hearings carry with them great potential to unfairly damage reputations.

United States Office of Government Ethics

The United States Office of Government Ethics (“the OGE”) is a small executive branch policy making agency established under the *Ethics in Government Act 1978*. The OGE has the task of developing standards of ethical conduct for federal employees and seeing those standards

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The Knapp Commission, *Report on Police Corruption*, New York: Braziller, 1973.

enforced. It seeks to prevent conflicts of interests or the appearance of such conflicts on the part of federal employees and to resolve those conflicts where they occur, so as to promote high ethical standards and public confidence in public administration at the federal level.

The OGE itself is divided into five offices: the Office for Director; the Office of General Counsel and Legal Policy; the Office of Agency Programmes; the Office of Administration; and the Office of Information Resources Management. Overall responsibility for the work of the OGE lies with the Office of Director. The Director is appointed by the President for a five year term.

In terms of enforcing and maintaining standards the OGE has an audit division which reports back to the audited agency. It was explained to the Committee that the OGE sees its role as supporting agencies in maintaining integrity standards and its reports are designed to be constructive and not critical. Where there are alleged violations of standards, these are investigated by the Inspector General of the Department of Justice or the Federal Bureau of Investigation.

In responding to comments by the Committee regarding the question of how ethics may be inculcated into individuals and organisations, the Committee was told that the principal tool used by the OGE is education. The Office develops programmes which are comprehensive, rule based and which set minimum standards. It further provides detailed advisory opinions and other practical advice and information on the rules and their application. Each federal government agency has an ethics official trained by the OGE and appointed by the head of the agency.

To facilitate and support the OGE's educative function the Office has established an Ethics Information Centre comprising a library, a central repository of ethics materials from other agencies and other relevant information. OGE materials, including information on post federal government employment requirements, financial disclosure requirements and standards of conduct, may be accessed on the world wide web. Among the materials presented to the Committee was *The Ethics CD-ROM*, a CD-ROM issued by the OGE and updated periodically, on which is collected federal executive branch ethics laws, executive orders, regulations, OGE advisory opinions and program administration aids.

The Committee was briefed by Jane Ley, Deputy Director for Government relations and Special Projects and Tonda King, Manager of the Ethics Information Centre.

The House Committee on Government Reform and Oversight

The United States Congress, like the Western Australian and Australian Parliaments, is a representative body made up of two Houses, the House of Representatives and the Senate. Its primary function is to enact laws. It also performs the function of overseeing the Executive branch of government. This is one of the functions carried out by Congressional committees, which may investigate and monitor the administration of policy by the Executive branch of government and wrongdoing on the part of members of the Executive.

The Committee met with Dan Burton, Chairman of the Committee on Government Reform and Oversight. This oversight committee is a committee of the House of Representatives. Its primary function is oversight of federal government operations with a particular emphasis on economy, efficiency and corruption. It is a large committee, even by the standards of the United States House of Representatives. Mr Burton noted that the Committee on Government Reform and Oversight had some forty-four members who worked across seven sub-committees. Its permanent staff totalled ninety, including thirty investigators. One of the principal investigations which had been recently undertaken by the Committee on Government Reform and Oversight concerned allegations of illegal campaign funding practices in the 1996 congressional elections.

Mr Burton informed the Committee that the Committee on Government Reform and Oversight could investigate any member of the Federal Executive, including the President, or any federal government agency.

In terms of the investigation of corruption, Mr Burton explained that if there were allegations of serious corruption within the Executive branch of government then the Department of Justice would be responsible for investigating those. If the Congress was not satisfied that the investigation was proceeding satisfactorily then it would be within the Committee on Government Reform and Oversight's jurisdiction to investigate those matters.

Mr Burton discussed with the Committee the difficulty of conducting investigations in a partisan environment. At the time the Joint Standing Committee met with him, the majority in the House of Representatives was Republican, while the President was a Democrat. Mr Burton expressed the view that the partisan divide between the House and the Executive affected the work of the Committee on Government Reform and Oversight in that partisan interests appeared to prevent any co-operation on the part of the Executive with Committee investigations.

New York Department of Investigation

The Department of Investigation ("the DOI") in New York was established in 1873 as the Office of the Commissioner of Accounts in response to the domination of City government at that time by corrupt elements in the Tammany Hall political machine. Since then the DOI has been responsible for promoting and safeguarding the integrity of New York City's government.

The primary responsibility of the DOI is to investigate corrupt, fraudulent or unethical conduct against the City; but it also performs a crucial role in fostering more effective government through reviewing government processes and recommending changes to limit opportunities for corruption and waste and to promote efficiency.

Under the New York City Charter the jurisdiction of the DOI extends to all agencies and officers and employees of the City and further encompasses "any person or entity doing business with the city, or any person or entity who is paid or receives money from or through the city or any agency of the city".²³ The DOI's power to initiate investigations is also broad. Under the Charter, the Commissioner of the DOI may –

... make any study or investigation which in his opinion may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.²⁴

The DOI's powers of investigation are extensive. For the purpose of an investigation or study, the DOI may compel any person to submit to an examination and give evidence on oath, subject to being granted a use immunity. Furthermore, officers and employees of the City must notify the DOI of corrupt activity of which they are aware and are required to co-operate with DOI investigations. Disclosures to the DOI are protected and it is charged with investigating complaints by an employee who alleges he or she has suffered by reason of having reported a matter to the DOI.

The Committee was told of the absolute importance of operational secrecy in conducting successful investigations. Covert techniques are employed by the DOI and involve undercover

²³ Section 803(d) of the Charter.

²⁴ Section 803(b) of the Charter.

work and the use of video and other recording devices. Such operations are very effective tools in investigating and exposing corruption and evidence so gathered can be enormously persuasive. While the DOI may compel evidence, there is some reluctance to do so because such evidence cannot be used against the witness in any subsequent criminal proceedings.

The DOI does not investigate all complaints which come before it itself. It may refer matters to other agencies to investigate.

It was made clear to the Committee that the DOI's law enforcement functions do not extend beyond investigation. The DOI cannot make findings of guilt against a person. Where an investigation reveals evidence of misconduct, the matter is referred to the relevant City agency for appropriate action. If the matter is of a criminal nature it is referred to either the United States Attorney, of which there are two in New York City, or one of the five New York City District Attorneys for prosecution.

The law enforcement function performed by the DOI and the power of the DOI to investigate matters itself or to refer them to other agencies for investigation has similarities to the operation of the ACC. Unlike the DOI, however, the ACC's role does not extend beyond investigation to addressing the systemic causes of corruption.

It was explained to the Committee that in 1987 the City's Inspector-General system came under the auspices of the DOI. That change was made to foster the independence of Inspectors General, who previously had been appointed by and were accountable to the head of the agency they were responsible for overseeing.

The independence of the DOI itself was strengthened in 1990 with changes to the process through which DOI Commissioners are appointed and removed. While the position remains a Mayoral appointment, that appointment is subject to the advice and consent of the City Council. Removal by the Mayor may only proceed upon filing with the Office of Personnel Director and where the Commissioner is served with reasons for removal and is given the opportunity to make a public explanation.

The Committee was briefed by David Burke, Director of the Corruption Prevention and Management Bureau of the DOI, and Vincent Green and Steven Pasishow, Assistant Commissioners of the DOI.

The Commission to Combat Police Corruption

Since the 1890s, the New York Police Department (NYPD) has been the subject of a major investigation into corruption by a mayoral commission every twenty years or so. Each commission found extensive corruption within the NYPD. The most recent of those was the Mollen Commission, which reported in 1994.²⁵ The Commission to Combat Police Corruption was established in February 1995 in the wake of the Report of the Mollen Commission. The Commission is comprised of five members appointed by the Mayor for varying terms and has a full-time staff headed by an Executive Director.

The cornerstone of the Mollen Commission's recommendations was that a permanent independent police commission be established to monitor and investigate corruption within the Police department.²⁶ The design of this external body reflected that of the DOI and the Mollen

²⁵ Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department ("the Mollen Commission"), *Commission Report*, Milton Mollen, Chair, 1994.

²⁶ *Ibid*, pp. 152-157.

Commission itself. It was not intended to displace the responsibility of the Police Department to conduct its own investigations, but it was intended to augment and enhance those investigations.

The Commission to Combat Police Corruption operates pursuant to Executive Order Number 18, dated 27 February 1995. This Order does not fully implement the recommendations of the Mollen Commission. The Commission's mandate extends to conducting audits, studies and analyses of the Police Departments anti-corruption processes and procedures, but falls short of granting it an investigative function.

It was explained to the Committee that the Police Department is required to allow the Commission full access to its records to supply it with information as requested. The Chairman of the Commission, its members and the Executive Director may attend weekly internal-crime control meetings with the Chief of Internal Affairs, the First Deputy Commissioner, the Chief of the Department, all Bureau Chiefs, the Deputy Commissioner of Crime Control Strategies, the Deputy Commissioner Legal Matters, and the Commander of the relevant Patrol Borough. In attending these meetings, the Commission performs a monitoring role and is not involved in operational decisions. The Commission is required to report at least once a year to the Mayor and the Police Commissioner.

