



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*

**FREEDOM OF INFORMATION ACT
1982 (Cth) (FOI ACT)**

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FOR LAW ENFORCEMENT INTEGRITY

REPORT 01/2010

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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.

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ABOUT ACLEI REPORTS

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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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Australian Government

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INVESTIGATION REPORT

**An investigation into allegations
about the Australian Crime Commission
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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.

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.

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



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INVESTIGATION REPORT

**An investigation into allegations
about the Australian Crime Commission
relating to compliance with a Direction
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**An investigation into allegations
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BACKGROUND

1. This investigation was occasioned by a letter dated 13 September 2007 to the Australian Commission for Law Enforcement Integrity (ACLEI) from a solicitor (the informant) making a "formal complaint"¹ on behalf of a client. The informant was concerned that a Direction made by an Australian Crime Commission (ACC) Examiner under section 25A(9) of the *Australian Crime Commission Act 2002* (the ACC Act) had been breached by an officer or officers of the ACC.
2. The informant advised that in July 2007 he had raised his concerns with the ACC (addressed to the Examiner), and in the absence of any response had subsequently written to the then Minister for Justice and Customs, but had received no response from the Minister. (In fact, at the time the informant wrote to me, the ACC had commenced an internal investigation of his concerns.)
3. In his letter, the informant does not specifically allege corrupt conduct on the part of the ACC or its officers. Notwithstanding that situation, because of the nature of his allegations and the context in which they were made, I decided that the issues raised should be investigated in accordance with section 26 of the *Law Enforcement Integrity Commissioner Act 2006*.
4. The Direction made by the Examiner prohibited the publication of certain evidence adduced during examinations² into the affairs of the informant's client. These examinations were conducted as part of an ongoing investigation run jointly by the ACC and the Commissioner of Taxation.
5. The subject matter of the examinations was related to issues also before the Federal Court of Australia in which the ACC was resisting claims made on behalf of the informant's client that certain documents should be subject to legal professional privilege. The documents in question had been obtained by the ACC pursuant to a notice issued under section 29 of the ACC Act.
6. The original Direction, which was made by the Examiner on 11 September 2007, stated that:

"The evidence given thus far and any further evidence given by --- [the informant's client] ---, the contents of the documents and the description of any things produced to the Commission during this examination shall not be published in particular to the Counsel for the Australian Crime Commission's legal team in the matters --- [being the matters before the Federal Court] ---".

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.

² An examination is a coercive hearing which is presided over by an ACC Examiner and held under Division 2 of the ACC Act.

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1982 (Cth) (FOI ACT)**

7. It appears that the purpose of the Examiner's Direction was to give an assurance to the informant's client (who was being examined) that the ACC would take appropriate measures to prevent any contempt of court from coming into real prospect, given that similar subject matter was being heard both by the Federal Court and the Examiner.
8. The concerns raised by the informant, both initially and during the course of the investigation, are that the Direction of 11 September 2007, and subsequent Directions made by the Examiner, had not been complied with, in that:
 - (a) an officer or officers, who were not authorised by the Examiner to attend examinations at which his client had been examined, had access to those proceedings;
 - (b) an officer or officers, who provided material for use in the Federal Court proceedings, had access to the evidence given at those examinations; and
 - (c) an officer who had access to that evidence, and who had sworn affidavits for use in the Federal Court proceedings, was a member of the ACC's legal team for those proceedings.

CORRUPTION ISSUE

9. The informant's specific concerns reflect his view that the purpose of the Direction was to ensure that information from the examination of his client was not to be made available to any person associated with the ACC side of the Federal Court proceedings.
10. Having regard to the jurisdiction of the Integrity Commissioner, namely to investigate corruption issues, my investigation needed to address whether corrupt conduct may have played a part if there had been a breach of the Direction.
11. In my view, the most efficient way of resolving this question was to address directly the issues raised by the informant.

FINDING

12. As a result of the investigation into the issues raised by the informant, I find that officers of the ACC did not engage in corrupt conduct in relation to those issues.

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CONSIDERATION OF THE ISSUES

ISSUE (a) – that an officer or officers, who were not authorised by the Examiner to attend examinations at which his client had been examined, had access to those proceedings

13. The informant's concern that an unauthorised officer had attended the examinations was based on circumstantial evidence which suggested to the informant that the officer was not authorised and had attended. In fact, the officer concerned was authorised by the Examiner to attend the examinations, but had not done so.
14. The investigation has established that the officer in question was interstate at the time of the relevant examinations and was fully engaged on matters other than the examination.

