

**PARLIAMENTARY JOINT COMMITTEE ON THE
AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY**

**Inquiry into the operation of the *Law Enforcement Integrity
Commissioner Act 2006***

Question No. 1

Senator Cameron asked the following question at the hearing on 14 August 2009:

Do you have a definition that you use to determine who is a 'whistleblower'? What is a 'whistleblower'? Secondly, what checks and balances do you have within the organisation when you are dealing with a whistleblower? How do you set about to properly investigate the claims of a whistleblower, and what management systems do you have in place to make sure we do not end up going down a completely wrong track with a whistleblower?

(Ref: Hansard, p 16)

The answer to the Senator's question is as follows:

Authority to receive disclosures

ACLEI uses the term 'whistleblower' in the broadest colloquial sense, that is, to apply to current and former staff of the ACC and the AFP who may bring information or an allegation to the Integrity Commissioner.

Under section 23 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act), any person (an 'informant'), including former and current employees of the ACC and AFP, may bring information or allegations which raise a corruption issue to the Integrity Commissioner. Accordingly, ACLEI complements the internal professional reporting mechanisms of the ACC and the AFP and is an alternative path for providing information about corruption.

Subsections 51(2) and (4) of the *Australian Crime Commission Act 2002*, and section 60A(2) of the *Australian Federal Police Act 1979*, permit a serving or former employee to provide to the Integrity Commissioner information and material that might disclose a corruption issue. These provisions provide a lawful exception to an employee's (or former employee's) duty to handle official information appropriately.

Dealing with information from current or former employees of the ACC or the AFP

All allegations or information about possible corruption from any source are assessed to inform the Integrity Commissioner's decision on how the issue should be dealt with.

A whistleblower may be in a 'position to know' about corruption, despite having ulterior motives for providing the information, or as to the timing of its disclosure. For instance, to discredit a rival, a person may make allegations that, on assessment, indicate the existence of a corruption issue.

Accordingly, the Integrity Commissioner does not exclude information automatically based on the motives of a person making a disclosure. Whether information is provided out of concern for the public interest is not a determinative factor in a decision to investigate.

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All information provided to ACLEI is assessed as to its reliability, that is, the likelihood that the information or allegation is true. ACLEI's role is to obtain evidence that may corroborate, exclude or contextualise information provided or sourced in other ways.

Once an assessment of the information is complete, the Integrity Commissioner decides how to deal with the issue. Factors in that decision include: jurisdiction, susceptibility of the issue to investigation (issues of quality of information, staleness, strength of evidence, potential avenues of enquiry), priority (seriousness and impact, currency, availability of resources) and corruption-disruption and prevention value.

The assessment and decision-making process for each allegation is documented in detail and reviewed by ACLEI's investigations and strategic intelligence managers as well as by the Integrity Commissioner.

ACLEI's role is to detect, investigate and prevent corruption. ACLEI is not a complaint handling agency. Accordingly, ACLEI's main objective is not to achieve a personal remedy or restitution for an informer, although that may be an outcome.

Protecting whistleblowers

A central concern in dealing with whistleblowers is to protect them from reprisal.

Whistleblowers and potential whistleblowers are an important part of ACLEI's intelligence collection. ACLEI takes all possible care to protect from discovery the identities of whistleblowers. Each case is managed carefully, including consultation with informants as to issues that may affect them. Strategic Investigation Plans, created by ACLEI for each investigation, specifically include management of whistleblowers as a mandatory element.

The LEIC Act has provisions to protect whistleblowers from victimisation or harassment.

- A person who refers a matter, gives information, or produces a document to the Integrity Commissioner is protected by section 220 of the LEIC Act, which establishes an offence of victimisation.
- Subsection 222(5) of the LEIC Act establishes an immunity from civil proceedings in respect of any information, document or evidence given to the Integrity Commissioner. Accordingly, a person may not be sued for defamation or libel as a consequence of providing information to ACLEI.
- Section 104A of the LEIC Act provides for the Integrity Commissioner to make such arrangements as are necessary to protect the safety of witnesses and intended witnesses (and of others whose safety may be prejudiced as the result of another person giving evidence), and to protect them from intimidation and harassment. ACLEI has arrangements in place for witness protection.

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Indemnity

In the context of corruption, there is the prospect that informants may have engaged in criminal or corrupt conduct, possibly as co-conspirators or beneficiaries. These issues are complex and require careful management. They arise not infrequently.

The Integrity Commissioner seeks to ensure that potential whistleblowers are not dissuaded from coming forward for fear of how their own conduct may be viewed. Accordingly, the Integrity Commissioner is mindful of the balance that must be found between the need to assure the integrity of a law enforcement agency and the need to hold individuals accountable for their actions.

ACLEI cannot provide any individual with an indemnity against prosecution. Only the relevant Commonwealth, State or Territory Director of Public Prosecutions may grant indemnities.

ACLEI has arrangements to approach these authorities whenever there may be a public interest in immunity being granted, or a general amnesty being sought in relation to an issue under investigation.

In arriving at findings and recommendations following an investigation, the Integrity Commissioner is mindful of the position of whistleblowers, and of others who may have given evidence truthfully, rather than acting to conceal it.

Protection from 'false information'

There is a risk that a person could provide information to ACLEI that he or she knows to be untrue. The Criminal Code contains penalty provisions for providing false information and statements to government officials (section 137.1).

ACLEI takes care not to dissuade a person from coming forward in circumstances where that person may lack corroborative evidence. For that reason, ACLEI encourages information to be provided, and uses the assessment and investigation process to establish veracity.

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Question No. 2

Senator Parry indicated that he would like to know ACLEI's definition of *integrity testing* (Hansard, p 19).

The answer to the senator's question is as follows:

The definition for *integrity test* used in Australia by law enforcement and oversight agencies is:

'An integrity test involves the creation of a situation or condition that is designed to provoke a reaction by the subject of the test. The subject is allowed to perform, or fail to perform, in a manner consistent with departmental and legislative requirements'.

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Additional Information

Senator Parry asked about the method by which the Integrity Commissioner could take on a fee-for-service role under State or Territory legislation (ref Hansard, pp 17-18).

In evidence, the Integrity Commissioner noted that the Commonwealth Ombudsman has an arrangement with the ACT Government to perform the role of the ACT Ombudsman. ACLEI understands that the following provisions make this arrangement possible:

Ombudsman Act 1976

4 Establishment of offices of Ombudsman and Deputy Ombudsman

...

(2) The functions of the Commonwealth Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:

- (a) this Act or the regulations; or
- (b) another Act or regulations made under another Act; or
- (c) an ACT enactment or regulations made under an ACT enactment.

...

5 Functions of Ombudsman

(1) Subject to this Act, the Ombudsman:

...

(c) with the consent of the Minister, may enter into an arrangement under which the Ombudsman will perform functions of an ombudsman under an ombudsman scheme established in accordance with the conditions of licences or authorities granted under an enactment.

...

(7) An arrangement referred to in paragraph (1)(c) may include provision for payment by the other party to the arrangement for the performance of functions by the Ombudsman in accordance with the arrangement.

If more information were required on this point, it may be preferable for the Committee to seek that information from the Commonwealth Ombudsman.