The Committee noted that the structure of the Commission and the policy underlying it are different to that adopted in Western Australia with respect to the detection and investigation of police corruption. In Western Australia, while the bulk of corruption cases involving police officers are dealt with by the Police themselves through the Professional Standards Portfolio, the ACC has the power to investigate individual cases of corruption where that is warranted. The ACC's functions, however, do not extend beyond this to auditing and assessing the Western Australian Police Service's anti-corruption processes and procedures. The Commission to Combat Police Corruption, on the other hand, performs this more general oversight role, but cannot conduct investigations into individual allegations of corruption. It was clear to the Committee that in New York the Mayor and the Police Department are committed to the idea that the most effective way of dealing with police corruption is to make the Department itself wholly responsible for the detection and investigation of police corruption.

Apart from the Commission's most recent Annual Report, the Committee was presented with following examples of the work undertaken by the Commission –

- *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau* (October 1997);
- *Performance Study: The Internal Affairs Bureau Command Center* (October 1997);
- *The New York City Police Department's Disciplinary System: How the Department Disciplines its Members who make False Statements* (December 1996); and
- *The New York City Police Department Random Integrity Testing Program* (Report to the New York City Commission to Combat Police Corruption, KPMG, December 1996).

The Committee was briefed by Joseph Gubbay, Executive Director, and Emery Adoratio, Deputy Executive Director, of the Commission.

The New York Police Department Internal Affairs Bureau and Police Academy

The New York Police Department (“the NYPD”) employs some 50 000 people, of which approximately 40 000 are sworn police officers. At the head of the NYPD is the Police Commissioner, who is appointed by the Mayor of the City of New York.

In January 1994, the Mayor, Rudolph Giuliani, directed the Police Commissioner to –

- refocus the Police Department on one central mission, that of reducing crime, disorder, and fear in the City of New York; and
- make certain the Department carries out this work with the highest degree of integrity.

The various strategies adopted to achieve these goals were outlined to the Committee. They include changes to the operation of the Internal Affairs Bureau (“the IAB”) and the NYPD’s recruitment, training and education processes.

The Internal Affairs Bureau

In its 1994 Report, the Mollen Commission found an anti-corruption system in the NYPD –

... that had virtually collapsed years ago – and that was more likely to minimize or conceal corruption than uncover and uproot it. We found that the New York City Police Department had largely abandoned its responsibility to police itself and had failed to create a culture dedicated to rooting out corruption.²⁷

The Committee was aware that even during the Commission’s inquiry change began to occur within the Department’s Internal Affairs structures and procedures. The Committee was told that since that time they have been substantially transformed. In general terms, the Department has sought to shift the culture of Internal Affairs from a static, reactive one more concerned with burying corruption and avoiding scandal to one committed to exposing corruption and bringing corrupt officers to account.

The Committee was informed that the expectations and status of the IAB within the Department have been raised. Within the IAB no one is a volunteer, not even the Chief of the Bureau. Officers in the IAB are drafted for a minimum of two years, though they may stay beyond that period. The IAB has first choice of officers and chooses the very best from within the Department. All complaints of corrupt or improper conduct against police officers come through the IAB and are monitored on a daily basis. The IAB investigates all serious cases itself, while less serious cases may be referred to other units within the Department. The policy of zero tolerance, through which police officers are required to take a strict approach to law enforcement, including minor crimes and misdemeanours, has its corollary in terms of the police service itself: even minor breaches of ethical standards are treated as serious matters.

Whereas internal affairs used to operate in isolation and secrecy, the Committee was informed that the IAB now works much more closely with precinct and other unit commanders and Integrity Control Officers assigned to the precincts in dealing with corruption cases. Precinct Commanders are kept informed about cases within their precinct and their assistance is sought. Precinct Commanders also may themselves request integrity testing within their precinct from the IAB. These changes reflect one of the key organisational reforms in the Department, which has been to make Precinct Commanders more responsible for operations within the precincts and the maintenance of high standards of integrity among the officers under their command.

It was emphasised to the Committee that the IAB now takes a much more active approach to dealing with corruption. Rather than responding to individual complaints, as it had done in the past, the IAB now uses the full range investigative tools and methods available to law

²⁷

Ibid, p. 70.

enforcement agencies in detecting and investigating corruption. These include pattern analysis and identification, state of the art surveillance, targeted and random integrity tests, confidential informants and undercover officers. The IAB also works co-operatively with other law enforcement agencies where that is required.

The importance of sophisticated covert investigation techniques to successful corruption investigations was an important theme in the Committee's meeting with the IAB, as it was in almost all of the Committee's meetings with law enforcement agencies involved in investigating corruption. The Committee was told that the use of covert surveillance techniques and undercover officers proved to be an extremely effective way of gathering evidence of corruption. The fact that officers are aware that such techniques are used and that they may be subject to integrity tests which utilise such techniques was also an effective deterrent.

The links between drugs and corruption in police services is well established. In the course of the Committee's IAB briefing, the Committee was informed that drug testing of officers and civilian employees of the Department is an important element of maintaining integrity in the NYPD. Random tests are used, and officers or employees of the Department are no longer given a day's notice that a test will be carried out. Drug screening through hair analysis, which can identify whether drugs have been used over a period of some months before the test, is also used where cause has been shown.

Less well established is the link between police brutality and corruption. The Mollen Commission discovered that a strong, and often direct, connection existed between corruption and police brutality. Even where brutality was not directly associated with corruption, the Mollen Commission concluded that brutality fosters a police culture more conducive to corruption.²⁸ The Committee noted that the IAB has a specific group, Group 54, dedicated to investigating allegations of the excessive use of force by police officers.

Police recruitment and training

It was clear to the Committee that improving the standard of recruits and training is seen as an important and necessary part of improving and maintaining high standards of integrity within the NYPD.

In terms of recruitment the Committee was informed that a higher entry age requirement, increased from 20 to 22, has been adopted and higher educational standards are now also required. To become an officer of the NYPD a recruit must have at a minimum two years military service or 60 college credits, the equivalent of two years at College. Previously officers were required to have only completed a high school diploma. Background investigations must be completed before a recruit is admitted to the Academy. Standards generally at the Police Academy have also been increased and the integrity related component of the Academy's entry level training has been enhanced.

One of the key points to emerge from the Committee's discussions with officers of the NYPD, was the importance of developing within recruits an understanding of the values underpinning police service and the system in which the police service operates.

Another key point made to Committee related to the central role played by supervisors in maintaining and reinforcing the values learnt by recruits in training. This was a theme which arose not only in this meeting, but in a number of later meetings held by the Committee. The

Committee was told that the selection and training of supervisors in the Department has been a primary focus of the changes within the NYPD over the past four years. Indeed, in setting out the strategy for building organisational integrity in the Police Department, the Mayor and the Police Commissioner said that –

The cornerstone of the effort to transform the NYPD operating culture is the reconstruction of the supervisory corps.²⁹

That statement is consistent with the findings of various bodies, including the Mollen Commission, that effective supervision is critical to developing and maintaining a culture of integrity within police departments.

Within the NYPD, the Committee was informed that promotional training for sergeants and lieutenants now occurs before promotion and not after it, and those failing twice are not promoted. The training course for sergeants has been extended from four weeks to six weeks, and for lieutenants from seven days to twenty-four days and the integrity component of these courses has been expanded. To become a Sergeant an officer must have served on the force for five years, including three on patrol.

It was pointed out to the Committee that while many positive changes were being made, there were still areas of concern. One of those is what officers of the NYPD are paid. The Committee was told that average wage for an officer is barely adequate and the unsatisfactory situation consequently arises where many officers work on the side to maintain a reasonable standard of living.

External oversight and accountability

It was clear to the Committee from its meeting with officers of the NYPD, as it had been from earlier meetings held by the Committee, that the New York City Government and Police Department is convinced that primary responsibility for the detection and investigation of police corruption should lie with the Police Department itself. The IAB, however, is subject to the general oversight of the Commission to Combat Police Corruption,³⁰ and officers of the NYPD are subject to oversight by the New York City Civilian Complaint Review Board.

The Board is an independent agency of the City which has the authority to investigate certain allegations by the public of police misconduct. The jurisdiction of the Board covers allegations of excessive force, abuse of authority, discourtesy and offensive language. The Board may receive, investigate, make findings and recommend disciplinary action regarding such complaints to the Police Commissioner. The Commissioner is not obliged to accept the findings or recommendations of the Board, though, where disciplinary action has been recommended, the Commissioner must report back to Board on the action taken.

The Board is made up of thirteen members appointed by the Mayor. Five are designated by the Mayor, five by the City Council to represent the five New York City Boroughs, and three by the Police Commissioner. The powers of the Board extend to compelling testimony from witnesses.

²⁹ *Police Strategy No. 7: Rooting Out Corruption; Building Organizational Integrity in the New York Police Department*, June 1995, p. 45.

³⁰ See further the summary of the Committee's meeting with officers of the Commission at pp. 22-23 of this report.

Confidentiality provisions prevent the Board from making public its findings in individual cases, though it does publish general reports.³¹

The Committee was briefed by Chief Charles Campisi, Chief of the Internal Affairs Bureau, New York Police Department, Deputy Inspector Steve Silks, Office of the Commanding Officer and Lieutenant John Gorman, Law Department, New York Police Department Police Academy.

