



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

INVESTIGATION REPORT

**An investigation into allegations
about the Australian Crime Commission
relating to unfair dismissal proceedings,
and certain other integrity matters**

A public report by the Integrity Commissioner, issued under
section 209 of the *Law Enforcement Integrity Commissioner Act 2006*

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Enquiries about this report can be directed to the Australian Commission for Law Enforcement Integrity, GPO Box 305, Canberra, ACT, 2601 or via email to contact@aclei.gov.au

FOREWORD

PUBLIC RELEASE OF INVESTIGATION REPORT 01/2009

The Integrity Commissioner may disclose information to the public about an investigation of a corruption issue, where she or he is satisfied that it is in the public interest to do so (section 209 of the *Law Enforcement Integrity Commissioner Act 2006*).

When a report is to be made public, the Integrity Commissioner must seek to achieve an appropriate balance between the public interest that would be served by disclosing information about his investigations, and any prejudicial consequences that might result from disclosing the information.

I am satisfied that it is in the public interest to publish this report – *An investigation into allegations about the Australian Crime Commission relating to unfair dismissal proceedings, and certain other integrity matters* – and that the report is fit for publication.



Philip Moss
Integrity Commissioner

30 June 2009

TABLE OF CONTENTS

➤ FOREWORD	(i)
➤ INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER	(v)
➤ EXECUTIVE SUMMARY	1
➤ THE CORRUPTION ISSUES	3
➤ BACKGROUND	4
➤ JURISDICTION	6
➤ INVESTIGATION	7
➤ Investigation of the allegations made by the informant	7
➤ Other allegations	8
➤ The investigation relating to the recording device	9
➤ OBSERVATIONS	10
➤ FINDINGS AND OPINIONS	11
➤ Findings	11
➤ Part 10 Actions	11
➤ Recommendations	11
➤ Opinions	12

INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

THE *LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006*

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

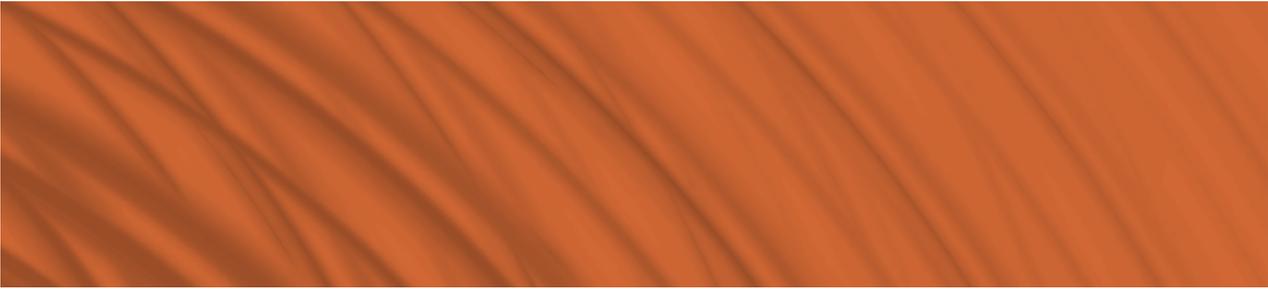
The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corruption in the Australian Crime Commission, the Australian Federal Police (AFP) and the former National Crime Authority. Other Australian Government agencies with law enforcement functions may be prescribed by regulation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

CORRUPT CONDUCT

'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

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 that relates to the 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.

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 matter to the AFP for investigation and may manage or oversee that investigation.

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

HEARINGS

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.

REPORTING

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, in relevant circumstances, to the head of a law enforcement agency. Where an investigation relates to a person seconded from another Government agency, 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 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.

Where a report is to be tabled in Parliament, the Integrity Commissioner must exclude information covered by a certificate issued by the Attorney-General under section 149 of the LEIC Act.

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.

EXECUTIVE SUMMARY

This investigation primarily concerns two related corruption issues arising out of the dismissal of a staff member of the Australian Crime Commission (ACC), and certain other integrity matters.

