



**Australian Government**  
**Australian Commission for  
Law Enforcement Integrity**

# INVESTIGATION REPORT

***An investigation into the actions of an Australian  
Federal Police (Australian Capital Territory Policing)  
appointee concerning the handling of controlled  
substances, and other integrity issues***

A report to the Minister for Home Affairs and Justice  
and to the Australian Capital Territory Minister for Police and Emergency Services,  
issued under section 55 of the *Law Enforcement Integrity Commissioner Act 2006*  
and regulation 24 of the *Law Enforcement Integrity Commissioner Regulations 2006*

REPORT 01/2011

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# ABOUT ACLEI REPORTS

## INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

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### *THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006*

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The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) established the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

### *THE ROLE OF THE INTEGRITY COMMISSIONER AND ACLEI*

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The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corrupt conduct in the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police and the former National Crime Authority. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

### *CORRUPT CONDUCT*

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'Corrupt conduct' is where a staff member of a law enforcement agency:

- abuses his or her office;
- perverts the course of justice; or
- having regard to his or her duties and powers, otherwise engages in corruption.

The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption.

### *DEALING WITH CORRUPTION ISSUES*

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A corruption investigation, conducted by ACLEI, can commence in different ways.

- The Minister may refer to the Integrity Commissioner an allegation or information that raises a corruption issue.
- The head of a law enforcement agency within ACLEI's jurisdiction must notify the Integrity Commissioner of any allegation or information that raises a corruption issue which relates to that agency.
- Any person or government agency (eg the Commonwealth Ombudsman) can refer to the Integrity Commissioner an allegation or information that raises a corruption issue. A referral may be anonymous, or on behalf of another person. A person in custody can make a referral by a secure communication channel.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

## ABOUT ACLEI REPORTS

The Integrity Commissioner may decide that ACLEI will investigate a corruption issue, allow a law enforcement agency to conduct its own investigation, conduct a joint investigation with a law enforcement agency, or decide that an investigation is not warranted. The Integrity Commissioner can manage or oversee an investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the AFP, the Integrity Commissioner can refer the issue to the AFP for investigation and may manage or oversee that investigation.

An allegation concerning an employee of a State or Territory agency (the home agency), seconded to an Australian Government law enforcement agency, can be referred to the home agency or to the relevant State or Territory police force or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

### INVESTIGATION POWERS

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When conducting an investigation, the Integrity Commissioner can:

- issue a summons or notice, requiring law enforcement personnel and other people to provide information and documents;
- obtain and execute a search warrant; and
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance.

### HEARINGS

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The Integrity Commissioner may conduct a hearing for the purposes of a corruption investigation. A hearing, or part of a hearing, may be conducted in public or in private.

The word 'hearing' as used in the LEIC Act, has no significance other than to describe a process whereby the Integrity Commissioner may gather information and evidence, and exercise certain coercive powers, for the purposes of an investigation. The purpose of a hearing is not to decide an issue, but to progress an investigation by assisting the Integrity Commissioner to discover facts that may lead to further action being taken.

### STANDARD OF PROOF

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The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.

Before making a finding, the Integrity Commissioner requires comfortable satisfaction, based on real evidence, that conduct occurred which fell within the meaning of the LEIC Act. This approach applies the reasoning of the High Court of Australia in *Briginshaw v Briginshaw* [1938] HCA 34 (per Dixon and Rich JJ) and *Neat Holdings P/L v Karajan Holdings P/L* [1992] HCA 66.

# ABOUT ACLEI REPORTS

## GRADES OF CORRUPTION

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The relevant provisions of the LEIC Act are based on the Integrity Commissioner's finding on a single question—did a person engage in corrupt conduct? While all corrupt conduct is wrong and should be eliminated, some instances are less grave than others in terms of, for example, motives, pre-meditation and planning, concealment and deceptive conduct, corrupt collaboration, the effects on public confidence in the law enforcement agency, the effect on other agency staff, and the steps required to rectify the problem.

The Integrity Commissioner may reflect on this question of relative gravity in a report.

## REPORTING

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Investigations conducted by the Integrity Commissioner culminate in a report made under section 54 of the LEIC Act. The Integrity Commissioner's report must be provided to the Minister and to the head of the relevant law enforcement agency.

When an investigation relates to a person seconded from another Government agency, a copy of the report must be provided to the head of the home agency and to a State or Territory integrity agency, as the circumstances warrant. If the corruption issue relates to the provision of police services to the Australian Capital Territory, the *Law Enforcement Integrity Commissioner Regulations 2006* require (per regulation 24(2)-(4)) that a copy of the report must also be provided to the ACT Government Minister responsible for police matters.

If a public hearing were held, the LEIC Act requires the Minister to present the Integrity Commissioner's report to both Houses of Parliament within 15 sitting days of receiving it. It follows that a report of a public inquiry requested by the Minister must also be presented to Parliament by the Minister.

