



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

INVESTIGATION REPORT

***An investigation into staff claims
about misuse of position and
certain other integrity matters
in the Australian Crime Commission***

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

REPORT 03/2010

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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**

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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.



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THE INVESTIGATION

EXECUTIVE SUMMARY

This investigation primarily concerns information which suggested corrupt conduct involving an Australian Crime Commission (ACC) senior manager. Specifically, the senior manager was said to have misused his position of influence to provide a more junior female staff member with preferential employment and financial benefits because they were reportedly engaged in a sexual relationship.

This and other information was provided to the ACC and ACLEI from a number of sources and initially raised concerns about possible systemic corrupt conduct on the part of several senior ACC staff members.

After extensive investigation by ACLEI, the Integrity Commissioner found that, although brought forward in good faith, there was no substance to the allegations.

The Integrity Commissioner found that in this instance, groundless rumour and misinterpretation were the basis of the allegations, and that a 'rumour mill' created conditions that heightened certain corruption risks.

The Integrity Commissioner has discussed the issues raised by the investigation with the Chief Executive Officer of the ACC and is satisfied that the agency is taking appropriate steps to address them.

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THE CORRUPTION ISSUES

1. This investigation primarily concerns information which suggested corrupt conduct involving an Australian Crime Commission (ACC) senior manager (Mr A).
2. This information was notified as a corruption issue to the Integrity Commissioner on 4 March 2009 by the Chief Executive Officer (CEO) of the ACC, Mr John Lawler APM, under section 19 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).
3. The corruption issue arose because an ACC staff member had heard of information concerning Mr A, namely that he was said to have misused his position of influence to provide a more junior female staff member (Ms B), who was employed by the ACC on a non-ongoing basis, with preferential employment and financial benefits because they were reportedly engaged in a sexual relationship.
4. A number of associated claims of corrupt conduct and misconduct were also investigated.

BACKGROUND

5. During the assessment of the corruption issue, ACLEI officers interviewed relevant ACC staff members, who provided information in relation to the reported corrupt conduct.
6. In summary, the staff members variously said that they had heard (or believed for other reasons):
 - (a) that Mr A and Ms B were in a sexual or otherwise inappropriate relationship;
 - (b) that Mr A had deleted all his emails about the suspected relationship shortly after asking about an internal investigation into himself;
 - (c) that another senior manager had also had a sexual relationship with Ms B – one of the staff interviewed told ACLEI that he believed that an email existed which detailed the senior manager's apology to Mr A, because Ms B was '[Mr A's] girl'.
 - (d) that there were irregularities, involving Mr A, in the selection process relating to a permanent position for which Ms B had applied, but for which her application was ultimately unsuccessful (at the time, Ms B was on a non-ongoing contract in the same role);
 - (i) that Mr A had advertised the position only within the Public Service Gazette to limit the field of applicants; and

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- (ii) that a member of the selection panel indicated after the interviews that Mr A would 'not be happy' that Ms B had not won the position and that, for a period of time, this member of the selection panel attempted to manipulate the panel's findings so that Ms B would be found suitable for the position;
- (e) that subsequently, Mr A extended Ms B's employment contract and found another non-ongoing position for her in another location for which she had little or no experience, that this decision allegedly was made only because of his purported relationship with Ms B, and that other qualified personnel within the ACC were not offered the opportunity, although they faced possible redundancy (as a consequence of downsizing);
- (f) that Mr A approved allowances for Ms B in excess of normal entitlements, including: an above-standard allowance for accommodation; a subsidy to meet the cost of her permanent residence while she was away; and 'excessive' return flights to her home town;
- (g) that other senior managers of the ACC were allegedly aware of the allegations of improper behaviour between Mr A and Ms B and the associated misuse of ACC funds, but took little or no action;
- (h) that Mr A was rumoured to have engaged in sexual relationships with a number of other female ACC employees (one staff member said that Mr A spoke freely about having sexual relationships and other staff members named some of those other female employees);
- (i) that there was a pervasive lack of professional distance between senior male staff and more junior female staff within the ACC, creating an uneasy working environment – one staff member said there seemed to be a competition between Mr A and two other senior managers about the number of female ACC staff they could seduce and another staff member said she had been subject to unwelcome advances from one of these two senior managers; and
- (j) that Mr A had misused his corporate credit card (one staff member referred to a specific expense in the belief that it was not work-related).