The first issue involves information provided by an employee of the ACC (the informant) alleging that the (then) Chief Executive Officer of the ACC and a (now former) senior officer of the ACC had given false testimony before the Australian Industrial Relations Commission.

The second issue involves possible corrupt conduct on the part of the informant and two colleagues, whereby the informant used an ACC recording device to record covertly the meeting at which he was dismissed. The device also recorded subsequent conversations involving some sensitive law enforcement issues. Copies of the recording were then provided to private persons.

Following investigation by ACLEI, that included private hearings and notices to produce documents, the Integrity Commissioner has found that no corrupt conduct was evident in either issue.

The Integrity Commissioner notes that copies of the covert recording are in the hands of private persons known to the informant. The Integrity Commissioner has recommended that the ACC take reasonable steps to recover all copies of the covertly recorded material.

The Integrity Commissioner also assessed a number of other integrity matters raised by the informant. None of these issues revealed corrupt conduct.

The Integrity Commissioner has also recommended that the ACC review all internal policies and procedures relating to the control, accountability for, and proper use of, covert surveillance devices. Such policies should explicitly limit the use of such devices to officially sanctioned purposes.

While this investigation has not found that individuals engaged in corrupt conduct, there still are valuable lessons to be learned about managing corruption risks.



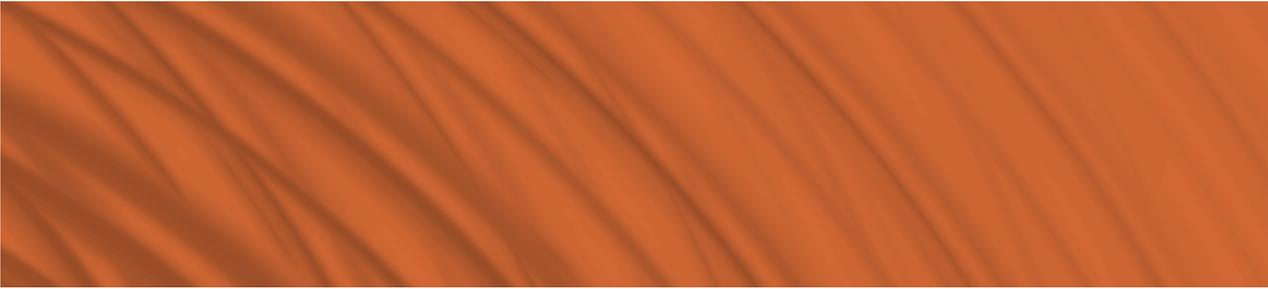
THE CORRUPTION ISSUES

1. This investigation primarily concerns two related and overlapping issues arising out of events concerning staff of the Australian Crime Commission (ACC).
2. The first issue involves information provided by an employee of the ACC (the informant) alleging that the (then) Chief Executive Officer (CEO) and a (now former) senior officer of the ACC (the senior officer) had given false testimony before the Australian Industrial Relations Commission (AIRC) during the informant's appeal hearings related to the termination of his employment with the ACC.
3. The second issue involves possible corrupt conduct on the part of the informant and two colleagues related to the making of those allegations.
4. A third issue, also raised by the informant, relates to the alleged improper use of an ACC corporate credit card.