Mr Gregory Thomas and Professor Kenneth Moran

Currently, Mr Thomas directs the Division of School Safety of the New York City Board of Education. Mr Thomas, however, has had long involvement in working in the area investigating and preventing public sector corruption, including police corruption. He began his public service career with the DOI and subsequently worked as an investigator and analyst with the Mollen Commission. Following this, he became an Associate Director of the CUNY/NYPD Cadet Corps at the John Jay College of Criminal Justice.

Professor Moran has been a Professor at the City University of New York, Graduate School Doctoral Faculty and the Department of Law and Police Science at the John Jay College of Criminal Justice since 1972. He has taught and published widely in the area of criminal justice.

The Committee spoke first with Mr Thomas, and later with both Mr Thomas and Professor Moran.

The discussions focussed on corruption in police services with particular reference being made to the NYPD.

The nature and history of corruption within the NYPD was outlined to the Committee. While corruption in the NYPD has long been a problem, the nature of the corruption has changed. Twenty years ago most corruption saw officers engaging in simple graft, but the Mollen Commission found that officers were now more likely to be engaged in serious crime themselves. What had been the case when the Knapp Commission reported in 1973,³² where most corruption was of a minor nature, but widespread, with more serious corruption occurring far less frequently, had been reversed with serious corruption being the rule rather than the exception.³³ Points made earlier to the Committee about the link between drugs and corruption and police brutality and corruption were emphasised again by Mr Thomas and Professor Moran. They also noted that many of the changes, though not all, recommended in the report of the Mollen Commission were being implemented in the NYPD.

It was clear to the Committee from its meetings with Mr Thomas and Professor Moran and its earlier meetings, that the factors which contribute to a police culture conducive to corruption are many and that a range of integrated strategies need to be employed to counter it. These include rigorous screening of recruits and high recruitment standards; ethics and related training and continuing education for recruits and officers; effective supervision; and a commitment across all levels of the police service to high standards of integrity and their enforcement. Both spoke of the fundamental importance of appropriate recruitment and training practices to developing and

³¹ A critical assessment of the Civilian Complaints Review Board, and the accountability of the NYPD generally, is provided in a recent report by Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, published in June 1998, at pp. 268-313.

³² *Op. cit.*, note 21.

³³ *Op. cit.*, note 24, p. 16.

maintaining high standards of integrity within police services and reinforced many points made to the Committee in other meetings.

The Committee was told that if you raise education standards and age requirements then research shows that you simply get a better police officer. A college education is essential and a military background is also useful as it brings with it desirable attributes such as discipline and a code of honour. Education introduces diversity into a police force and is a counterweight to the sort of police culture that encourages corruption.

Effective screening techniques, including psychological testing, are also important, as past conduct is an indicator of the sort of person you are hiring. It was explained to the Committee that the purpose of such screening is not to choose candidates, but to exclude them. One of the first things to do is to identify recruits who have previous drug convictions.

Attention must also be given to how recruits are trained at the Academy and throughout their police careers. Past practices in the NYPD had done little to develop in officers high ethical standards. The old culture of the Police Academy was not aimed at training a professional police service dedicated to serving the public, but rather reflected many of the negative aspects of police culture which recruits would face once they became officers. It taught recruits to protect their own private interests and to cover themselves and look after each other. It was not that corrupt officers were produced through the training process: as recognised by the Mollen Commission, most officers in the NYPD were and are good and honest people; but the culture in which they were imbued permitted corruption to flourish among a corrupt few. Training must extend beyond the practical requirements of policing and rote learning of rules and laws to inculcating an understanding within recruits of the purposes and values underpinning good police service and the system in which it operates.

Once initial training is complete, the central importance of the proper supervision of officers was emphasised to the Committee, the key being a healthy ratio of well trained and competent sergeants to lower ranking officers. Ideally the ratio should be around 1:10. What is then learnt in the academy can be reinforced once recruits start working as police officers. The Committee was told that the ratio in the NYPD had been as high as 1:30 or 1:40. It was noted that the present Commissioner has changed the management structure of the NYPD and more sergeants are being trained and taken off desk jobs to become frontline supervisors.

Mr Thomas and Professor Moran also referred to the changes in the culture of the IAB that had taken place and reiterated many of the things which had been said to Committee when it met with officers of the NYPD. The IAB was now more active in detecting and investigating corruption, it took the best recruits, themselves older and better educated than in the past, and there were good career opportunities for officers who joined the Bureau.

In his discussions with the Committee, Mr Thomas expressed the view that in maintaining a police culture committed to high integrity standards, external oversight of internal investigations was desirable. A properly constituted external body will protect against a negative police culture becoming entrenched within internal affairs, as had happened in the past in the NYPD.

The Los Angeles Police Department Internal Affairs Group and the Anti-Corruption Unit of the Los Angeles Police Department Police Academy

The Committee was told that in the 1930s and 40s the LAPD had the reputation of being a corrupt organisation, but since then the LAPD has developed into a police force which successfully maintains high standards of professionalism and integrity. The strategies employed to maintain those standards are consistent with many of the comments made to the Committee

in earlier meetings about what the key factors are in making for a police service free of systemic corruption. Those strategies include solid recruitment and educational standards, extensive and positive supervision of officers while at work, a commitment to effective internal affairs investigations, good pay and conditions and an ethos of professionalism.

The implementation of those strategies reflects in part the recommendations of the Independent Commission on the Los Angeles Police Department (“the Christopher Commission”),³⁴ which had been established to conduct a broad ranging inquiry into the LAPD and reported its findings in July 1991. That report was completed four months after the beating of Rodney King by officers of the LAPD.

The Internal Affairs Group

The LAPD comprises approximately 8000 sworn officers and 3000 civilians. The Internal Affairs Group has about 100 sworn personnel dealing with serious corruption.

The Committee was informed that every complaint of corruption or misconduct against a LAPD officer is investigated. All complaints go through Internal Affairs, but not all are investigated by it. Where complaints are referred to other units, investigations are carried out and reports made to the Internal Affairs Group by the relevant area commander. Internal Affairs itself only requires a “reasonable suspicion” to carry out an investigation. The Internal Affairs Group reports to the Chief of Police.

Under the City Charter of Los Angeles, the Chief of Police is responsible for disciplining officers, subject to various checks and balances.³⁵ The Chief of Police may impose a suspension without pay of not longer than thirty days with or without reprimand. The Chief also has the authority to demote an officer. Upon suspension or demotion an officer has a right to a hearing before a Board of Rights, comprising two command officers and one civilian. Removal of an officer from office or a suspension of more than thirty days can only be made on a recommendation from a Board of Rights following a hearing before such a Board. The Chief has the discretion to decrease any penalty recommended by a Board, but he or she may not increase it.

The LAPD is committed to having an effective and well respected Internal Affairs Group. The Committee noted that the manner in which that the Department seeks to achieve this departs in some ways from the models it had investigated through its earlier meetings with other law enforcement agencies in the United States.

A position in the Internal Affairs Group is an advanced position with positive career benefits. The Committee was informed that working in Internal Affairs is well respected: it has a good reputation and is seen as impartial and fair and attracts top quality recruits.

When the Committee asked about the use of sophisticated covert surveillance techniques in conducting investigations, it was informed that the Internal Affairs Group places much less reliance on such techniques than either the FBI or the NYPD. The Committee was told that the level of corruption in the LAPD does not warrant such aggressive investigative techniques.

³⁴ The Commission was chaired Warren Christopher.

An assessment of the reform process in the LAPD since the completion of the inquiry by the Christopher Commission is provided in Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, June 1998, at pp. 199-234.

³⁵ Los Angeles Police Department, *Management Guide to Discipline*, May 1998.

The LAPD relied on encouraging and maintaining a positive police culture as the best protection against corruption. It was made clear to the Committee that officers and commanders in the LAPD take great pride in their work and that the culture of the Department fosters professionalism and is inimical to systemic corruption.

Having said this, it was noted, that where corruption occurred within the LAPD, the pattern had parallels with corruption in other police forces. In the past it was associated with the excessive use of force and falsifying probable cause, while now corrupt officers were engaging in serious crime themselves.

Police recruitment and training

The required educational level for recruits is graduation from a United States High School. A two or four year college degree from an accredited school may be substituted for the high school requirement. Recruits must pass extensive background, psychological and physical tests before being selected. They must be twenty-one years old at the time of hire. Training consists of seven months at the Academy and officers are subject to a one and a half year probationary period. Only one in each 100 applicants is hired.

The point was made to the Committee that corruption begins in small ways. Combatting corruption requires commitment to thorough investigation of complaints and the taking of appropriate disciplinary action for even minor integrity breaches, combined with ethics training. Recruits and officers are given a clear idea of what standards are expected of them, both on and off duty, and they know that those standards will be enforced.

As had been emphasised to the Committee in a number of its earlier meetings, once recruits have completed their training, the first line supervisor is the key to maintaining and reinforcing the standards of professionalism and integrity that officers have been taught at the Academy. The Committee was told that, while the extent of supervision required will depend on the complexity of the task, the LAPD generally maintained a high ratio of supervisors to lower ranking officers, about 1:8.