JURISDICTION

7. Integrity in leadership is a key determinant of the success of any anti-corruption framework. The information provided to ACLEI in the corruption issue assessment phase, although in the main not based on first-hand experience, came from a number of sources and raised concerns about possible systemic corrupt conduct on the part of some senior ACC staff members. At the time, the ACC had already commenced an internal investigation into several claims that the agency already knew about.

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8. In the circumstances, I formed the view that the independence provided by external investigation, and the use of the Integrity Commissioner's hearing powers, would be needed to gain the confidence of witnesses and obtain the evidence required. I also wished to ensure that any protections available to whistleblowers and other witnesses under the LEIC Act could be accessed, if needed. Accordingly, on 18 May 2009, I decided to investigate.
9. Section 26(1)(a) of 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.
10. The allegations relating to Mr A and others raised a corruption issue within the meaning of section 7 of the LEIC Act.

INVESTIGATION

11. The investigation focused on the allegations that Mr A acted corruptly by misusing his position of influence to provide Ms B with preferential employment and financial benefits to which she would not otherwise have been entitled.
12. The investigation also examined a number of other allegations to establish if they had substance (and, if so, whether there were any indication that corrupt conduct was involved). These allegations were:
 - (a) that Mr A had misused his corporate credit card;
 - (b) that Mr A had engaged in sexual relationships with other ACC staff;
 - (c) that other senior managers within the ACC were complicit in the reported sexual impropriety and any associated corrupt conduct; and
 - (d) that other senior managers were themselves involved in similar sexual impropriety.
13. The investigation was extensive. It included recorded interviews with two witnesses and coercive information-gathering hearings with a further seven witnesses.
14. ACLEI also analysed electronic records, emails (including deleted emails retrieved by the ACC), and travel information between Mr A and Ms B to see if there were any evidence of the alleged corrupt conduct.
15. ACLEI's investigation found no evidence to suggest an improper relationship between Mr A and Ms B or that any inappropriate influence had been applied in her favour. Neither was evidence found that supported allegations of improper conduct on the part of Mr A nor any other senior manager. Similarly, no evidence was found that Mr A had misused his credit card.

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16. Several witnesses provided plausible and credible statements that countered the allegations. These statements were corroborated by ACLEI's analysis of ACC records.

FINDING

17. I find that, in relation to the corruption issues investigated, there is no substance to the allegation that Mr A, or any other ACC staff member, engaged in corrupt conduct.

CONSIDERATION OF THE ISSUES

ALLEGATIONS OF IMPROPRIETY INVOLVING MR A AND MS B

18. The threshold question for the investigation was whether an improper relationship existed between Mr A and Ms B. The investigation found no evidence to suggest that Mr A and Ms B were ever in the alleged relationship.
19. The evidence showed that:
 - (a) the subjects of the allegations, being Mr A and Ms B, both denied that they were, or ever had been, engaged in a relationship;
 - (b) no witness could provide first hand details or evidence of an admission from either Mr A or Ms B that the alleged relationship existed;
 - (c) analysis of the travel records and call charge records relating to Mr A and Ms B did not disclose any patterns supporting the allegation;
 - (d) although it had been alleged that emails between Mr A and Ms B would confirm the existence of a sexual relationship, no such emails were discovered in the ACC data archives and no witness was able to provide any evidence or further information regarding these emails;
 - (e) a close work associate of Mr A, nominated as a person who allegedly knew of the relationship between Mr A and Ms B, denied any knowledge of such a relationship;
 - (f) a close work associate of Ms B, who was said to be a confidante of Ms B's, told ACLEI that, from her knowledge of both Mr A and Ms B, she did not believe the alleged relationship existed and, that when she had asked Ms B about the rumour, Ms B had denied ever having the alleged relationship with Mr A; and
 - (g) no witness was able to provide any evidence of the alleged relationship between Mr A and Ms B and it was apparent all 'knowledge' of the alleged relationship was third hand.