BACKGROUND

5. The background relevant to the investigation is summarised as follows:
 - a. At a meeting held on 29 October 2004, the informant was dismissed from the ACC for contravening the Australian Public Service (APS) Code of Conduct;
 - b. The informant challenged his dismissal in the AIRC, and the CEO and senior officer were among those who gave sworn evidence to the proceedings;
 - c. After a number of hearings before the AIRC, the dismissal was found to have been harsh, unjust and unreasonable, and the AIRC ordered that the informant be reinstated;
 - d. Due to his distrust of management, the informant had used an ACC recording device to record covertly the meeting at which he was dismissed (as was permitted under the relevant Victorian legislation, if the person making the recording were a party to the conversation);
 - e. The informant states that he intended only to record the meeting at the end of which he meant to de-activate the recording device;
 - f. The meeting ended with the informant's dismissal accompanied by a demand that he immediately surrender all ACC property in his possession, which included the still-activated recording device;
 - g. The recording device continued to record subsequent conversations held in its vicinity, including some confidential conversations relating to law enforcement operations;
 - h. Later that day at an informal, out-of-office meeting with some ACC staff, the informant realised that the recording device had not been de-activated and told at least some of the others present, who included his ex-supervisor, about the device;
 - i. While still at the informal meeting, the ex-supervisor was contacted by the senior officer and asked to arrange the collection of the surrendered property, which included the recording device;

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- j. The ex-supervisor sent a staff member (the staff member) to retrieve the surrendered property;
 - k. Aware that the recording device was activated, the staff member collected and immediately de-activated it;
 - l. At no stage was the senior officer, or anyone other than the staff at the informal meeting, made aware that the recording device had been active during and after the meeting at which the informant had been dismissed;
 - m. Subsequently, the staff member listened to and privately copied the recorded material;
 - n. After discussing the content and seeking advice from the informant's ex-supervisor on what to do with the recording, the staff member, in accordance with the advice given to him, provided the informant with a copy of the disc containing all the material covertly recorded on 29 October 2004; and
 - o. The informant made a transcript of the disc and discussed at least some of the material with family members and provided copies of the disc to at least two private persons "for safe keeping".
6. The informant's allegation, the main subject of this investigation, is that the CEO's and the senior officer's testimony before the AIRC, as to the reasons for his dismissal, was false. That allegation is based on the comments of the senior officer that were covertly recorded in the hours following the informant's dismissal, which are anomalous in some respects to the written reasons given for the dismissal.



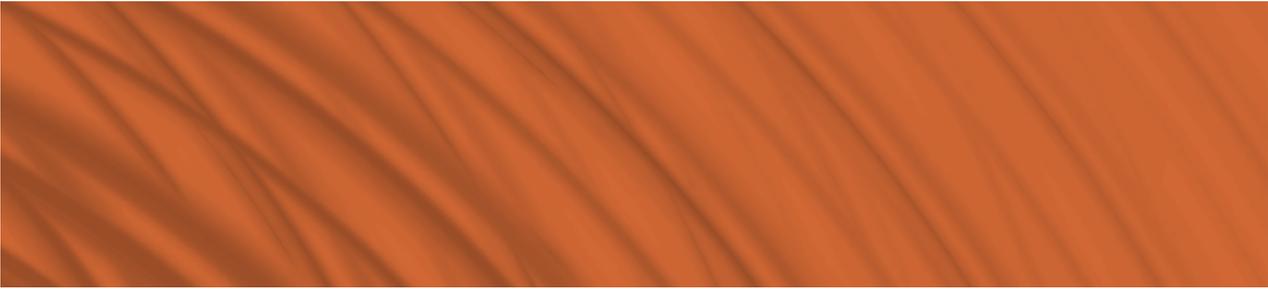
JURISDICTION

7. Section 26(1) of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) provides that the Integrity Commissioner may deal with a corruption issue that relates to a law enforcement agency, including the ACC, by investigating that issue.
8. The allegations made by the informant about the CEO and the senior officer raised a corruption issue within the meaning of section 6 of the LEIC Act.
9. The actions of the informant, the staff member and the ex-supervisor warranted investigation as a corruption issue pursuant to section 38 of the LEIC Act.

