



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

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# INVESTIGATION REPORT

## **An own initiative investigation into possible corrupt conduct in the Australian Federal Police, concerning an operational security breach**

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

REPORT 04/2010

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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 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*

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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 service or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

### 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.

### 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. 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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## **INVESTIGATION REPORT**

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# THE INVESTIGATION

## INTRODUCTION

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1. The management of information relating to law enforcement operations presents a constant, serious and difficult-to-manage corruption risk.
2. This investigation concerns the possibility that an officer or officers of the Australian Federal Police (AFP) may have been involved in corrupt conduct concerning the handling of sensitive official information about Operation Neath, which was a multi-agency, multi-jurisdictional counter-terrorism operation into an alleged terrorist cell in Melbourne.

## BACKGROUND

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3. On 4 August 2009, commencing at about 4.30 am, over 230 officers from the AFP, Victoria Police and other government agencies, executed search warrants relating to Operation Neath at 19 locations across Melbourne. A number of people were arrested and have since been charged with terrorism-related offences. Those allegations are presently before the Courts.
4. Five days prior, on 30 July 2009, a journalist from *The Australian* newspaper telephoned the AFP Media Unit seeking to confirm information he had, which the AFP recognised as relating to Operation Neath. The details which the journalist provided to the AFP were largely accurate, indicating that a knowledgeable and up-to-date law enforcement source may have 'leaked' the information.
5. The AFP immediately informed its partner agencies of the journalist's telephone call. In the context of Operation Neath, a 'leak' or unauthorised disclosure of information represented both a significant risk to, and a breach of, operational security.
6. A meeting of senior representatives from all partner agencies, known as the Joint Management Group (for Operation Neath), took place later that afternoon, at which possible courses of action were discussed. The partner agencies agreed that the AFP should negotiate with the newspaper to delay publication of the story, which was scheduled for the following day. As a result of those negotiations, *The Australian* agreed to delay publication of information about Operation Neath.
7. In the following days, senior members of the AFP provided official briefings to the newspaper about Operation Neath. The information contained in those briefings, combined with what the journalist already knew, formed the basis of two articles that the newspaper published on the morning of the searches and arrests.

# THE INVESTIGATION

## THE CORRUPTION ISSUES

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8. The corruption issues investigated were:
  - (a) in relation to the security breach, whether any member of the AFP made an unauthorised disclosure of sensitive law enforcement information to the journalist ('the security breach'); and
  - (b) in relation to the AFP's handling of the security breach, whether the AFP's subsequent disclosure of national security and other sensitive information in briefings to *The Australian* was made to obtain the benefit of favourable media coverage for any member of the AFP, such that it could constitute corrupt conduct ('the handling of the security breach').
9. Both of these issues come within the scope of section 7 (Meaning of corruption issue) of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).

## JURISDICTION

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10. On 4 August 2009, the Director, Police Integrity (Victoria) announced his intention to initiate an own motion investigation, under section 44 of the *Police Integrity Act 2008* (Vic), for the Office of Police Integrity (OPI) to examine the possible involvement of any member of Victoria Police in relation to the unauthorised disclosure.
11. On 5 August 2009, consistent with the role and functions of the Integrity Commissioner, I commenced an own initiative investigation under section 38 of the LEIC Act to investigate whether there was any evidence of corrupt conduct by any AFP member concerning the Operation Neath security breach and related matters.
12. Because of the potential overlap of the two investigations, I entered into a joint investigation arrangement with the Director, Police Integrity to facilitate information-sharing about State and Federal aspects of the security breach.
13. It was intended initially that the Director, Police Integrity and I would produce a joint report into the unauthorised disclosure of information. However, following an injunction obtained in the Federal Court of Australia by Nationwide News Pty Ltd (the owner of *The Australian* newspaper), I decided that the joint reporting arrangement created ambiguity as to which head of power (the LEIC Act or the Police Integrity Act) was being used as authority for any particular comment, opinion or finding. Accordingly, on 23 March 2010, I withdrew from the joint investigation with OPI in order to report in my own right.

# THE INVESTIGATION

## INVESTIGATION AND CONSIDERATION OF THE ISSUES

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14. My investigation was extensive, and comprised nine coercive hearings under the LEIC Act, as well as interviews with other witnesses, collection of written accounts, and examination of relevant files, contemporaneous notes, emails and other records.

### *ISSUE A: THE SECURITY BREACH*

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15. Information, made available to me by OPI early in the investigation, indicated that an unauthorised disclosure may have been made by a member of Victoria Police. Even so, I continued to investigate the possibility that an AFP member or members may have been the source of the information obtained by the journalist.
16. No evidence was discovered that implicated any member of the AFP in an unauthorised disclosure. (I note that a member of Victoria Police has since been charged in relation to this matter.)
17. However, during the investigation I identified two other possible sources of unauthorised disclosure, which are noted below.

### *AFP Melbourne Office*

18. On 17 July 2009, almost two weeks prior to the day the journalist contacted the AFP Media Unit (30 July 2009), there was a security breach at the Major Incident Room in the AFP Melbourne Office, which at various times contained sensitive information about Operation Neath.
19. My investigation established that inflexible and impractical security arrangements meant that some seconded Joint Counter Terrorism Team (JCCT) members were not issued with security passes to the Major Incident Room. These arrangements resulted in so-called 'practical solutions' being applied, such as jamming open the door to ensure that all taskforce members had access to the incident room. (During the course of my investigation, I raised concerns about this practice with the AFP Commissioner, Mr Tony Negus, who has since taken appropriate remedial action.)
20. Usually, JCCT members took care to secure the room prior to leaving it for the evening. However, on 17 July 2009, a night-duty security guard momentarily entered the room to check that it was clear of staff before securing it for the night. The incident was properly and contemporaneously reported.
21. I am satisfied that the timing of the breach (which affected what information would have been displayed in the room) meant that it could not have resulted in the guard obtaining the information later held by the journalist from *The Australian*.