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20. Similarly, the investigation found no evidence that either Mr A or Ms B had engaged in sexual relationships with other ACC staff members:
- (a) Mr A and Ms B denied that they had engaged in such behaviour with other staff members of the ACC;
 - (b) one of the witnesses, named as one of the female staff members who had also had a sexual relationship with Mr A, denied allegations of such a relationship between herself and Mr A;
 - (c) the senior manager, named as the person who had also had a sexual relationship with Ms B, denied allegations of such a relationship between them;
 - (d) ACLEI's analysis of ACC records corroborated the statements of those against whom the allegations had been made or inferred; and
 - (e) no witness was able to produce any evidence of such relationships between any ACC staff member and either Mr A or Ms B.

ALLEGATIONS IN RELATION TO PREFERENTIAL EMPLOYMENT OPPORTUNITIES FOR MS B

21. As to the allegations that Mr A had sought to influence the recruitment process for a permanent position in the ACC in favour of Ms B, the investigation found no evidence to support such a conclusion.
22. The evidence showed that:
- (a) both Mr A and the member of the selection panel, who had allegedly attempted to influence the panel's findings, provided plausible and credible explanations about their decisions and actions in relation to the recruitment process;
 - (b) the way in which the position was advertised was suggested to Mr A by ACC Human Resources;
 - (c) ACC Human Resources oversaw the recruitment process;
 - (d) there was no indication in any correspondence of a guarantee being made before the interviews that Ms B would secure the position; and
 - (e) correspondence after the interviews indicates that Mr A had no objection to the appointment of another person to the position.
23. As to the allegation that, when Ms B was not successful in her application for the permanent position, Mr A corruptly offered her a new non-ongoing contract in a position for which she was not qualified, the investigation found no evidence to support such a conclusion.

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24. The evidence showed that:
- (a) Mr A and another senior manager provided plausible and credible explanations for the decision to offer Ms B a new non-ongoing contract;
 - (b) these explanations were related to a need to preserve business continuity at short notice in a critical operational role in a remote location for which it was difficult to find staff;
 - (c) the explanations included the reasons why Ms B was considered qualified to fill the role on a short-term basis; and
 - (d) the contract was offered without advertisement to Ms B with the knowledge and endorsement of the ACC's General Manager of People.

ALLEGATIONS ABOUT TRAVEL AND FINANCIAL BENEFITS RECEIVED BY MS B

25. As to the allegation that Mr A corruptly paid financial benefits in excess of ACC entitlements, including allowances, accommodation and travel, to Ms B during her temporary posting, the investigation found no evidence to support such a conclusion.
26. The evidence showed that:
- (a) Mr A and another senior manager provided credible evidence that the amount and type of allowances, accommodation and travel benefits paid to Ms B were informed by operational considerations, namely that there were difficulties at the time in attracting staff to temporary ACC postings in more-remote locations and consequently that allowances and benefits were often greater than those for other locations, or for on-going positions in remote localities;
 - (b) the duration of Ms B's posting (initially four months, with a later four-week extension) coupled with the high cost of short-term accommodation in the location to which she was posted, meant that some attendant costs were higher in Ms B's case, however Mr A and the other senior manager gave evidence that Ms B sought and received prior approval before incurring these costs;
 - (c) the benefits provided to Ms B, including travel, were consistent with ACC policies and practices at the time and were provided with the knowledge and endorsement of the ACC's General Manager of People; and
 - (d) the investigation uncovered no evidence to suggest that a subsidy was paid to cover the cost of Ms B's permanent residence.

ALLEGATION THAT MR A HAD MISUSED HIS CORPORATE CREDIT CARD

27. The investigation found no evidence to support the allegation that Mr A had misused his corporate credit card.

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28. The evidence showed that:
- (a) analysis of the expenditure on Mr A's corporate credit card found no significant transactions that did not adhere to ACC guidelines;
 - (b) Mr A provided satisfactory explanations for all transactions about which he was questioned; and
 - (c) analysis of the specific expense which had raised a staff member's concerns showed that the expenditure in question was work-related and adhered to ACC guidelines.