ISSUE (b) – that an officer or officers, who provided material for use in the Federal Court proceedings, had access to the evidence given at those examinations

15. The informant and the ACC have very different views as to the intent and effect of the Direction.
16. As previously identified, the informant contends that the Direction was designed to ensure that information from the examination process was not available to any person associated with the ACC's side of the Federal Court proceedings.
17. The ACC, on the other hand, viewed the Direction as prohibiting only the provision of evidence arising from the examination process to a more confined group, namely the Counsel for the ACC and any member of the ACC's legal team involved with the Federal Court proceedings.
18. For the record, I set out below my views on this issue:
 - (a) The problem lies in the use of the words "in particular" in the Direction. Without those words, the prohibition would be clear and would be as the ACC contends.
 - (b) In the course of the ACC's initial investigation of the informant's "complaint", an officer of the ACC enquired of the Examiner as to his intention at the time of issuing the Direction. The Examiner advised that he "never intended to exclude any other ACC staff member except legal officers associated with the litigation". Notwithstanding his advice, the question remains as to whether what he intended is what was achieved.
 - (c) I am satisfied however that the Direction cannot be taken literally to prohibit publication of evidence, documents and things altogether, or even to prohibit publication to officers of the ACC other than members of the legal team involved in the Federal Court proceedings. To interpret it as imposing such a blanket prohibition would make a nonsense of the

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examination, the object of which is to establish evidence which can be used in the investigation to which the examination relates.

- (d) A Direction which prohibited the communication of such material to the legal team involved with the Federal Court proceedings does however seem both sensible and appropriate. The effect of such a Direction would be to prohibit officers who were not members of that legal team from disclosing that material to those members.
 - (e) That interpretation of the Direction of 11 September 2007 is also consistent with the two variations made by the Examiner during his further examination of the informant's client:
 - (i) on 14 September 2007, the Examiner exempted from the Direction of 11 September 2007 "the CEO, Examiners and members of staff of the Commission, also any prosecuting authority for use in any matter, including a prosecution for which they are responsible, arising from this investigation"; and
 - (ii) on 13 December 2007, when the examination concluded, that exemption was repeated in a further Direction.
19. However, in the context of an investigation into corrupt conduct, the dispute I have outlined is a semantic one.
20. More salient is that my investigation found no evidence that:
- (a) supports the contention that material used in the Federal Court proceedings relied on a prohibited disclosure from the examinations; or
 - (b) suggests that any disclosure was made to the legal team involved with the Federal Court proceedings.
21. Accordingly, the allegation fails for want of evidence.

ISSUE (c) – that an officer who had access to that evidence, and who had sworn affidavits for use in the Federal Court proceedings, was a member of the ACC's legal team for those proceedings

22. The informant is also concerned that the Direction was breached because it appeared that an officer involved in the examination process, whom he identified as a person who had sworn affidavits for use in the Federal Court matter, was a member of the ACC's legal team.
23. During the course of ACLEI's investigation, the informant alerted ACLEI to an amendment to the Examiner's Direction, in which a footnote listed the members of the legal team for the first time. The informant argues that the sudden appearance of the footnote supports his contention that the officer he identified was once a member of that team.

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24. While I understand the informant's concern about the abrupt and unexplained appearance of the footnote, I am satisfied that it simply reflected what was and always had been the ACC's view about the membership of its legal team in the Federal Court proceedings. As an aid to compliance with the Direction, the inclusion of the footnote is better viewed as a good governance measure.
25. The officer identified by the informant is employed by the ACC as an investigator who was, and is, closely involved in the investigation. Contrary to the informant's conjecture, that officer was not regarded by the ACC (or apparently by the Examiner) as being a member of any legal team. In fact, he is not legally qualified.
26. My investigation found no evidence that the officer made use of, or even needed to made use of, any information derived from the examination process in his sworn affidavits.

OBSERVATIONS

27. The quarantining, from criminal proceedings, of self-incriminatory information gathered through coercive questioning is a fundamental doctrine of Australian law. The prospect that an agency with coercive examination powers might act intentionally to circumvent that doctrine is anathema.
28. Having explored this issue thoroughly during the course of my investigation, I am satisfied that the ACC was conscious of the need to sequester the evidence obtained through the examination process from those matters being dealt with by the Federal Court, and took steps to do so.

RECOMMENDATIONS

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



Philip Moss
Integrity Commissioner

30 April 2010

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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

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.

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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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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**

REPORT 03/2010

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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.

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.

THE INVESTIGATION

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.