External oversight and accountability

With respect to external oversight of the LAPD there is no civilian review board as exists in New York. At the apex of the LAPD, however, is the Board of Police Commissioners (“the Commission”) with a membership of five civilians appointed by the Mayor and confirmed by the City Council, which heads the LAPD and to which the Chief of Police is answerable. The Commission’s primary functions are to set the policies of the LAPD and to supervise its operations. The Chief of Police is responsible for the day to day work of the LAPD. Under the Charter, the Commission recommends candidates for the position of Chief of Police to the Mayor and is responsible for deciding whether or not a Chief should be reappointed to the position following his or her initial five year term. The Commission also appoints civilian representatives on Boards of Rights. Where use-of-force reviews are undertaken, final authority for determining whether the use of force came within departmental policy rests with the Commission.

Reporting directly to the Police Commission is the Office of Inspector General. The Office was set up on the recommendation of the Christopher Commission. The Inspector General is a civilian whose role is to monitor, audit and oversee the Department’s disciplinary system. The Inspector General has full access to all departmental documents and staff and may subpoena witnesses and compel the production of documents. It is required to report every six months.

Complaints against officers of the LAPD may be received through the Office of Inspector General. Those complaints are passed on to the Internal Affairs Group for further action. The Office assists complainants with inquiries regarding the action taken with respect to their complaint.

The Committee was briefed by Captain George Ibarra, the Commanding Officer of the Internal Affairs Group in the LAPD, Lieutenant Gus Martinez and Commander Garret Zimmon, Officer-in-Charge of the Anti-Corruption Unit at the LAPD Police Academy. The Committee also inspected the LAPD Police Academy.

The Hong Kong Independent Commission Against Corruption

The Independent Commission Against Corruption (“the ICAC”) is an independent statutory authority charged with the prevention and investigation of corruption in Hong Kong. The ICAC was established in 1974. It is headed by a Commissioner appointed by and directly responsible to the Chief Executive.

Through the ICAC a comprehensive and integrated approach across a number of fronts is taken to controlling public sector corruption. Unlike the policy on which the ACC is based, the Hong Kong Government believed that merely establishing an investigative agency would not be adequate to overcome corruption in the colony. The ICAC was created to deal with corruption on three fronts: investigation, prevention and education. To this end, the ICAC has three functional departments –

- the Operations Department, which investigates allegations of corruption;
- the Corruption Prevention Department, which studies the systems in place in government departments and public agencies to identify where those systems can be improved to reduce opportunities for corruption; and
- the Community Relations Department, which educates the public about corruption and its effects and encourage public assistance in combatting corruption.

It was explained to the Committee that the ICAC is granted extensive investigatory powers under various statutory instruments.³⁶ It may search bank accounts and hold documents. Suspects may be required to provide information about their assets, income and expenditure. It is an offence for a government official to receive an advantage over a certain amount. Officers of the ICAC may exercise powers to arrest and detain a person suspected of engaging in corruption. Suspects and premises may be searched and evidence seized. The ICAC can compel testimony, subject to a use immunity. With the passing of a Bill of Rights in Hong Kong, the Commissioner’s powers of search and seizure, to obtain information, to retain travel documents and restrain the disposal of property have been transferred to the judiciary.

Where evidence of corruption is revealed through an ICAC investigation that information is passed to the Secretary for Justice, who is responsible for making a decision as to whether prosecution should proceed.

The Committee was told that confidentiality of operations is protected for the purpose of maintaining operational integrity and the reputations of those under investigation.

³⁶

The Prevention of Bribery Ordinance, the Independent Commission Against Corruption Ordinance and the Corrupt and Illegal Practices Ordinance.

The Committee discussed at some length the accountability of the ICAC. It was informed that the Commissioner reports to the Executive Council on important policy matters. The Commissioner and directorate officers are also required to appear before the Legislative Council to provide information on policy matters and required funding. The ICAC provides an annual report on its activities to the Legislative Council.

The ICAC is also subject to the oversight of four independent advisory committees, comprised of citizens drawn from various parts of the Hong Kong community. These committees are –

- the Advisory Committee on Corruption, which has the task of advising the ICAC on general policy matters;
- the Operations Review Committee (“the ORC”), which oversees the work of the Operations Department and, at regular meetings, advises the department on the conduct of its investigations;
- the Corruption Prevention Advisory Committee, which considers reports by the Corruption Prevention Department and advises on the priority to be given corruption prevention studies; and
- the Citizens Advisory Committee on Community Relations, which provides the Community Relations Department with advice on how to effectively educate the public about corruption.

With respect to complaints against the ICAC or its officers, it was explained to the Committee that an ICAC Complaints Committee has been established which monitors and reviews how the ICAC deals with complaints against it or its officers. It is chaired by a senior member of the Executive Council. The ICAC has created an internal investigation unit to deal with such complaints. The unit comes under the authority of the Director of Investigations (Private Sector). Completed investigations into complaints against the ICAC or its officers are reported to the Operations Review Committee. Complaints are not investigated until the original case has been completed.

The point was made that corruption by its nature is a secretive activity and it is difficult to gather direct evidence. It is important that law enforcement oversight mechanisms do not function in a way which hinders or prevents the law enforcement agency from detecting and investigating corruption. The ICAC is responsible to the Government, not the Legislature, though Legislative Councillors are involved on both the ORC and the ICAC Complaints Committee. The view was expressed to the Committee that it would be incongruous for a Parliamentary watchdog to oversee the ICAC as operations are necessarily conducted in secret, whereas Parliament itself operates in public.

The Committee also discussed the history and role of the ICAC in investigating police corruption in Hong Kong. With the creation of the ICAC the investigation of corruption was removed from the Hong Kong Police Force (“the HKPF”) entirely, though it retained responsibility for investigating other forms of police misconduct. Such a separation is designed to protect against negative aspects of police culture undermining effective and impartial investigation of police corruption.

This is a very different approach to that taken in New York and Los Angeles, where the investigation of police corruption is almost entirely the responsibility of the police themselves, or

to a lesser extent in our own State, where the investigation of such matters is conducted by the police in most instances, with the ACC conducting investigations in more serious cases.

It was explained to the Committee that in the 1970s syndicated corruption was rife within the HKPF. Police were poorly paid and police culture protected and encouraged corruption. With the establishment of the ICAC it has been possible to attack the root causes of police corruption in co-operation with the HKPF, as was acknowledged to the Committee by both the ICAC and the HKPF. Since that time the HKPF has gradually developed into a professional organisation in which corruption appears to be the exception rather than the rule.

The Committee met first with Mrs Lily Yam, Commissioner of the Independent Commission Against Corruption. It subsequently met with Mr Tony Kwok, Head of Operations, Mr Tony Godfrey, Assistant Director and Mr Kwang-fuk Yip, Chief Investigator of the Commission.

The Hong Kong Police Force

As the Committee had been told when meeting with members of the ICAC, the HKPF had been an organisation within which there was serious systemic corruption, but was now a much more professional service in which systemic corruption had been largely eliminated.

Anti-corruption strategies

The Committee attended briefings by members of the HKPF in which the Force's anti-corruption strategies were comprehensively outlined.

Much of the information presented to the Committee related to organisational reforms which had been undertaken since 1994 when the Commissioner of Police directed that the HKPF's corruption prevention policy and strategy be reviewed. That process was being undertaken through the Force Anti-Corruption Strategy Steering Committee ("the FACSSC") which was established in August 1995. The FACSSC's Terms of Reference are as follows –

- the identification of factors which present opportunities for corruption;
- coordinating and monitoring initiatives to combat and minimise opportunities for corrupt activities;
- the identification of phenomena which influence susceptibility to corruption;
- developing, implementing and monitoring the results of strategic counter-measures to adverse influences; and
- the development of a Force Code of Ethics/Conduct.

The Committee was told that in pursuing these objectives, the ICAC and the HKPF have worked closely together. This co-operation occurs through a number of mechanisms. Since 1981 a Police Corruption Prevention Group has operated to assist studies into corruption prevention by the ICAC and to monitor the implementation of recommendations made by the ICAC. ICAC monitors corruption reports and reports to FACSSC meetings. ICAC may also attend Major Formation Commanders meetings and is involved in HKPF training courses. Officers of the ICAC lecture in basic training, promotion training and command courses on corruption and supervisory accountability in the HKPF. The Commissioner of Police is also represented on the ICAC ORC.

It appeared to the Committee from comments made by members of the ICAC and the HKPF that the two organisations worked reasonably well together and had been successful in implementing positive reform within the Force. However, given the role and history of the ACC in relation to the investigation of corruption in the Western Australian Police Service, the Committee remains mindful of the observations of the Select Committee on the Western Australian Police Service, which, while noting that at the level of senior management the relationship was effective, lower ranking officers remained suspicious and mistrustful of the ICAC.³⁷ The Select Committee's conclusion was that the tension arising from this "was a major stumbling block to the effectiveness of an independent agency".³⁸

It was evident to the Committee that an integrated and comprehensive approach to preventing corruption in the HKPF was being implemented. In addition to the vigorous detection and investigation of instances of corruption by the ICAC, a number of other specific strategies have been employed.

The Personnel Wing has developed a range of strategies to reduce adverse influences on officers. It has developed a strategy which promotes fitness and a healthy lifestyle among officers. Officers who have debt difficulties are provided with counselling and are able to attend stress management workshops. An *aide memoire* on integrity and honesty will be supplied to officers.

Through the Service Quality Wing an Anti-Corruption Sub-Committee on Ethics was established in October 1995 under the FACSSC to develop a Code of Ethics. It has also developed a Living-the-Values Strategy. Following consultation, a Statement of Common Purpose and Values was prepared and workshops organised in which officers explored the values of the Force and identified how those values might be maintained.