INVESTIGATION

INVESTIGATION OF THE ALLEGATIONS MADE BY THE INFORMANT

10. As previously identified, the informant's allegations are based on the covertly recorded comments made by the senior officer in discussing with others the reasons for the informant's dismissal.
11. I have considered the material relating to the investigation, including the senior officer's covertly recorded comments and transcripts of the proceedings before the AIRC.
12. As part of this investigation, hearings were held in private under section 82(1)(a) of the LEIC Act, at which both the CEO and the senior officer gave sworn evidence relating to the dismissal of the informant and other integrity matters.
13. Significantly, in his evidence the senior officer accepted responsibility for the comments covertly recorded on which the informant relies, and he affirmed the evidence he gave before the AIRC. In essence, the senior officer admitted that the comments he made in the ACC office were not accurate and were intended for effect.
14. In my view, while the comments of the senior officer constituted poor judgement at the time, they are not evidence of corrupt conduct. I note that he has disclosed these issues to his present employer.
15. The CEO also re-affirmed his evidence to the AIRC that the reasons for the informant's dismissal were those identified in the termination notice. Under coercive notices issued under section 75 of the LEIC Act, the CEO produced to me several legal advices upon which he had relied to proceed to dismissal. These advices corroborate fully the CEO's version of events.

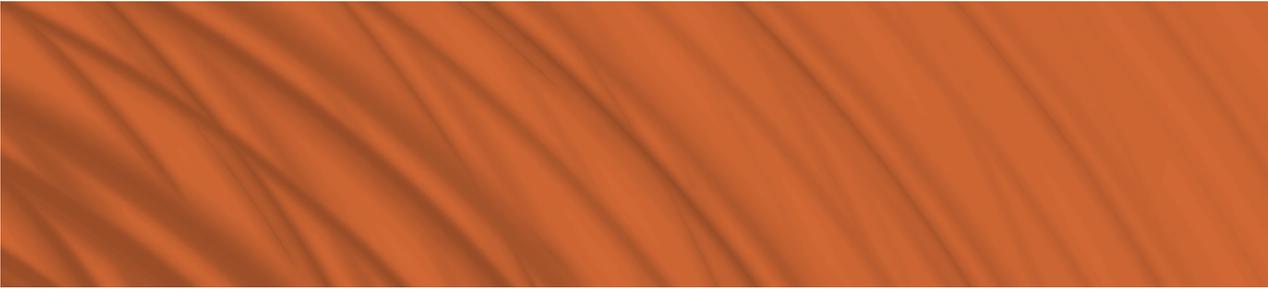
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16. I accept the CEO's testimony that, in dismissing the informant, he relied only on the reasons stipulated in the notice of termination. That said, he may have been generally aware that there were other matters concerning the informant which could have been grounds for considering dismissal. However, it would appear that the CEO was confident that he needed no other grounds on the basis of the legal advices available to him.
 17. There is, in my view, no credible evidence that the decision of the CEO to terminate the informant's employment with the ACC was made for reasons other than those identified in the termination notice given to the informant.
 18. The fact that the AIRC found the dismissal was harsh, unjust and unreasonable, does not amount to evidence that the CEO acted other than in good faith.

OTHER ALLEGATIONS

19. The informant made a number of other allegations, not related to the reasons for his dismissal. I have considered those allegations, only one of which raised a corruption issue under the LEIC Act.
20. That issue relates to a private purchase by an ACC staff member using an ACC corporate credit card. I am satisfied that the ACC took appropriate action in relation to this issue at the time. It appears that this allegation was made because of the informant's partial knowledge of the circumstances.
21. The informant also raised a concern about the initial ACC investigation into his conduct. To the extent that there may have been shortcomings in the ACC's handling of the dismissal and the investigation that led to it, I do not consider that they occurred for corrupt purposes.
22. None of the other allegations raised a corruption issue under the LEIC Act.

