

Customs and Border Protection Service  
SES Planning Days

## **Managing Integrity in a Law Enforcement Environment**

Address by the Integrity Commissioner  
24 March 2010

Rydges Capital Hill  
11.30 am

### **CHECK AGAINST DELIVERY**

#### **Introduction**

Thank you, Michael [Carmody] for such a warm introduction. I have had the pleasure of working with Michael down the years in various roles.

Leadership is always a key issue for the Australian Public Service – it is central to our ability to deliver good policy and effective programs for the government, for the benefit of the nation.

For that reason, it is a pleasure to be with you this morning as we develop our thinking together about emerging issues, and even develop novel solutions to old problems.

Michael has kindly asked me to share some thoughts today about managing integrity in law enforcement. I am very glad to do so, particularly in the context of a recent Parliamentary Joint Committee report.

I am referring of course to the recommendation made recently by the Parliamentary Joint Committee on ACLEI that the Customs and Border Protection Service be added to my jurisdiction. I will return to that topic later on.

I intend to leave a good amount of time after my talk for questions and discussion. I am keen to hear what things look like from your perspective.

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## About ACLEI

For those of you not familiar with the work of my agency, let me give you a snapshot of ACLEI.

Formed just over three years ago, ACLEI is a small, specialised agency that is designed to collect information and deal with allegations about possible corrupt conduct, and then decide whether investigations should be commenced. If I decide an investigation is necessary, ACLEI may investigate, or I may refer the issue for internal investigation or criminal investigation.

[ACLEI is not a complaint-handling agency. Accordingly, its main focus is to find the truth of a matter, rather than to achieve resolution for a complainant.]

Presently, the Australian Crime Commission and the Australian Federal Police are the two agencies subject to this integrity regime.

Among the policy rationales for ACLEI is that Government recognises that the ACC and AFP, as a consequence of their law enforcement roles, may be at high risk of infiltration and compromise, for example by organised crime groups. A second reason is that these agencies are so central to public confidence in law enforcement, that their compromise would have a significant and lasting effect on their ability to operate effectively.

The legislation I work under, the Law Enforcement Integrity Commissioner Act requires me to focus on serious and systemic corruption. As a result, I confine my investigations to those cases that would most benefit from independent scrutiny, or to which the use of my inquisitorial hearing powers may be more suited than a traditional investigation approach.

My sources of information are varied. I may receive information from whistle-blowers and members of the public, including persons in detention, among others.

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A key source of information is the ACC and AFP themselves. Under the Act, each agency head must notify me about any information or allegations that they receive that raises a corruption issue within their agencies. This mandatory arrangement brings me into an 'integrity partnership' with the ACC and the AFP. We share a common purpose.

Under the Act, I report to the Minister for Home Affairs, who you may note is also the minister for the ACC and AFP. It is he who should know about the integrity of the agencies in his portfolio.

My personal approach as Integrity Commissioner is to protect the reputations of individuals from unfair harm, as well as the reputations of the agencies. For me, this approach goes beyond the mere affording of procedural fairness.

In all of this, my fundamental aim is to maintain and improve the integrity of the agencies I oversee.

## **Managing Integrity**

I turn now to the topic of managing integrity.

Integrity is a broad topic and I intend to talk to you about it in terms of ACLEI.

The main purpose of ACLEI is to guard against compromise, particularly that which is linked to serious crime or organised crime. In this context, an ACLEI investigation could relate to anyone in an agency – the IT officer may be as much use for a corrupt or criminal purpose as a person with law enforcement powers.

A second purpose is to ensure that the senior leadership of an agency is seen to maintain the highest standards of integrity; and that there is in place a mechanism to give that assurance when necessary. Leadership is important to meet the challenges of managing an organisation, including corruption challenges, for example those that accompany Budget austerity measures.

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Accordingly, ACLEI's other focus can be to assure the integrity of an agency's senior leadership, because it sets the ethical tone by which more junior staff will measure themselves. This ethical tone is the background against which staff and managers alike will assess the agency's preparedness to resist internal corruption.

When I say corruption, I must tell you that I have very little interest in garden-variety fraud, bullying, misuse of resources, or conflicts of interest. I do not believe the Parliament has provided the Integrity Commissioner with extensive law enforcement powers in order for me to do what an employer should do for itself, or to replicate what the Australian Federal Police can already do.

My powers include the ability for me to summons witnesses, who must appear, must answer questions and must answer truthfully under threat of incarceration for non-compliance. It is a significant power, and not given or used lightly. Used in combination with our law enforcement powers – controlled operations, technical surveillance, and others – ACLEI has an appropriate and unique framework to deal with the hidden nature of corrupt conduct. In many instances, ACLEI undertakes its work jointly with the agencies it oversees.

### **Corruption risk**

Those of you with a sense of history might properly regard corruption challenges as 'old problems', and you would be correct. Bribery, favouritism, stand-over schemes, 'green-lighting' and tip-offs have been the standard fare that have captured the interest of corruption fighters for a long time.

It is clear, however, that these problems are not old, in the sense that they no longer occur. The risk of corruption in law enforcement continues to exist.