Two working groups have also been established: one to review the effectiveness of the strategy to communicate Force values throughout the Force; and the other to study the best way to implement a centralised system to receive and investigate reports of misconduct and to provide support and protection to officers who report such conduct.

As part of its long term strategy to become a more service orientated and professional organisation with a flatter management structure, the Force is looking to reduce the number of ranks. At present there are thirteen.

It was explained to the Committee that the key to developing a corruption free police force is the care and attention paid to junior staff. The HKPF offers a good career, with reasonable pay and excellent conditions relating to housing, education and health.

As had been so often underscored during the course of the briefings to the Committee in the United States, the provision of adequate supervision was seen by the HKPF as an essential element in maintaining high standards of integrity. A Tutor Police Constable Scheme, modelled on the system used in the United Kingdom, was introduced in 1987, but this was not found to be effective. As in the NYPD and the LAPD, sergeants are now used in the HKPF to perform this supervisory function. The Committee was informed that the sergeant to constable ratio is 1:5, though in some tactical units it may be as low as 1:3. The effectiveness of sergeants in the performing a supervisory role is presently being evaluated.

³⁷ Select Committee on the Western Australian Police Service, *Report on the Examination undertaken by the Committee of Procedures and Systems in relation to Complaints against Police and the Detection of Corruption in other Jurisdictions*, Legislative Council of Western Australia, 1995, pp. 12-13.

³⁸ *Ibid*, p. 13.

The Committee observed that the high ratio of sergeants to constables was indicative of the commitment of the HKPF to preventing corruption, which was evident throughout the Committee's meetings with members of the Force.

Police recruitment and training

The practice of the LAPD in maintaining high recruitment standards as one of the key elements in its strategy to prevent corruption and the emphasis the NYPD was now putting on recruitment standards was also apparent in the HKPF. Securing a position in the Force is very competitive and it now attracts high quality recruits. In 1996/1997 there were 13 062 applicants for 920 positions in the disciplined ranks of the HKPF. Minimum education standards are high and recruits are required to go through a rigorous application and screening process.

Initial training for recruits takes place at the Police Training School. Probationary Inspectors undergo 36 weeks of basic training. The syllabus is presently being reviewed. Recruit Police Constables undergo 27 weeks of basic training. The Police Training School also provides in-service training through promotion and development programmes.

The Force Anti-Corruption Sub-Committee on Training was established in 1995 to review and improve anti-corruption training in the HKPF. Through the work of the Sub-Committee the anti-corruption training syllabus for all training levels is being revised and improved.

The Committee was informed that ethics education is being integrated into the whole programme. The general philosophy of training in ethics is changing. Traditionally recruits were required to rote learn rules and regulations. Now the focus is not only on learning the rules, but the values and principles which underlie them.

The Complaints and Internal Investigations Branch

The Complaints and Internal Investigations Branch is made up of the Complaints against Police Office (CAPO) and the Internal Investigations Office (IIO).

The IIO's primary responsibility is to conduct supervisory accountability and other studies as directed. It is also responsible for conducting investigations into disciplinary breaches and related matters which are revealed through investigations by other government agencies.

The CAPO is responsible for the investigation of complaints alleging criminal acts or disciplinary breaches against members of the HKPF other than allegations of corruption, which are dealt with by the ICAC. The CAPO is required by law to investigate each complaint it receives.

The investigation of complaints against officers of the HKPF by CAPO is subject to external oversight by the Independent Police Complaints Council (IPCC). The IPCC is an independent advisory council appointed by the Hong Kong Government. It is not an investigatory body. Its functions are limited to monitoring and reviewing investigations by CAPO. The IPCC's Terms of Reference are as follows –

- to monitor and, where it considers appropriate, to review the handling by the Police of complaints by the public;
- to keep under review statistics of the types of conduct by police officers which lead to complaints by members of the public;
- to identify any faults in police procedures which lead or might lead to complaints; and

- where and when it considers it appropriate, to make recommendations to the Commissioner of Police or, if necessary, to the Chief Executive.

The Committee was briefed by Mr Lee Ming-Kwai, Director of Management Services, Mr Wong Doon-ye, Commander of the Police Training School, and Ms Tong Kit-lin at the Queensway Recruiting Centre.

The Committee visited the Police Training School and the Queensway Recruiting Centre.³⁹

6. REPORTS TO PARLIAMENT

Included among the Committee's functions is the requirement to report to Parliament on certain matters within its Terms of Reference. The relevant Standing Orders are as follows –

- 415B (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 resolution as “official corruption”;
- 415B (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;
- 415B (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
- 415B (g)** to report to Parliament as to whether any changes should be made to relevant legislation.

The Committee tabled the following reports in the Parliament during the first eighteen months of its operation –

- *Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia* (Tabled on 23 October 1997);
- *The Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies* (Tabled on 28 May 1998 in the Legislative Council and 11 June 1998 in the Legislative Assembly);

³⁹

A table setting out the briefings given the Committee over the past eighteen months, including those given while in the United States and Hong Kong, is appended to this report (Appendix 6).

- *Report on Complaints made by Detective Sergeant Peter Coombs Against the Anti-Corruption Commission, Special Investigator Geoffrey Miller QC and Others* (Tabled on 18 June 1998);
- *Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights under the Anti-Corruption Commission Act 1998* (Tabled on 29 October 1998);
- *Amending the Anti-Corruption Commission Act 1988* (Tabled on 22 December 1998 in the Legislative Council and 23 December 1998 in the Legislative Assembly); and
- *The Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies* (Tabled on 23 December 1998 in the Legislative Assembly).

The Committee also tabled the following discussion paper –

- *Secrecy Under the Anti-Corruption Commission Act* (Tabled on 2 April 1998 in the Legislative Council and 7 April 1998 in the Legislative Assembly).

During this period, the reports of the Committee reflect the attention it has paid to ensuring that the ACC can effectively perform its functions under the ACC Act, while being properly accountable for how it does so. The Committee also prepared material designed to enhance public understanding of the ACC Act and the purposes underpinning the Act. In its reports, the Committee has identified a number of deficiencies in the present system of accountability for the ACC and has made recommendations to address those deficiencies. It further made a number of recommendations regarding a range of suggested amendments to ACC Act.

The Committee also reported on the activities of the Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies.

The Committee's Reports

Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia

In September 1997, the Committee met with a number of anti-corruption and law enforcement agencies in other Australian jurisdictions and the parliamentary committees created to supervise those agencies.

The main purpose of those meetings was to examine the tension between confidentiality requirements regarding operational matters and the need for such matters to be subject to scrutiny if an agency is to be fully accountable. Each of the parliamentary oversight committees with which the Committee met identified this tension as one of the central issues with which they had to contend. In its report on those meetings, *Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia*, the Committee examined the reasons for that tension arising and the ways in which it had been dealt with by other parliamentary oversight committees.

A number of other themes were also raised and discussed in the meetings and outlined in the report. These included –

- the development of education programmes and the prevention of corruption;
- complaints regarding the activities of an agency or the conduct of its officers;
- the coercive powers exercised by specialist anti-corruption and/or law enforcement agencies;
- public vs private hearings during investigations;
- parliamentary oversight committee involvement in determining an agency's budget;
- parliamentary oversight committee involvement in the selection and removal of the Chairman and other members of an agency;
- public hearings by oversight committees;
- secondment of police officers from within an agency's jurisdiction; and
- the question of whether parliamentary oversight committees should be established by statute or parliamentary resolution.

Report on Complaints made by Detective Sergeant Peter Coombs Against the Anti-Corruption Commission, Special Investigator Geoffrey Miller QC and Others

On 9 April 1998, the Committee received a letter from Det. Sgt Peter Coombs raising a number of serious allegations against the ACC, Special Investigator Geoffrey Miller QC and others. The matters raised by Det. Sgt Coombs concerned an ACC Special Investigation being conducted by Mr Miller. To some extent those allegations had been aired publicly. Given this, and the seriousness of the allegations, the Committee resolved to conduct an inquiry into those allegations. The original allegations and others were enumerated and expanded upon by Det. Sgt Coombs in a Statutory Declaration dated 19 March 1998, in a subsequent letter to the Committee dated 24 April 1998 and in evidence given to the Committee on three separate occasions during the course of the inquiry.

The Committee found that there was no foundation to any of the allegations made by Det. Sgt Coombs.

During the course the inquiry the Committee received material of a highly confidential nature. The inquiry also concerned matters which had been the subject of a Supreme Court action and an injunction issued by the Court applied to Mr Miller's Report to the ACC on the Special Investigation. Much of this material, while it informed the Committee's deliberations, could not be included in the report.

Apart from addressing the specific complaints made by Det. Sgt Coombs, the Committee examined both its role and that of the Commission in investigating complaints against the ACC or its officers. Its conclusion was that the existing processes for dealing with such allegations were unsatisfactory and that there was a need for an independent arbiter to respond to complaints against the ACC or its officers. At the conclusion of the report, the Committee indicated that it would bring down a recommendation for such an arbiter. It did so in its report on the operational accountability of the ACC and the protection of rights under the ACC Act.

Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights under the Anti-Corruption Commission Act 1998

During the course of the inquiry which culminated in this report, the Committee tabled a discussion paper, *Secrecy Under the Anti-Corruption Commission Act*, which outlined the secrecy and confidentiality provisions in the ACC Act and the purposes served by those provisions. At the time the paper was released the secrecy surrounding the ACC's operations was the subject of much critical comment in the press. Through the paper, the Committee sought to encourage an informed public response to concerns surrounding the secrecy and confidentiality provisions contained in the ACC Act. It further raised for discussion the accountability of the ACC and the protection of rights under the Act: the two matters which provided the central focus of the Committee's report.

The key recommendation in the report was that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established with full access to the operational files and the staff of the ACC, and extensive powers to –

- audit the operations of the ACC;
- investigate complaints against the ACC or its officers; and
- evaluate the effectiveness and appropriateness of the ACC's procedures.

There is at present no continuing, independent mechanism through which the ACC's operations can be fully scrutinised. The Committee's recommendation that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established is intended to fill this gap in the accountability of the ACC.

In making this recommendation the Committee sought to maintain the independence of the ACC, the secrecy of its operations and the confidentiality of witnesses and informants, whilst providing an effective mechanism for the operational accountability of the ACC. Through auditing the operations of the ACC, an Office of Parliamentary Inspector of the Anti-Corruption Commission can ensure that the ACC properly administers the procedural and rights provisions in the ACC Act. It would further provide an independent and effective means for complaints against the ACC or its officers to be addressed.

Following the tabling of the report, the ACC and the Western Australian Police Union of Workers endorsed the Committee's recommendation that an Office of Parliamentary Inspector of the Anti-Corruption Commission be created, as did the *Special Inquiry into Allegations Concerning the Anti-Corruption Commission* conducted by Special Inquirer Trevor Boucher.⁴⁰

Amending the Anti-Corruption Commission Act 1988

In September 1998, the Chairman of the ACC wrote to the Committee enclosing a paper submitted to the Premier as Minister responsible for the ACC detailing submissions by the ACC regarding amendments it considered necessary to the ACC Act.

In this report the Committee brought together the changes to the ACC Act which it had recommended in its Fourth Report and its response to the changes suggested by the ACC.

⁴⁰Special Inquiry into Allegations Concerning the Anti-Corruption Commission, *Report*, Perth, November 1998.

The three main matters dealt with in the report were –

- (i) the accountability of the ACC;
- (ii) the powers the ACC over serious improper conduct; and
- (iii) the investigative powers the ACC.

Accountability

The Committee reiterated its reasons for recommending that an independent Office of Parliamentary Inspector of the Anti-Corruption Commission be created under the ACC Act.

Serious improper conduct

In May 1998, the Supreme Court concluded that the ACC could not make findings of guilt against a person.⁴¹ At the time the report was prepared there was, however, uncertainty about the extent to which the ACC could evaluate evidence of serious improper conduct and draw conclusions about whether the conduct had occurred, and make recommendations as to what action should be taken with respect to such conduct.

In responding to this uncertainty, the Committee recommended that the ACC should only be able to report on the results of an investigation, but in so doing it should be able to evaluate evidence of serious improper conduct for the limited purpose of determining whether or not it warrants the relevant responsible agency giving consideration to taking disciplinary or administrative action.

In reaching its conclusion about the proper scope of the powers of the ACC with respect to serious improper conduct, the Committee found comments by the High Court in *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625 instructive.⁴² In that case the Court said (at p. 634) –

At least in theory there may be a fine line between making a finding and merely reporting the results of an investigation. But in practice the line should not be difficult to draw. It is clear enough that there is a distinction between the revelation of material which may support a finding of corrupt conduct or the commission of an offence and the actual expression of a finding that the material may or does establish those matters.

The Western Australian Supreme Court has now clarified the extent of the ACC's powers in respect of serious improper conduct in *Parker and Others v Anti-Corruption Commission*, unreported decision of the Full Court, delivered 31 March 1999, Library Number: 990162B (*Parker v ACC*). The Court's findings as to the powers of the ACC and the limitations upon those powers are consistent with the Committee's conclusions in its Fifth Report. In the words of the Murray J at pp. 11 and 15 of his judgment in *Parker v ACC* –

Parker v Miller and *Balog v Independent Commission Against Corruption* are authority for the proposition that the reporting power of the ACC may not be properly exercised so as to make findings or express conclusions about the guilt of any person of criminal or improper conduct, and

⁴¹ *Parker and Others v Miller and Others*, Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 8 May 1998, Lib. No. 980249.

⁴² *Balog* concerned the powers of the Independent Commission Against Corruption to make findings and report those findings to the New South Wales Parliament under the *Independent Commission Against Corruption Act 1988* as it stood in 1990.

the recommendations, if any, made in such a report, may not properly be as to the particular action which should be taken by way of prosecution or disciplinary action, or what should occur in relation to the employment of any person, because all those matters are matters to be considered and decided upon by the appropriate authority or independent agency to which the report is made. Such a report goes beyond the statutory power. ...

It seems to me that the language used in the relevant sections of the Act carries the necessary implication that to report on an allegation, and the outcome of the investigation by the ACC, may involve an account of the process, evaluation of, comment upon, the outcome of the investigation and the evidence assembled, if thought to be helpful, including the presentation of a summary of what has been discovered and a discussion of the perceived merit or lack merit in the allegation.

Pidgeon J and Wheeler J agreed generally with the reasons of Murray J, subject to comments made by Wheeler J in her judgement. In her judgement Wheeler J said at p. 3 –

So far its own functions are concerned, the ACC must evaluate the evidence to the extent necessary to decide whether to report, and to whom. Provided that this evaluation goes no further, and is not directed to the issues of what view should be formed or what action should be taken by the authority to whom the report is made, the ACC would not have exceeded its power.

The investigative powers of the ACC

The powers the ACC may exercise when conducting a preliminary inquiry are in some ways greater than those it can exercise when it conducts a full investigation. It had been suggested that the ACC's preliminary inquiry powers should be available to the ACC when it conducts full investigations.

The Parliamentary Committee concluded that the powers the ACC can exercise now when conducting a full investigation are adequate for it to effectively perform its functions, except that the ACC should be able to request a statement of information from any person or body and not just public officers or authorities. Apart from this change, the Committee recommended that the greater powers the ACC can exercise during preliminary inquiries should not be extended to full investigations.

The Committee further concluded that there should not be any difference in the powers that the ACC can exercise when conducting a preliminary inquiry and a full investigation. It recommended that the preliminary inquiry powers should be removed from the ACC Act and provision made for the ACC to exercise its powers of investigation when conducting preliminary inquiries.

Other suggested changes

The report also contains the Committee's responses to a number of other suggested changes to the ACC Act made by the ACC.

Reports on the Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies

On 26 and 27 February 1998 the inaugural meeting of the Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies was held in at Parliament House in Brisbane.

The second meeting of the Working Group was held in Perth over 5 and 6 November 1998.

The Committee has reported to Parliament after each meeting of the Working Group. In each report the Committee explained the purposes served by the Working Group and outlined in

general terms the meeting's proceedings. The Committee included in each report the Communiqué prepared at the conclusion of the meetings.⁴³

7. MATTERS TO BE CONSIDERED IN 1999

During the first eighteen months of its operation the Committee's work has focussed on the ACC and the Act it administers. That focus has reflected the fact that the ACC has been in existence for just over two years. It began operation on 1 November 1996, and has been going through a period of establishing itself. During this formative period, the Committee has seen its primary tasks as developing the mechanisms through which it can monitor and review the ACC in the performance of its functions, examining the operation of the ACC Act and reporting to Parliament on the activities of the ACC and the operation of the Act.

The Committee will continue to maintain its oversight role with respect to the ACC and it will continue to refine the mechanisms through which it performs this role. It will also continue to examine the operation of the ACC Act and the effect of any amendments which may be made by Parliament to the Act. The Committee's Terms of Reference, however, extend beyond oversight of the ACC to oversight of the whole of Western Australia's public sector anti-corruption framework. During the coming year, the Committee intends to look beyond the ACC and address broader questions regarding the prevention and detection of corruption within Western Australia's public sector.

Monitoring the extent of official corruption in Western Australia

One matter which encompasses both the Committee's specific functions with respect to the ACC and its broader responsibility for oversight of the whole of Western Australia's anti-corruption framework concerns the question of whether the extent of official corruption in Western Australia warrants the resources presently allocated to its prevention and detection. In addition to the ACC, the Professional Standards Portfolio of the Western Australian Police Service provides for the investigation of corruption in the Police Service and contains a specialist unit, the Public Sector Investigation Unit, which is designed to investigate allegations of corruption against public officers, other than police officers. The Committee has been informed that the ACC at 28 February 1999 employed 60 staff. The Professional Standards Portfolio at 30 June 1998 had a staff of 57 sworn personnel and 34 unsworn personnel, an increase of 9 sworn and 9 unsworn personnel on the previous year.⁴⁴ The Office of Parliamentary Commissioner for Administrative Investigations (the Ombudsman), the Auditor General and the Public Sector Standards Commission are also part of this framework. The Committee intends to review the extent of official corruption in Western Australia and to scrutinise the allocation of resources to those bodies presently responsible for investigating it.