ALLEGATIONS THAT ACC MANAGERS WERE COMPLICIT IN THE 'IMPROPER BEHAVIOUR'

29. As no evidence was found to support allegations of any impropriety or corrupt conduct by Mr A, I do not consider that the allegations that other senior managers were complicit in his behaviour could have any substance. Accordingly, these allegations were not further investigated.

ALLEGATIONS OF IMPROPRIETY BY OTHER ACC MANAGERS

30. No evidence was found or produced to support the allegation that any other senior manager engaged in inappropriate behaviour with any staff member of the ACC.
31. Some of the staff members interviewed in the assessment phase had said that there was a culture of sexual misbehaviour among the senior managers of the ACC office in which they worked. However these assertions were not corroborated by other witnesses.
32. One of the staff members had told ACLEI that she had been subject to unwelcome advances from a senior manager (not Mr A). However, the situation described by the staff member was open to interpretation, and, in my view, does not warrant further investigation by ACLEI.
33. None of the other witnesses suggested that managers at the ACC office in question, or any other managers of the ACC, were engaged in improper sexual behaviour.
34. In respect of this issue, one female witness stated that she had never seen any behaviour that caused her concern. Another female witness said that she had always found the ACC office atmosphere to be professional and respectful towards female employees and that she had never personally witnessed or heard of any such behaviour.
35. In my view, the allegations of inappropriate behaviour by other ACC managers could not be substantiated and did not warrant further investigation by ACLEI.

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OBSERVATIONS

WHISTLEBLOWERS

36. People who provide information about suspected corruption have certain protections under the LEIC Act. For instance, section 220 of the LEIC Act creates an offence of victimisation if a person causes, or threatens to cause, detriment to another person who has raised an allegation or provided information about a suspected corruption issue.
37. I do not expect that whistleblowers or other informants would always have firm evidence for allegations or corruption issues that they report to ACLEI. As a matter of policy, ACLEI considers that people should be able to bring forward their genuine concerns regarding possible corrupt conduct, even if they are not able to substantiate their suspicions.
38. In my view, the information and allegations made in relation to this investigation were brought forward in good faith. However, as discussed further below, this situation illustrates a problem that can arise when benign events are misinterpreted.

THE 'RUMOUR MILL'

39. The allegations and information provided to ACLEI that led to this investigation were not based on any individual's first-hand knowledge or experience, but on hearsay and assertion. No evidence to corroborate the claims was subsequently found or produced to investigators.
40. It is apparent that, in this instance, groundless rumour and misinterpretation were the basis of the allegations, and that ACC staff members at varying levels of seniority across the ACC had passed on untested gossip, providing the rumours with credibility and momentum.
41. The subjects of the rumours were the most negatively affected by the experience, as the rumours had a direct impact upon their job satisfaction and reputations and, arguably, their career progression.
42. However, people who heard the rumours were also adversely affected, as they were forced to take sides and question whom they should trust.
43. At a human resources level for the ACC, the situation caused a loss of productivity and efficiency, including the loss of staff. However, the more general effect of the rumours was to destabilise the workplace, create animosity and divide loyalties.
44. Accordingly, the 'rumour mill' created conditions that heightened certain corruption risks. Although no evidence of corrupt conduct was found during this investigation, several precursors to corruption were present.

THE INVESTIGATION

45. For instance, disaffected staff members are more likely to make unauthorised disclosures. Also, a perception that unethical practices are widespread sends the message that corrupt conduct is tolerated, and that whistle-blowing may be futile.

LACK OF CONFIDENCE IN MANAGEMENT SYSTEMS

46. Although the investigation found that several ACC staff members had heard about the alleged behaviour and were concerned about it, most of them did not report the rumours or the allegations through the management or internal complaints systems that had been established for reporting suspected corruption and misconduct in the ACC.
47. The evidence suggests that some witnesses did not report the allegations through official channels because they believed that some senior managers were complicit in the alleged misconduct or that, for other reasons, they did not have confidence that anything would be done to rectify the situation.
48. As a result, while the ACC had commenced an internal investigation into allegations of misconduct that were known about, ACC senior management was not aware of the rumours at an early enough stage, or aware of their extent, in a way that would have allowed the potential risks to the agency and its staff to be managed easily.

