

sions were at least fifteen years out of date. There is neither a national data base nor comparability across the Corporate Affairs Commissions.

- Monitoring of company activity is an unattainable ideal.
- Rather than preventing corporate crime or responding to it as it occurs, corporate affairs investigators tend to deal with companies which are defunct.
- Even with their limited role as 'corporate undertakers', the Corporate Affairs Commissions visited by the authors were hopelessly backlogged and only able to investigate a fraction of the cases of serious wrongdoing called to their attention. (This finding supports the view expressed by Mr Bosch.) The Victorian Corporate Affairs Commission was forced to drop over 500 matters from its investigative files leaving it with a backlog of 150 cases.

As noted above, the NCSC proposals allow for a measure of civil litigation by way of private enforcement of the insider trading provisions. Grabosky and Braithwaite, in an analysis of the various types of regulatory behaviour examined in their book, which covers such diverse areas as environmental protection, occupational health and safety regulation, radiation control, food standards, prudential regulation and anti-discrimination policy, conclude that encouraging civil litigation as a means of corporate regulation has not traditionally had support among Australian regulatory agencies. Nevertheless, if the reluctance to follow up anything other than the most clear cut of cases evidenced by Mr Bosch persists as a result of lack of resources, private enforcement may turn out to be the most effective way of enforcing a reformed law on insider trading.

complaints against police

Mankind may be divided into two races, those who acquiesce and those who growl. I am on the side of the growlers, always and everywhere; because I

remember what I owe to them.

Sir Walter Murdoch, *Collected Essays*

genesis of the police complaints authority.

In July 1986 the latest addition to the burgeoning ranks of statutory watchdogs was born. But if the gestation of the Victorian Police Complaints Authority had been a troubled one, its early months were to prove even more difficult.

The Victorian PCA is a direct descendent of the Australian Law Reform Commission's Reports *Complaints Against Police*, ALRC1 and *Complaints Against Police (Supplementary Report)*, ALRC9 which recommended the creation of internal investigation departments within the police forces and the use of the Ombudsman as 'neutral territory' for the receipt of complaints, as investigator of last resort and as public guardian to require certain public complaints to be scrutinised in a public forum. Ironically, the ALRC recommended against the establishment of specialist police complaints authorities. 1985 and 1986, though, saw the creation of Australia's first two police complaints authorities in South Australia and Victoria respectively. Their role is to oversee the investigations undertaken by police internal investigations departments. In limited circumstances they can also undertake investigations themselves where they have received complaints from members of the public about police conduct or police practices. Thus at least potentially, their facts are of a case-work nature and they have an auditing role over the general performance and practices of the police forces over which they are watchdogs.

A Commissioner involved in both of the ALRC reports on complaints against police was John Cain, now the Premier of Victoria. The head of the PCA is Hugh Selby, a Sydney barrister and former Senior Assistant Ombudsman in Canberra, while its Manager is Ian Freckelton, formerly Senior Law Reform Officer at the ALRC.

legal problems for the pca. In October 1986, the Police Complaints Authority hit the headlines after being taken to the Supreme Court by the Victorian Police Union. The aftermath of the case was a call from the Secretary of that Union, Chief Inspector Tom Rippon, that the head of 'the embattled Police Complaints Authority, Mr Hugh Selby, should resign' (*The Age*, 24 October 1986). In a report to the Victorian Parliament Mr Selby argued that existing legislation and the actions of the Union were placing 'absurd fetters' on the Authority.

The Authority had received complaints, mainly at second and third hand, about a series of police raids in the outer Melbourne area of Panton Hill. In order to ascertain the bona fides of the complainants and the accuracy of the information which had been purveyed to the Authority, the head of the Authority had caused notices to be placed in two hotels in the Panton Hill area informing people that he and members of his staff would be available to receive information about the alleged misconduct of the police in one of the hotels at a certain time. The Union objected to this conduct on the grounds that 'the Authority was touting for business' and successfully sought from the Supreme Court an injunction preventing the Authority both from visiting the hotels and investigating complaints about the alleged incidents.

The Supreme Court decision by Justice Hamper has many ramifications for the Victorian Police Complaints Authority. An editorial in *The Age* commented:

It is a measure of the sensitivity of the Police Association about the existence of the Complaints Authority that so modest an initiative should have been so unhesitatingly challenged. That the challenge succeeded is a measure of what a lame duck the Police Complaints Authority really is. The Authority's role is passive: It seems it must do nothing to make it easier for prospective complainants to be heard; it has no power to initiate investigations. If it wants to take up a complaint, it must generally refer it to the Chief Commissioner. He chooses the investigators and what they do is under his control. One important con-

cession is, if the Authority believes that in the public interest it should do an investigation itself, it has the power to do so — passively. What can happen when it tries to do something actively was vividly demonstrated in the Supreme Court last Friday. The Authority has other serious weaknesses. For example, it is compelled to investigate any complaint it receives about the Chief Commissioner and his deputies. Yet for these, as for all the Authority's investigations, Police Officers seconded to do the job remain under the direction and control of the Chief Commissioner. The seconded Police are permitted, however, to 'have regard to the wishes' of the Authority in conducting their investigation. This has the potential to put them in a vulnerable and invidious position. (24 October 1986)

options for the future. The decision of Justice Hamper that the Authority is only entitled to do that which is expressly permitted by its legislation, and not what is necessary and incidental to the spirit of the legislation, places considerable limitations upon the potential effectiveness of the PCA. Mr Selby has described the body as a 'Clayton's Authority' (*Herald*, 23 October 1986) and has called for amended legislation to give it greater discretionary powers. As a result of Justice Hamper's decision, it would appear that the Authority is now unable to advertise its existence and in any active way to facilitate access to its staff or premises by members of the public. The debate over the powers that the PCA should have was joined by a group of lawyers representing the federation of Victorian Legal Centres who called on the government to amend the legislation setting up the Authority to give the PCA the same powers to investigate complaints against the police as the police have to investigate other offences. The Victorian Council for Civil Liberties also swung its support behind Mr Selby, with Acting Secretary, Melbourne lawyer Ian Gray, saying that the Authority should be given both legislative teeth to 'do its job properly' and the support of the government and the Police Association.

The Authority should not be undermined, stymied or taken to court so its job was made more difficult, rendering it 'a paper tiger'. It was of great concern that the Police Association ap-

peared to be too willing to draw whatever teeth the Authority had as soon as it could. (*The Age*, 24 October 1986)

The controversy over the newest legislation in Australia to set up an independent statutory watchdog promises to continue into 1987 with the Victorian Police Complaints Authority both appealing against the decision of Justice Hampel and lobbying the Government to remedy the flaws which it claims defeat the spirit of ALRC1 and 9 and the legislation which created it in 1986.

asio

There are groups of people here who feel important by imagining their phones are being tapped and there is a file being compiled on these dull activities. They hear a crackle on the line and think it's ASIO. In fact it's probably Harry Butler nailing a budgie to a pole to get a good picture.

Barry Humphries, *Australian House & Garden's Celebrities at Home* Sydney, 1982

1986 was a significant year for the Australian Security Intelligence Organisation (ASIO). The organisation which is concerned with Australia's internal security received more than its usual media coverage. The reasons for this coverage included:

- the move of ASIO's headquarters from Melbourne to Canberra with the concomitant problem of staff losses;
- new legislation to more clearly define ASIO's powers and functions and to create an Inspector-General of Intelligence and Security;
- the death of Justice Lionel Murphy whose name has been associated with ASIO since 1973 when he, as federal Attorney-General, led a 'raid' on ASIO's headquarters to obtain information, the implication being that ASIO was withholding it from him;
- the court case seeking to restrain publication of a book by former spy Peter Wright in which it was suggested that a former head of the British intelligence organisation MI5 who assisted in the

establishment of ASIO may have been a Russian spy.

ASIO has always operated covertly and shunned publicity but in 1986 there were efforts made to 'woo the media'. The new Director-General of ASIO, Mr Alan Wrigley, took the unprecedented step of addressing the National Press Club in Canberra and also during the year invited selected journalists on a tour of the new ASIO headquarters in Canberra to meet 'typical' ASIO officers. (*Sydney Morning Herald*, 7 March 1986)

lionel murphy and asio. The names of Lionel Murphy and ASIO were first associated in the minds of many people in 1973. Early on the morning of 16 March 1973 Lionel Murphy, the then Attorney-General, 'raided' (as the newspapers of the day referred to it) the headquarters of ASIO in Melbourne. The previous evening he had visited the Canberra office of ASIO. In a later statement in Parliament, Senator Murphy said that while at ASIO he had inspected documents relating to Croatian terrorist organisations and to ASIO itself (Senate *Hansard*, 27 March 1973, p551) and that he had ordered Commonwealth Police who had accompanied him to seal a number of safes and containers in ASIO headquarters. The raid preceded the visit to Australia of the Yugoslav Prime Minister and there was fear of a terrorist attack against him. The then Senator Murphy said that on the basis of information he had obtained, partially from his 'raid' on ASIO, security had been significantly tightened for the Yugoslav Prime Minister, and the visit proceeded without major incident.

While a number of questions remain unanswered about Murphy's 'raid' on ASIO, the event appears to have had a number of long term consequences. It is often regarded as the commencement of a decade of uncertainty for ASIO. During that time its role and activities were examined in detail by two Royal Commissions, the recommendations of which are still being implemented. There is