Review

The Committee is mindful that the information gathering powers the ACC possess in investigating official corruption and serious improper conduct, extend well beyond powers which may be exercised by the Police. The exercise of those powers can diminish the civil liberties of public sector employees and officers. In providing the ACC with these powers, the Parliament has

⁴³ A more detailed discussion of The Working Group is contained in chapter 4 of this report.

⁴⁴ Western Australian Police Service, *Annual Report 1998*, p. 77 and Western Australian Police Service, *Annual Report 1997*, p. 73.

traded the rights of public sector employees and their associates against the presumably greater good of preventing and detecting official corruption and serious improper conduct. The Committee does not yet have enough information to conclude whether this equation is justified.

The Committee believes that amendments to the ACC Act in the 35th Parliament must include provision for a formal review to take place five years from the creation of the ACC. This review must assess not only the performance of the ACC but also the continuing need for such a body. The ACC Act should only continue subject to Parliamentary reauthorisation, following such periodic review.

Police recruitment and integrity training and education

During the past year, the Committee has begun to collate information on police recruitment and training both here and in other jurisdictions. It is clear that how police officers are chosen and trained has an effect on the overall integrity of a police service. As part of the process of reform of the Western Australian Police Service, there have been significant changes to how the Police Service recruits and trains its police officers. The Committee intends to inquire into the changes which have been made and what effect they might have on the culture of the Police Service in Western Australia.

Official corruption and contracting out

Increasingly, governments, including the Western Australian government, are contracting out services which had previously been delivered by the public sector. Contracting out is justified on the basis that it can result in the more efficient delivery of certain services, not only in terms of cost efficiency, but also accountability. Given the increasing reliance on government contracts with private contractors for the delivery of public services in Western Australia the Committee is considering investigating the accountability of the contracting out process and the effectiveness of the mechanisms in place to control corruption and fraud in the granting and implementation of such contracts.

APPENDIX ONE

Committee Expenditure for the 1997/1998 Financial Year

Statement of actual costs of the operation of the Joint Standing Committee in accordance with Legislative Assembly Standing Order 378(b).

Travel Expenses

Brisbane, Queensland (25 February to 27 February 1998)

Airfares	Members	\$15 800.00	
	Staff	\$3 900.00	
Allowances	Members	\$7 700.00	
	Staff	\$1 900.00	
Incidental Expenses		<u>\$1 000.00</u>	\$30 300.00

Sydney, New South Wales (28 June to 29 June 1998)

Airfares	Members	\$1 300.00	
	Staff	\$1 300.00	
Allowances	Members	\$600.00	
	Staff	\$600.00	
Incidental Expenses		<u>\$100.00</u>	\$3 900.00

United States of America and Hong Kong (18 July to 4 August 1998)

Airfares	Members	\$48 000.00	
	Staff	\$12 000.00	
Allowances	Members	\$54 700.00	
	Staff	\$13 700.00	
Incidental Expenses		<u>\$5 000.00</u>	\$133 400.00

General Expenses

Meals	\$500.00	
Postage and Couriers	\$300.00	
Protocol	\$600.00	
Printing (General and Commercial)	\$1 600.00	
Salaries	\$36 000.00	
Taxis	\$1 700.00	
Stationery/Photocopying	\$200.00	
Miscellaneous	<u>\$100.00</u>	\$41 000.00

GRAND TOTAL

\$208 600.00

APPENDIX TWO

Committee Expenditure between 1 July and 31 December 1998

Statement of actual costs of the operation of the Joint Standing Committee in accordance with Legislative Assembly Standing Order 378(b).

Travel Expenses

United States of America and Hong Kong (18 July to 4 August 1998) - Acquittal of travel allowances from previous financial year.

Allowances	Members	\$8 500.00	
	Staff	<u>\$2 300.00</u>	\$10 800.00

General Expenses

Advertising	\$1 400.00	
Postage and Couriers	\$400.00	
Printing (General and Commercial)	\$1 300.00	
Protocol	\$1 500.00	
Salaries	\$22 700.00	
Stationery/Photocopying	\$600.00	
Taxis	<u>\$400.00</u>	\$28 300.00

GRAND TOTAL	<u>\$39 100.00</u>
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APPENDIX THREE

Committee Meetings 19 June 1997 to 31 December 1998

From its inception to 31 December 1998 the Committee met 57 times. On a further two occasions, evidence was taken by the Committee where it was not fully constituted, but where it had a quorum for the purpose of taking evidence (Standing Order 363). Fifteen of those meetings were held principally for the purpose of taking evidence.

DATES OF COMMITTEE MEETINGS HELD 19 June 1997 to 31 December 1998		
1.	Thursday	19 June 1997
2.	Wednesday	2 July 1997
3.	Wednesday	9 July 1997
4.	Wednesday	20 August 1997
5.	Wednesday	27 August 1997
6.	Monday	1 September 1997
7.	Tuesday	2 September 1997
8.	Wednesday	3 September 1997
9.	Thursday	4 September 1997
10.	Friday	5 September 1997
11.	Wednesday	10 September 1997
12.	Wednesday	17 September 1997
13.	Tuesday	30 September 1997
14.	Wednesday	15 October 1997
15.	Wednesday	22 October 1997
16.	Wednesday	29 October 1997
17.	Wednesday	12 November 1997
18.	Wednesday	26 November 1997
19.	Wednesday	17 December 1997*
20.	Wednesday	20 January 1998
21.	Wednesday	4 February 1998

DATES OF COMMITTEE MEETINGS HELD 19 June 1997 to 31 December 1998		
22.	Wednesday	11 February 1998
23.	Wednesday	18 February 1998
24.	Wednesday	26 February 1998
25.	Wednesday	18 March 1998
26.	Wednesday	25 March 1998
27.	Wednesday	1 April 1998
28.	Wednesday	8 April 1998
29.	Wednesday	15 April 1998
30.	Wednesday	29 April 1998
31.	Wednesday	6 May 1998
32.	Friday	8 May 1998
33.	Thursday	14 May 1998*
34.	Wednesday	20 May 1998
35.	Wednesday	27 May 1998
36.	Wednesday	10 June 1998
36A.	Thursday	11 June 1998
37.	Wednesday	17 June 1998
38.	Thursday	18 June 1998
39.	Wednesday	24 June 1998
40.	Tuesday	21 July 1998
41.	Wednesday	22 July 1998
42.	Thursday	23 July 1998
43.	Friday	24 July 1998
44.	Monday	27 July 1998
45.	Tuesday	28 July 1998
46.	Thursday	30 July 1998
47.	Monday	3 August 1998
47A.	Wednesday	26 August 1998*

DATES OF COMMITTEE MEETINGS HELD 19 June 1997 to 31 December 1998		
48.	Wednesday	9 September 1998
49.	Wednesday	16 September 1998
50.	Wednesday	21 October 1998
51.	Friday	23 October 1998
52.	Wednesday	28 October 1998
53.	Wednesday	18 November 1998
54.	Tuesday	24 November 1998
55.	Wednesday	25 November 1998
56.	Wednesday	2 December 1998
57.	Wednesday	9 December 1998*

* Quarterly meeting with the Anti-Corruption Commission.

APPENDIX FOUR

Meetings with the Anti-Corruption Commission 19 June 1997 to 31 December 1998

DATES OF MEETINGS HELD WITH THE ACC 19 June 1997 to 31 December 1998		
1.	Tuesday	30 September 1997
2.	Wednesday	17 December 1997*
3.	Wednesday	1 April 1998
4.	Wednesday	15 April 1998
5.	Thursday	14 May 1998*
6.	Thursday	11 June 1998
7.	Wednesday	26 August 1998*
8.	Friday	23 October 1998
9.	Wednesday	9 December 1998*

* Quarterly meeting with the Anti-Corruption Commission.

APPENDIX FIVE

Table of Witnesses

DATE	WITNESS	POSITION AND ORGANISATION
Wed, 9 July 1997	Mr J.L.C. Wickham Mr Wayne Mann	Chairman, Anti-Corruption Commission Chief Executive Officer, Anti-Corruption Commission
Tues, 30 September 1997	Mr Don Saunders Mr Terry O'Connor, QC Commodore David Orr Mr Robert Falconer	Commissioner for Public Sector Standards Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner of Police, WA Police Service
Wed, 22 October 1997	Mr Jack MacKaay	Assistant Police Commissioner, WA Police Service
Wed, 29 October 1997	Mr Trevor Porter Mr Des Pearson Mr Gary Baker Ms Rochelle Bradley Mr Murray Allen	Detective Senior Sergeant, WA Police Service Auditor General, Director of Audit, Office of the Auditor General Executive Officer, Office of the Auditor General Parliamentary Commissioner for Administrative Investigations
Wed, 8 April 1998	Mr Jack MacKaay	Assistant Police Commissioner, WA Police Service
Wed, 15 April 1998	Mr Terry O'Connor, QC Mr Wayne Mann	Chairman, Anti-Corruption Commission Chief Executive Officer, Anti-Corruption Commission
Wed, 29 April 1998	Mr Peter Coombs	Detective Sergeant Western Australian Police Service

Table of Witnesses (cont'd)