The Integrity Commissioner may exclude other information from a report if the Integrity Commissioner were satisfied that it is desirable to do so. In coming to a decision, the Integrity Commissioner must seek to achieve an appropriate balance between the public interest that would be served by including the information in the report, and the prejudicial consequences that might result from that disclosure.

# THE INVESTIGATION



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# THE INVESTIGATION

## EXECUTIVE SUMMARY

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This investigation primarily concerns suggestions that an ACT Policing constable, an appointee of the Australian Federal Police (AFP), had improperly disposed of illicit drugs (tablets which he had received in the course of his duties in October 2007), apparently by flushing them down a police station toilet. The information raised the possibility that the constable had not disposed of the tablets, but had kept them for his own use, or to sell or give them to another person.

Giving evidence to a hearing convened by the Integrity Commissioner, the constable admitted to disposing of the tablets in an unapproved way. The investigation established that no other AFP employee witnessed the claimed disposal of the drugs, but discovered no evidence that the constable had kept the tablets.

The constable made other admissions, relating to retaining property improperly, misusing police vehicles and accepting gratuities from licensed premises.

The AFP dismissed the constable, taking into account evidence which the Integrity Commissioner provided to the AFP Commissioner during the course of this investigation.

# THE INVESTIGATION

## THE CORRUPTION ISSUES

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1. This investigation report concerns information which suggested corrupt conduct involving a sworn Australian Federal Police (AFP) appointee, then a serving constable in Australian Capital Territory Policing (ACT Policing).
2. The information suggested that the constable had improperly disposed of illicit drugs, which were tablets he had received in the course of his duties, apparently by flushing them down a police station toilet. AFP guidelines establish enforceable requirements for the proper disposal of possible prohibited or controlled substances.
3. In November 2007, the then AFP Commissioner notified this information to the Integrity Commissioner under section 19 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).
4. A number of other integrity issues which arose during my investigation are also discussed in this report.

## JURISDICTION

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5. The information raised the possibility that the constable had not disposed of the tablets, but had kept them for his own use, or to sell or give them to another person. This possibility raised a corruption issue within the meaning of section 7 of the LEIC Act.
6. Section 26(1)(a) of the LEIC Act provides that the Integrity Commissioner may deal with a corruption issue which relates to a law enforcement agency, including the AFP, by investigating that issue. Section 26(2) of the LEIC Act provides that the Integrity Commissioner may investigate the corruption issue either alone or jointly with another government agency.
7. For the purposes of investigating this corruption issue, I decided that it would be beneficial to hold hearings, in private, under the LEIC Act. I also decided that the AFP should be part of the investigation, to assist with gathering information and managing the human resource aspects. Accordingly, ACLEI conducted this investigation jointly with AFP Professional Standards.

## INVESTIGATION

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8. ACLEI analysed financial information, call charge records, e-mails and AFP drug handling statistics. ACLEI also considered the results of drug tests relating to the constable (which returned negative results), that had been conducted by the AFP as part of its ongoing drug-testing program.
9. AFP Professional Standards conducted two recorded interviews as part of the investigation.

# THE INVESTIGATION

10. ACLEI conducted one recorded interview and I summonsed four witnesses, including the constable, to attend separate hearings, held in private.
11. No new evidence arose from considering information from the financial institutions, the examination of the constable's AFP e-mail usage or the AFP-conducted drug tests. Telephone records showed contact around the relevant time with two people, one known, and one suspected, to be involved in unlawful drug use. It also showed regular private contact with some licensed premises.
12. The interview and hearings with other AFP appointees established that no other AFP employee witnessed the claimed disposal of the drugs.

## CONSIDERATION OF THE ISSUES

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### ADHERENCE TO DRUG HANDLING PROCEDURES

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13. At a hearing, the constable stated that while he was on duty, a security guard at licensed premises gave him a bag of tablets, thought to be ecstasy, that had been found on the floor. The constable stated that he did not make a notebook entry when he took possession of the tablets.
14. The constable admitted to disposing of the tablets in an unapproved way, claiming that he had flushed them down a police station toilet. The constable also stated that he knew at the time that his actions were wrong and described the AFP's procedures, based on the AFP National Guideline: ACT Policing Property, Exhibit and Drug Handling, which he should have followed. There was no witness to the claimed disposal of the tablets, which was said to have occurred in a police station.
15. The constable admitted also that he had failed to report a declarable association with a known drug-user (his girlfriend at the time of the event under investigation), although he knew of the requirement on him to do so.
16. The investigation revealed no evidence that the constable had kept the tablets. In explaining his actions in disposing of the tablets in a manner contrary to the guidelines, the constable stated that:

*"...On a busy night like that, there may only be three members on [duty]... but to receive drugs it generally takes a car ... off the road for a period of maybe one to two hours while we exhibit them, lodge them out at – with the Winchester Centre. ...At the time, getting rid of them ourselves by myself flushing them down the toilet and keeping a car on the road ... was the reason I did that."*

## THE INVESTIGATION

17. Other witnesses shared a perception that the ACT Policing Property, Exhibit and Drug Handling guidelines can be onerous, in the ways described by the constable. However, this investigation found no indication that other officers have avoided proper procedures in relation to drug or property handling.
18. The guidelines have regard to legal responsibilities and accountability objectives. Adherence to these procedures is vital, not only to protect evidence for use in court proceedings, but also to protect police officers from the type of inference which was the subject of this investigation.
19. The perception that the guidelines are onerous may indicate that officers are not sufficiently conscious of the guidelines' purpose and of their obligations under drug control laws, or that they feel a competing obligation to stay on patrol.
20. Such a situation poses a corruption risk whereby the use of 'work-arounds' and avoidance of proper procedure may become accepted and not routinely reported. This situation opens the possibility that seized drugs could be used, sold or given away unlawfully by police officers, without the prospect of detection.
21. I note that the ACT Chief Police Officer, of his own initiative, is presently trialling revised arrangements for the lodgement of confiscated drugs.

### *OTHER INTEGRITY ISSUES*

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22. The constable made other admissions, namely that he had:
  - (a) retained for himself some property (of minor value) that he had found while on duty, despite that he knew of his obligation to register and deposit the property;
  - (b) made use of police vehicles to provide lifts to friends when he was on duty and had himself used such lifts when off-duty (the so-called 'blue-light taxi'); and
  - (c) accepted free drinks and preferential treatment while off-duty from the management of licensed premises which were part of his patrol.
23. The risks to ACT Policing from actions such as those admitted by the constable are various.
24. When the constable took for himself the property he had found, he profited by keeping it. The property should have been properly processed so it could have been returned to its rightful owner (if one could be identified) or handled in accordance with AFP requirements. The unlawful retention of property by the constable may give rise to a criminal offence.

## THE INVESTIGATION

25. The use of AFP vehicles for private purposes, such as providing lifts to off-duty employees, involves a financial cost to the public. It also means that the vehicles taken offline are unavailable during that time for legitimate ACT Policing requirements. Such conduct may also amount to a criminal offence.
26. Receiving free drinks from licensed premises or accepting other benefits, such as priority in queues, creates a number of risks for ACT Policing appointees. It may lead to a perception among the public that the business in question is favoured by police and will not receive the scrutiny it should. It may lead to requests for favours—indeed, the constable reportedly received a request (which he refused, but did not report at the time) from a manager of licensed premises for him to access an AFP database—and difficulty in refusing those requests.

## OPINION

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27. If the lapses of integrity identified in this report were widespread, they could contribute to inappropriate risk-taking behaviour and undermine the AFP's substantial investment in measures to prevent corrupt conduct.
28. In the present case, more than one officer came forward to report aspects of the constable's conduct through official channels. Accordingly, I consider that this investigation does not reveal a wider integrity problem in ACT Policing.
29. It is relevant to note that the events which were the subject of my investigation took place in 2007 and 2008. As an assurance measure, ACLEI and ACT Policing have arranged to undertake a strategic assessment of corruption risk in the community policing context.

## ACTIONS UNDER PART 10 OF THE LEIC ACT

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### *BREACH OF DUTY*

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30. Part 10 of the LEIC Act outlines what the Integrity Commissioner may do with evidence and information obtained during an investigation. Section 146 requires the Integrity Commissioner to bring to an agency head's notice evidence of a breach of duty or misconduct by a staff member. This requirement arises when the Integrity Commissioner is satisfied that the evidence may justify terminating the staff member's employment or initiating disciplinary proceedings against the staff member and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so.
31. In my view, the constable's actions involved breaches of discipline. It is not certain why the constable acted as he did. Nevertheless, he admitted that he knew his actions were wrong or that he could have found out what he should have done.

## THE INVESTIGATION

32. Accordingly, during the course of my investigation, I disseminated evidence concerning the constable's actions to the AFP Commissioner, to allow him to take what action he considered appropriate. The AFP Commissioner has since informed me that, as a result of this evidence and other information gathered by the AFP, he has dismissed the constable.

### *EVIDENCE OF AN OFFENCE*

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33. In accordance with section 142 of the LEIC Act, I have provided to the AFP evidence of possible offences against the criminal law obtained during my investigation.

### **FINDING**

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34. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
35. Having regard to the constable's admissions and the conduct engaged in, I do not find that the constable engaged in corrupt conduct. Any evidence that he had retained the drugs may have led to a different conclusion.



**Philip Moss**  
Integrity Commissioner

29 June 2011



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