When any official role involves a discretionary power, there is the potential for corruption to arise. However, it is generally recognised that there is a particular risk that corruption may arise in law enforcement environments, unless appropriate counter-measures are in place to meet the risk. There are a number of reasons for this view.

First, because the duties of law enforcement officers bring them directly into the path of opportunity, there may be a temptation to use their



discretionary power to gain a benefit. Law enforcement work necessarily includes engaging in legitimate activities that carry a high corruption risk, often with limited opportunity for supervision, including:

- dealing direct with criminals (including in covert operations or through criminal informants);
- seizing and handling property, firearms and illicit drugs;
- having a high degree of control over an investigation or interdiction, including charging and arresting individuals; and
- having access to law enforcement information data sources.

Secondly, law enforcement agencies and their staff are at risk of being compromised by criminals. Specific temptations may be offered to individual law enforcement officers or other staff to recruit them to a criminal cause. These attempts may occur opportunistically or in a planned and targeted way, and may also involve infiltration of the agency. Equally, a staff member who wished to act maliciously or opportunistically, may find a ready market for restricted information.

Thirdly, if these inherent risks were left uncontrolled or unmitigated, a number of other factors could combine to magnify the threat that corruption could manifest. For instance, the strong bonds that exist among staff in law enforcement agencies may result in sub-cultures of misplaced loyalty and accompanying loss of objectivity, which in turn may lead to a reluctance to report misconduct or, in some cases, to a propensity to cover-up wrongdoing.

Finally, as corruption control expert Professor Malcolm Sparrow characterises the problem, corruption not only seeks to remain invisible and undetected, but also involves combating 'a conscious opponent'. While these characteristics present a challenge to corruption control generally, in the case of law enforcement corruption the opponents are likely to be well-versed in law enforcement detection and investigation methods, and skilled at countering them.

For these reasons, law enforcement agencies have an inherently high exposure to corruption risk. The specific risk will vary within each agency, according to the specific activities being undertaken, and the counter-measures deployed to mitigate each risk or vulnerability.

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Accordingly, I have come to use the term 'corruption risk' to convey a number of ideas.

On the one hand, in the Australian Public Service there is no perception that there is an existing significant problem with corruption. I note that, in the Second Reading Speech that introduced the LEIC Bill, the then Attorney-General said

*"...The focus on the AFP and the ACC does not reflect a perception that these bodies currently have a significant problem with corruption. However, these agencies play a key role in Australian Government law enforcement. The Government considers that putting in place a regime of rigorous external examination now will ensure that the public can have continuing confidence in their integrity."*

I agree with that proposition, and all the evidence I have seen in relation to the ACC and AFP supports my view. I know of no information that would lead me to believe that Customs is in any different situation.

On the other hand, we should not be naïve about the prospect that serious corruption may occur. The Commonwealth has access to enormous resources, both in the monetary sense and in terms of the information it holds, including information about law enforcement methods, targets and operations. Public servants who work in a regulatory setting are frequently also in decision-making roles, and the possibility always exists of a ready market and lucrative illicit gains for those with a saleable product.

The point I am making about corruption risk is that, in such an environment, some situations carry a higher inherent risk than others.

For instance, those roles that are less amenable to supervision – remote locations or covert work are the classics – they have a higher inherent corruption risk.

Then there is the issue of attractiveness – what some commentators call 'the invitational edge of corruption'. The closer an agency is to the role of combating serious and organised crime, the higher is its inherent risk.

The third issue is 'displaced' risk. The paradox of building up the ACC's and AFP's resistance to corruption, is that the risk increases that



criminals will retarget their activities from those two agencies to their partner agencies.

### **Matching measures to risks**

I believe in not over-doing things, and adhere to the principle of matching measures to risks: no more intervention need be applied than is reasonably required to address a problem.

Of course, serious problems may arise if the risk is under-estimated, and the value of the strategy to mitigate the risk is over-stated.

However, my experience is that small measures can make a difference, and that measures to combat corruption do not need to be expensive, and may even be free. For instance, I have been working with the CEO of the ACC to introduce a 'loss of confidence' power, whereby he would be more easily able to dismiss individuals for reasons of serious misconduct, including corrupt conduct. This measure was recommended by the Wood Royal Commission into the New South Wales Police Service, and has been part of the AFP integrity framework for the past decade.

ACLEI is also working with the AFP to redesign its compulsory drug testing regime: realigning it to address the areas of most risk, and to remove its present predictability. That is a cost neutral exercise.

Another example is that, in 2009, I worked jointly with the ACC and AFP to review their integrity frameworks. The exercise provided an opportunity to examine old approaches and, together, to consider some new solutions. There is now some innovative work going on in those agencies which targets previously invisible problems, such as those associated with sub-cultures and misplaced loyalties.

As this is a leaders' group, let me say that a lot of the work we do is with agency leadership groups to have them see themselves as the front-line of corruption control. We help them develop the awareness and the up-to-date information that they most need to be effective in that role. Over time, leaders in both agencies have come to know that we are attuned to their challenges and aspirations.

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