DATE	WITNESS	POSITION AND ORGANISATION
Fri, 8 May 1998	Mr Geoffrey Miller, QC Mr George Tannin Mr David Warren Mr Colin Pruiti Ms Rosy D'Uva Mr Cyril White	Barrister Special Investigator, Anti-Corruption Commission Senior Investigator, Anti-Corruption Commission Solicitor Reporter, Verbatim Manager, Verbatim
Wed, 14 May 1998	Mr Terry O'Connor, QC Commodore David Orr Mr Donald Doig Mr Wayne Mann	Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Chief Executive Officer, Anti-Corruption Commission
Wed, 20 May 1998	Mr Peter Coombs	Detective Sergeant Western Australian Police Service
Wed, 27 May 1998	Mr Peter Coombs	Detective Sergeant Western Australian Police Service
Wed, 26 August 1998	Mr Terry O'Connor, QC Commodore David Orr Mr Donald Doig Mr Wayne Mann	Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Chief Executive Officer, Anti-Corruption Commission

Table of Witnesses (cont'd)

DATE	WITNESS	POSITION AND ORGANISATION
Wed, 16 October 1998	Mr Michael Dean	President, WA Police Union Of Workers
Fri, 23 October 1998	Mr Terry O'Connor, QC Commodore David Orr Mr Donald Doig Mr Wayne Mann	Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Chief Executive Officer, Anti-Corruption Commission
Wed, 9 December 1998	Mr Terry O'Connor, QC Mr Robert George Mr Donald Doig Mr Wayne Mann	Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Chief Executive Officer, Anti-Corruption Commission

APPENDIX SIX

Table of Briefings

DATE	NAME	POSITION AND ORGANISATION
Mon, 1 Sept 1997	Mr F Clair Mr G Brighton Mr M Le Grand Mr D Brereton Mr B Hailstone Mr M Barnes Hon. V Lester, MLA Mr G Nuttall, MLA Mr B Bauman, MLA Mr F Carroll, MLA Mr R Hollis, MLA Mr S Robertson, MLA Ms K Newton Ms V Rogers	Criminal Justice Commission, Qld Chairman Executive Director Director, Official Misconduct Division Director, Research and Coordination Division Director, Corruption Prevention Division Chief Officer, Complaints Section Parliamentary Criminal Justice Committee, Qld Chairman Deputy Chairman Member Member Member Member Principal Research Officer Senior Research Officer
Tues, 2 Sept 1997	Mr N Hodgkiss	Australian Federal Police, Vic General Manager of the Southern Region
Wed, 3 Sept 1997	Mr J Banford, MP Senator S Conroy Mr P Filing, MP Senator N Stott Despoja	Parliamentary Joint Committee on the National Crime Authority, ACT Chairman Member Member Member

Table of Briefings (cont'd)

DATE	NAME	POSITION AND ORGANISATION
Thur, 4 Sept 1997	Hon. D Gay, MLC Dr Beck, MP Mr Peter Gifford Mr R Noaldon	Independent Commission Against Corruption, NSW Deputy Chairman Member Director, Corruption Prevention and Education Solicitor
Fri, 5 Sept 1997	Judge P Urquhart, QC Mr T Sage Mr D Lenihan	Police Integrity Commission, NSW Commissioner Assistant Commissioner Parliamentary Liaison
Mon, 29 June 1998	Judge P Urquhart, QC Hon. M Finlay, QC	Police Integrity Commission, NSW Commissioner Inspector
Tues, 21 July 1998	Mr J Gangloff Hon. M Bromwich Mr M Hershman	United States Department of Justice, Public Integrity Office, Washington DC, USA Principal Deputy, Criminal Division Office of the Inspector General, US Department of Justice, Washington DC, USA Inspector General Transparency International/Fairfax Group, Washington DC, USA Member, Board of Directors

Table of Briefings (cont'd)

DATE	NAME	POSITION AND ORGANISATION
Wed, 22 July 1998	Mr S Potts Ms J Ley Ms T King Mr D Burton	Office of Government Ethics, Washington DC, USA Director Deputy Director Manager Government Reform and Oversight Committee, Washington DC, USA Chairman
Thur, 23 July 1998	Ms K Gardner	Federal Bureau of Investigation, Washington DC, USA Supervisory Special Agent, Public Corruption Unit
Fri, 24 July 1998	Mr D Burke Mr V Green Mr S Pasichow Mr J Gubbay Mr E Adoraidio	Corruption Prevention and Management Review Bureau, New York, USA Director Assistant Commissioner Assistant Commissioner Commission to Combat Police Corruption, New York, USA Executive Director Deputy Executive Director
Mon, 27 July 1998	Mr S Silks Lieutenant J Gorman Mr C Campisi	New York Police Academy, New York, USA Office of the Commanding Officer Law Department Internal Affairs Bureau, New York Police Department, New York, USA Chief of the Internal Affairs Bureau

Table of Briefings (cont'd)

DATE	NAME	POSITION AND ORGANISATION
Tues, 28 July 1998	Mr G Thomas Professor Moran Mr G Thomas	Division of School Safety, Board of Education, New York, USA Associate Director John Jay College of Criminal Justice, New York, USA Associate Director Associate Director
Thur, 30 July 1998	Chief B Parks Captain G Ibarra Lieutenant G Martinez Commander G Zimmon	Internal Affairs Group, Los Angeles Police Department, Los Angeles, USA Chief of Police Commanding Officer Officer Transit Group, Los Angeles Police Department, Los Angeles, USA Officer in Charge
Mon, 3 Aug 1998	Mrs L Yam Mr T Kwok Mr T Godfrey Mr Kwang-Fuk Yip Mr Lee Ming-Kwai Mr Wong Doon-Yee Ms Tong Kit-Lin	Independent Commission Against Corruption, Hong Kong Commissioner Head of Operations Assistant Director Chief Investigator Hong Kong Police Force, Hong Kong Director, Management Services Commander Recruiting Officer

APPENDIX SEVEN**Participants and Speakers at the Working group Meeting
26-27 February 1998****PARLIAMENT HOUSE
BRISBANE, QUEENSLAND****Committees in Attendance –**

- The Commonwealth Joint Committee on the National Crime Authority.
- The New South Wales Parliamentary Joint Committee on the Independent Commission Against Corruption.
- The New South Wales Parliamentary Joint Committee on the Office of the Ombudsman and Police Integrity Commission.
- The Queensland Parliamentary Criminal Justice Committee, which oversees the Criminal Justice Commission.
- The Western Australian Joint Standing Committee on the Anti-Corruption Commission.

Guest Speakers –

Mr Tony Morris QC
Barrister-at-Law

Mr Tim Carmody
Crime Commissioner
Queensland Crime Commission

Mr Frank Clair
Chairman
Criminal Justice Commission

Mr Mark Le Grand
Official Misconduct Division
Criminal Justice Commission

Mr Terry Gorman
President, Australian Council for Civil Liberties
Vice-President, Queensland Council for Civil Liberties

APPENDIX EIGHT**Participants and Speakers at the Working Group Meeting
5-6 November 1998****PARLIAMENT HOUSE
PERTH, WESTERN AUSTRALIA****Committees in Attendance –**

- The Commonwealth Joint Committee on the National Crime Authority.
- The New South Wales Parliamentary Joint Committee on the Independent Commission Against Corruption.
- The New South Wales Parliamentary Joint Committee on the Office of the Ombudsman and Police Integrity Commission.
- The Queensland Parliamentary Criminal Justice Committee, which oversees the Criminal Justice Commission.
- The Western Australian Joint Standing Committee on the Anti-Corruption Commission.

Representatives of State Parliaments –

Hon. Ian Gilfillan, MLC (South Australian Parliament); and

Mr Phillip Mitchell, MP (Northern Territory Parliament).

Guest Speakers –

Commissioner Jack Gregor
Western Australian Industrial Relations Commission
Previously Chairman of the Western Australian Commission on Government

Commodore David Orr, R.A.N. Ret'd.
Retired Commissioner
Anti-Corruption Commission

Guest Speakers cont'd –

Mr Terry O'Connor QC
Chairman
Anti-Corruption Commission

Mr Graeme Charlwood
Director of Investigations
Anti-Corruption Commission

Mr Michael Barker QC
Barrister

Mr Peter Alexander
President
Police Federation of Australia

Mr Mark Burgess
President
Police Federation of New South Wales

Mr John McKechnie QC
Director Public Prosecutions

APPENDIX NINE**The Committee's 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 with the following Assembly Standing Orders –

415B The functions of the Committee shall be —

- (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 resolution 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 terms of reference 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.

415C The Joint Standing Committee shall 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.

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- 415D** The Joint Standing Committee consist of 8 members, of whom –
- (a) 4 shall be members of the Legislative Assembly; and
 - (b) 4 shall be members of the Legislative Council.
- 415E** No Minister of the Crown or Parliamentary Secretary to a Minister of the Crown be eligible to be a member of the Joint Standing Committee.
- 415F** A quorum for a meeting of the Joint Standing Committee be 5 members, each House of Parliament being represented by at least one member.
- 415G** The Joint Standing Committee have power to send for persons, papers and records, to adjourn from time to time and from place to place, and, except as hereinafter provided, to sit on any day and at any time and to report from time to time.
- 415H** The Joint Standing Committee not sit while either House of Parliament is actually sitting unless leave is granted by that House.
- 415I** A report of the Joint Standing Committee be presented to each House of Parliament by a member of the Joint Standing Committee nominated by it for that purpose.
- 415J** In respect of matters not provided for in this resolution, the Standing Orders of the Legislative Assembly relating to select committees be followed as far as they can be applied.