# THE INVESTIGATION

## *Television production company briefing*

22. My investigation also identified that a production company, which was filming the work of the AFP for a television series, was informed in general terms about Operation Neath on 3 August 2009. The timing of this limited briefing excludes the possibility of it being related to the information held by *The Australian* on 30 July 2009.

## *ISSUE B: THE HANDLING OF THE SECURITY BREACH*

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23. My investigation also sought to establish whether the AFP's subsequent handling of the security breach, namely the AFP's formal disclosure of national security and other sensitive information in briefings to *The Australian*, was made to obtain the benefit of favourable media coverage for any members of the AFP, such that it could constitute corrupt conduct.
24. At coercive hearings, and in interviews, I examined the circumstances in which the AFP decided to provide the briefing to the newspaper. Those hearings and interviews, as well as my examination of emails and other records, has established to my satisfaction the following facts.
- (a) On the evening of 30 July 2009, the journalist advised the AFP that any security concerns about the proposed article (which was then under consideration for publication in the following day's newspaper) should be raised with the Editor. Accordingly, Mr Negus rang the Editor.
  - (b) The paramount concern of various AFP witnesses, including Mr Negus, in dealing with the newspaper was to prevent the possibility of a domestic terror attack which, in their view, might be precipitated by premature publication of the details which the journalist knew about Operation Neath.
  - (c) The AFP's concern was not based on mere speculation, but had a solid foundation in the intelligence gathered as part of Operation Neath.
  - (d) After being informed by Mr Negus of the seriousness of the situation, the Editor of the newspaper agreed to hold over publication of the Operation Neath information.
  - (e) The AFP leadership perceived that they needed to do more to protect Operation Neath from further compromise. Accordingly, the AFP offered a briefing to the journalist, based on what information was anticipated would be made publicly available soon after the arrest of suspects, and commenced discussions about an agreed publication date that would minimise the various risks associated with Operation Neath.

## *The decision to provide the briefing*

25. In my view, by offering to provide additional information over a number of days to *The Australian*, the AFP sought to gain and exert continuing control over the threat (as the AFP perceived the risk of compromise).

## THE INVESTIGATION

26. My investigation considered also how the AFP handled a more general and non-specific enquiry from another newspaper, which came at about 6.30 pm on the evening before the scheduled searches and arrests. In that instance, due to the timing of the enquiry (which lowered the risk of compromise), the AFP decided not to provide any information to that newspaper.
27. This second incident lends weight to the evidence of AFP officers, namely that they applied appropriate risk management techniques to the media enquiries concerning Operation Neath.
28. I note too that the AFP and partner agencies also employed other risk management strategies, including bringing forward the date of the searches to lessen the risk of compromise or public harm.

### *The extent of the briefing*

29. Before adopting a strategy of providing a briefing to *The Australian*, the AFP was faced with deciding how much additional information would be provided to the newspaper. I am aware of concerns, expressed later by members of one of the partner agencies, that the level of information provided to *The Australian* was excessive and more than was necessary in the circumstances.
30. The briefing given to the newspaper was extensive. In addition, at the point the briefing was provided, some of the information was still operationally sensitive and may have attracted protection under Commonwealth legislation.
31. AFP witnesses stated in evidence that they believed they needed to engage genuinely with the newspaper to continue to mitigate the perceived risk of premature publication. They were aware also of the need to protect certain information and to take care not to prejudice the fair trial of any persons who may be charged with criminal offences.
32. Accordingly, officers of senior rank briefed the journalist, based on the information that would be tendered to court if arrests were made, and agreement was reached that the draft text of the resulting articles would be vetted by the Operation Neath partner agencies, which occurred. In the final event, *The Australian* withheld some information from publication at the AFP's request.
33. It is arguable that a less extensive briefing would just as well have met the AFP's goal of controlling the security breach. However, I note the account of the key AFP witnesses, namely that, in their judgement, the action taken was warranted by the circumstances they faced.

# THE INVESTIGATION

## *Timing of the distribution of the newspaper*

34. As previously mentioned, the journalist's articles were published on the morning of the searches and arrests. Agreement had been reached that only the final edition of the newspaper would carry the story, and *The Australian* had also committed not to publish the articles on-line until later in the morning (after which, it was assumed, any risk to safety would have passed).
35. On the day, some copies of the final edition of the newspaper were available in Melbourne from about 2.00 am, introducing the possibility that the information could become known to the subjects of Operation Neath before the searches were to commence. This situation led to criticism of the AFP for not delaying the publication of the articles until the day after the searches had concluded and the arrests had been made.
36. My enquiries have satisfied me that there was no ill intent in the agreement which the AFP made with *The Australian* about the timing of the publication of the newspaper. The documentary evidence shows that a misunderstanding meant that the AFP was not aware that distribution of the newspaper could occur earlier than had been discussed in the planning stages, which was the foundation of agreements about the day the articles would be published.

## CONCLUSIONS AND FINDING

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37. In respect of the issues investigated, I find that no member of the AFP engaged in corrupt conduct. Neither do I consider that there is evidence of a criminal offence arising out of the AFP's handling of the security breach.
38. I note that Federal agencies with national security responsibilities, including the AFP, are presently reviewing the Operation Neath security breach to ensure that the framework for responding to such incidents remains appropriate. In this context, I have asked the AFP Commissioner to consider scenario planning to strengthen guidance about managing any future compromise to a sensitive investigation.

## RECOMMENDATIONS

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39. I make no recommendations in relation to this investigation.



**Philip Moss**  
Integrity Commissioner

10 November 2010

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