CODE OF CONDUCT CONCERNS

49. The investigation was not able to determine how the rumours began, but it was evident that many staff members had readily repeated or embellished the rumours.
50. Although the rumours were passed on by staff at varying levels across the ACC, few staff recognised that their repetition of workplace rumours which were salacious in character may itself have been a breach of the ACC's professional standards or of the Australian Public Service Code of Conduct. Accordingly, the rumours were able to be spread relatively unchecked.

SECURITY RISKS

51. The ACC is both a public service agency and a law enforcement agency and has to deal with the consequent cultural, organisational and administrative challenges. One of these challenges is to develop a broad security awareness across the agency that includes both law enforcement and non-law enforcement staff.
52. As staff of a criminal intelligence and investigation agency, those people who heard the rumours should also have been alert to the associated security and corruption risks, both in relation to the content of the rumours and to their spread.

THE INVESTIGATION

ENVIRONMENTAL FACTORS

53. The events described in this report took place against a backdrop of significant change for the ACC and its staff.
54. In 2008 and 2009, the ACC was undergoing a number of difficult organisational and cultural adjustments. For instance, the ACC was experiencing budgetary constraints and, for this and other reasons, some programs were being down-sized, merged or closed. In addition, some ACC offices were being relocated and a new CEO was appointed towards the end of the period. Accordingly, many staff were anxious about their futures.
55. Also during this period, an enterprise agreement was in negotiation with the then prospect of no pay increase, a situation which caused significant tension between staff and senior management, and which heightened staff sensitivity to pay and conditions issues.
56. In my view, it is likely that the 'rumour mill' started and was perpetuated in the context of this uncertainty and mistrust.
57. Against this environment, the commencement of a new CEO in March 2009 provided ACC staff with a fresh opportunity to raise their concerns.

OPINIONS

58. Although I have made no finding of corrupt conduct, this investigation provides several insights into how the culture of a law enforcement agency may affect corruption risk. For instance:
 - (a) disgruntled staff may be more willing to jump to conclusions based on partial information or hearsay, thereby undermining relationships and creating or reinforcing negative perceptions of the organisation for which they work;
 - (b) acceptance of certain types of unethical behaviour, such as rumour-mongering, dulls the ability or preparedness of staff members to recognise and report indications of corruption;
 - (c) lack of confidence in management systems undermines the detection and reporting of corruption and sets up a culture in which avoiding management intervention is acceptable behaviour; and
 - (d) staff perceptions that the risk of detection of misconduct is low or that penalties are weak, reduce the deterrence value of professional reporting (whistleblower) systems and may encourage risk-taking behaviour.
59. These weaknesses, and their consequences, could be exploited by external people seeking to target an agency for information or by internal people (or former staff) who may misuse their own positions to assist others for private reward.

THE INVESTIGATION

60. I have discussed the issues raised by the investigation with the CEO of the ACC and am satisfied that the agency is taking appropriate steps to address them.
61. In the circumstances, it would be inappropriate, and may be counter-productive, to apply a disciplinary approach to staff members who may have been involved in perpetuating the 'rumour mill'. In my view, it is more important to use the insights generated by this investigation to inform strategies to strengthen the ACC's resistance to corruption.
62. The interventions most needed (and already underway) are:
- (a) awareness-raising about corruption risk and behavioural standards, for instance by using this investigation as a case study;
 - (b) ethics training for middle managers, as the front line of corruption control;
 - (c) developing a culture of adherence to professional standards;
 - (d) nurturing a system of professional reporting; and
 - (e) the further strengthening of management and leadership systems.
63. The ACC is already taking steps to understand and improve the ethical health of the organisation. For instance, the 2009-10 ACC staff survey is a sincere attempt to understand the problems faced by ACC staff, to improve communications and build trust with staff.

PART 10 ACTIONS

64. Part 10 of the LEIC Act sets out 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.
65. Having regard to all the circumstances, I do not consider it would be appropriate to take any disciplinary action in relation to this matter.

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RECOMMENDATIONS

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

A handwritten signature in black ink that reads "Philip Moss". The signature is written in a cursive, flowing style.

Philip Moss
Integrity Commissioner

7 May 2010



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