



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

INVESTIGATION REPORT

**An investigation into allegations
about the Australian Crime Commission
relating to the communication of information
obtained under section 3E of the
*Taxation Administration Act 1953***

A report to the Minister for Home Affairs, issued under
section 55 of the *Law Enforcement Integrity Commissioner Act 2006*

REPORT 01/2010

© Commonwealth of Australia 2010

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**

TABLE OF CONTENTS

PART ONE – ABOUT ACLEI REPORTS

INVESTIGATIONS AND REPORTS BY THE INTEGRITY
COMMISSIONER

iv

PART TWO – THE INVESTIGATION

BACKGROUND

1

FINDING

1

CONSIDERATION OF THE ISSUES

1

Was there a breach of section 3E?

2

Was there corrupt conduct?

3

Were there other breaches of the law?

3

RECOMMENDATIONS

3

ABOUT ACLEI REPORTS

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 the Integrity Commissioner.

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 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 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 to the head of the relevant 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.



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

INVESTIGATION REPORT

**An investigation into allegations
about the Australian Crime Commission
relating to the communication of information
obtained under section 3E of the
*Taxation Administration Act 1953***

REPORT 01/2010

THE INVESTIGATION

BACKGROUND

1. By letter dated 12 September 2007, a solicitor (the informant) made a “complaint”¹ on behalf of two clients raising an issue related to a suspected breach of section 3E of the *Taxation Administration Act 1953* (the TA Act) by an officer or officers of Australian Crime Commission (ACC).
2. On 20 September 2008, the informant wrote again on behalf of his clients raising the possibility that there had been a further breach of section 3E of the TA Act by the same officer or officers of the ACC.
3. If these allegations were true, both suspected breaches would have involved the unlawful communication by an officer of the ACC of material which had been provided by the Commissioner of Taxation in accordance with the provisions of section 3E of the TA Act. If done intentionally, rather than inadvertently, the breaches could be construed as an attempt to pervert the course of justice, and in that context would likely amount to corrupt conduct within the meaning of section 6 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).

FINDING

4. For the reasons identified below, I find that the communication of the material was not in breach of section 3E of the TA Act and did not constitute corrupt conduct.

CONSIDERATION OF THE ISSUES

5. Commonwealth taxation legislation requires, generally, that information provided or obtained by the Australian Taxation Office (ATO) regarding individual taxpayers be kept confidential. There are, however, exceptions to that general requirement. In particular, section 3E of the TA Act provides that, in prescribed circumstances, information held by the ATO may be divulged or communicated to an authorised law enforcement agency officer, but that such an officer can then only communicate that information in accordance with the other provisions of that section.
6. The ACC is a law enforcement agency for the purposes of the TA Act.
7. It is not in dispute that the ACC lawfully obtained the material provided under section 3E of the TA Act in the course of a properly authorised investigation.

¹ The term “complaint” is used here to convey the nature of the informant’s approach to ACLEI, and that, in the informant’s view, the issue raised had a detrimental effect on his clients. ACLEI is not a complaint-handling agency, but may use information provided by any person to inform investigations about corruption issues.

THE INVESTIGATION

8. The suggested breach of that section arose in the course of proceedings brought by the informant's clients in the Federal Court of Australia claiming legal professional privilege in respect of certain documents obtained by the ACC under section 29 of the *Australian Crime Commission Act 2002*. In the course of those proceedings, the ACC submitted a number of draft affidavits to the judge. Those affidavits were made by an ACC investigator and attached to them were exhibits which divulged material obtained by the ACC under section 3E of the TA Act.
9. The informant is of the view that this material was communicated other than in accordance with those provisions of section 3E that permit the communication of material obtained under that section, and was therefore unlawful.
10. Although in his letters of "complaint" the informant does not specifically allege corrupt conduct, I decided to treat the information as possibly raising issues which might, if proven, constitute corrupt conduct. Accordingly, I commenced an investigation under section 26(1)(a) of the LEIC Act.
11. My investigation looked at three issues, namely:
 - (a) whether there was evidence that material was communicated in breach of section 3E of the TA Act;
 - (b) if so, whether such a communication constituted corrupt conduct on the part of an officer or officers of the ACC; and
 - (c) if there were no corrupt conduct, whether there was any evidence of the commission of an offence against a law of the Commonwealth or any contravention of a law which would attract a civil penalty.

WAS THERE A BREACH OF SECTION 3E?

12. As previously identified, the disputed material (which also was, in the Federal Court, the subject of the claim for legal professional privilege) was obtained by the ACC as part of a properly authorised investigation. That investigation was undertaken with a view to possible prosecution in connection with a tax-related offence and the possible making of orders under the *Proceeds of Crime Act 2002*.
13. Having regard to paragraph 4(a)(i) and to sub-section 5A of section 3E of the TA Act, I am satisfied that the use of that material in disputing the claim for legal professional privilege was in relation to, or connected with, a possible prosecution arising out of the ACC investigation and was therefore not in breach of section 3E of the TA Act.

THE INVESTIGATION

WAS THERE CORRUPT CONDUCT?

14. Given my conclusion above, it follows that this communication did not involve corrupt conduct arising out of, or in the course of, a breach of section 3E of the TA Act.
15. Notwithstanding that conclusion, I have found nothing during my investigation that I consider would have warranted a finding that any officer of the ACC engaged in corrupt conduct or had breached his or her professional standards.

WERE THERE OTHER BREACHES OF THE LAW?

16. My investigation has not found any evidence of the commission of an offence against a law of the Commonwealth or of any contravention of a law which would attract a civil penalty.

RECOMMENDATIONS

17. I make no recommendations in relation to this issue.



Philip Moss
Integrity Commissioner

30 April 2010



www.aclei.gov.au