THE INVESTIGATION RELATING TO THE RECORDING DEVICE

23. The way in which the recording was made and copied, the way in which the informant obtained a copy, and the subsequent handling of the material, all raised serious questions as to the appropriateness and the legality of the actions of the informant, the staff member and the ex-supervisor (the parties).
24. The actions which gave rise to the possibility that the parties may have engaged in corrupt conduct are themselves complex and raise some challenging ethical and legal issues. However, the investigation does not establish that they, jointly or severally, engaged in corrupt conduct.
25. That is not to say that the parties acted ethically or appropriately. Nor does it mean that they may not have breached the APS Code of Conduct or otherwise acted illegally. It does mean that those considerations are, in this matter at least, separate from the question as to whether they engaged in corrupt conduct.
26. In the abstract, the identification of the element, or elements, that make conduct corrupt rather than simply unlawful is problematic, and individual circumstances will obviously be relevant. Clearly, corrupt conduct will often involve a breach of the law, but equally clearly, not all breaches of the law involve corrupt conduct in any meaningful sense. It is also at least arguable that a person could act lawfully, but corruptly. A person's intention in acting in a particular way will be relevant, but not necessarily determinative.
27. I consider that the parties took the actions they did because of their perception that a wrong had occurred, namely the unexpected dismissal of the informant. When analysed, it can be seen that the actions taken by the parties (copying and disseminating the recording) were designed to bring to light the perceived wrong. However, their indignation and sense of grievance impaired their judgement and led them to take actions that were inappropriate and unnecessary.
28. In the circumstances, I do not find that the actions of the parties were corrupt.



OBSERVATIONS

29. I trust that my examination of the evidence, particularly that relating to the content and timing of the legal advices, will bring a sense of resolution to this matter for the parties, particularly for the informant.
30. I note that copies of the covertly recorded material were provided to at least two unauthorised private persons. Some of the material includes information that, although now dated, has some sensitivity and is therefore protected by law. The continued possession of this material may leave it insufficiently protected, and the third parties exposed inadvertently to criminal sanction.
31. Given that a copy of the material is now held officially by ACLEI, the informant's concerns that somehow the material might be lost to him are no longer tenable. It would be appropriate for the informant to retrieve the material from any other persons in possession of it, and provide it to the ACC.

FINDINGS AND OPINIONS

FINDINGS

32. I find that none of those involved – the (then) CEO, the (now former) senior officer or the parties – engaged in corrupt conduct.

PART 10 ACTIONS

33. Part 10 of the LEIC Act deals with what the Integrity Commissioner may do with evidence and information obtained in an investigation. Section 146 obliges me to pass evidence to the head of a law enforcement agency, where such action is justified, for example, in the case of a breach of duty or misconduct of a staff member.
34. On the facts, it would not be appropriate to take any disciplinary action in this matter.

RECOMMENDATIONS

35. Under section 54 of the LEIC Act, I make the following recommendations.
 - (i) *The Australian Crime Commission should review all internal policies and procedures relating to the control, accountability for, and proper use of, covert surveillance devices. Such policies should explicitly limit the use of such devices to officially sanctioned purposes.*
 - (ii) *The Australian Crime Commission should take reasonable steps to recover all copies of the covertly recorded material.*

OPINIONS

36. While this investigation has not found that individuals engaged in corrupt conduct, there still are valuable lessons to be learned about the ways in which corruption can arise.
37. The ways agencies are managed can either contribute to, or mitigate against, corruption risk. In principle, demonstrating fairness, proportionality and equality in decision-making are important elements of building and maintaining trust with staff. In the present case, a mistrust of management led to poor decision-making by the parties. In other circumstances, this situation could have resulted in corrupt conduct.
38. The parties' immediate reaction to the dismissal influenced adversely their decision-making. This situation illustrates a second corruption risk, namely a greater loyalty to colleagues than to professional standards.
39. A third corruption risk relates to law enforcement officers specifically, namely that they may become desensitised to their operating environment, with the effect that rules and boundaries become blurred. In the present case, the familiarity of the parties with surveillance devices and covert methods appears to have contributed to their inappropriate use of such devices and methods.
40. I have discussed these matters with the ACC, and I am confident that, through open dialogue with its staff, the agency is already working to promote a culture of allegiance to professional standards. I am satisfied that ACC management understands the importance of engaging in this way to address corruption risks effectively.



Philip Moss
Integrity Commissioner

30 June 2009