

THE INVESTIGATION

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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.

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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.

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.

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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.



Philip Moss
Integrity Commissioner

7 May 2010



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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*

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ABOUT ACLEI REPORTS

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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

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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INVESTIGATION REPORT

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

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INTRODUCTION

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

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.

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THE CORRUPTION ISSUES

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

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.

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INVESTIGATION AND CONSIDERATION OF THE ISSUES

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

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*.

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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

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).

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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.

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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

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

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



Philip Moss
Integrity Commissioner

10 November 2010

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INVESTIGATION REPORT

***An investigation into the actions of an Australian
Federal Police (Australian Capital Territory Policing)
appointee concerning the handling of controlled
substances, and other integrity issues***

A report to the Minister for Home Affairs and Justice
and to the Australian Capital Territory Minister for Police and Emergency Services,
issued under section 55 of the *Law Enforcement Integrity Commissioner Act 2006*
and regulation 24 of the *Law Enforcement Integrity Commissioner Regulations 2006*

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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 corrupt conduct in the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police 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

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

INVESTIGATION POWERS

When conducting an investigation, the Integrity Commissioner can:

- issue a summons or notice, requiring law enforcement personnel and other people to provide information and documents;
- obtain and execute a search warrant; and
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance.

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.

STANDARD OF PROOF

The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.

Before making a finding, the Integrity Commissioner requires comfortable satisfaction, based on real evidence, that conduct occurred which fell within the meaning of the LEIC Act. This approach applies the reasoning of the High Court of Australia in *Briginshaw v Briginshaw* [1938] HCA 34 (per Dixon and Rich JJ) and *Neat Holdings P/L v Karajan Holdings P/L* [1992] HCA 66.

GRADES OF CORRUPTION

The relevant provisions of the LEIC Act are based on the Integrity Commissioner's finding on a single question—did a person engage in corrupt conduct? While all corrupt conduct is wrong and should be eliminated, some instances are less grave than others in terms of, for example, motives, pre-meditation and planning, concealment and deceptive conduct, corrupt collaboration, the effects on public confidence in the law enforcement agency, the effect on other agency staff, and the steps required to rectify the problem.

The Integrity Commissioner may reflect on this question of relative gravity in a report.

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.

When an investigation relates to a person seconded from another Government agency, a copy of 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 the corruption issue relates to the provision of police services to the Australian Capital Territory, the *Law Enforcement Integrity Commissioner Regulations 2006* require (per regulation 24(2)-(4)) that a copy of the report must also be provided to the ACT Government Minister responsible for police matters.

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.

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

**An investigation into the actions of an Australian Federal
Police (Australian Capital Territory Policing) appointee
concerning the handling of controlled substances,
and other integrity issues**

REPORT 01/2011

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EXECUTIVE SUMMARY

This investigation primarily concerns suggestions that an ACT Policing constable, an appointee of the Australian Federal Police (AFP), had improperly disposed of illicit drugs (tablets which he had received in the course of his duties in October 2007), apparently by flushing them down a police station toilet. The information raised the possibility that the constable had not disposed of the tablets, but had kept them for his own use, or to sell or give them to another person.

Giving evidence to a hearing convened by the Integrity Commissioner, the constable admitted to disposing of the tablets in an unapproved way. The investigation established that no other AFP employee witnessed the claimed disposal of the drugs, but discovered no evidence that the constable had kept the tablets.

The constable made other admissions, relating to retaining property improperly, misusing police vehicles and accepting gratuities from licensed premises.

The AFP dismissed the constable, taking into account evidence which the Integrity Commissioner provided to the AFP Commissioner during the course of this investigation.

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THE CORRUPTION ISSUES

1. This investigation report concerns information which suggested corrupt conduct involving a sworn Australian Federal Police (AFP) appointee, then a serving constable in Australian Capital Territory Policing (ACT Policing).
2. The information suggested that the constable had improperly disposed of illicit drugs, which were tablets he had received in the course of his duties, apparently by flushing them down a police station toilet. AFP guidelines establish enforceable requirements for the proper disposal of possible prohibited or controlled substances.
3. In November 2007, the then AFP Commissioner notified this information to the Integrity Commissioner under section 19 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).
4. A number of other integrity issues which arose during my investigation are also discussed in this report.

JURISDICTION

5. The information raised the possibility that the constable had not disposed of the tablets, but had kept them for his own use, or to sell or give them to another person. This possibility raised a corruption issue within the meaning of section 7 of the LEIC Act.
6. Section 26(1)(a) of the LEIC Act provides that the Integrity Commissioner may deal with a corruption issue which relates to a law enforcement agency, including the AFP, by investigating that issue. Section 26(2) of the LEIC Act provides that the Integrity Commissioner may investigate the corruption issue either alone or jointly with another government agency.
7. For the purposes of investigating this corruption issue, I decided that it would be beneficial to hold hearings, in private, under the LEIC Act. I also decided that the AFP should be part of the investigation, to assist with gathering information and managing the human resource aspects. Accordingly, ACLEI conducted this investigation jointly with AFP Professional Standards.

INVESTIGATION

8. ACLEI analysed financial information, call charge records, e-mails and AFP drug handling statistics. ACLEI also considered the results of drug tests relating to the constable (which returned negative results), that had been conducted by the AFP as part of its ongoing drug-testing program.
9. AFP Professional Standards conducted two recorded interviews as part of the investigation.

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10. ACLEI conducted one recorded interview and I summonsed four witnesses, including the constable, to attend separate hearings, held in private.
11. No new evidence arose from considering information from the financial institutions, the examination of the constable's AFP e-mail usage or the AFP-conducted drug tests. Telephone records showed contact around the relevant time with two people, one known, and one suspected, to be involved in unlawful drug use. It also showed regular private contact with some licensed premises.
12. The interview and hearings with other AFP appointees established that no other AFP employee witnessed the claimed disposal of the drugs.

CONSIDERATION OF THE ISSUES

ADHERENCE TO DRUG HANDLING PROCEDURES

13. At a hearing, the constable stated that while he was on duty, a security guard at licensed premises gave him a bag of tablets, thought to be ecstasy, that had been found on the floor. The constable stated that he did not make a notebook entry when he took possession of the tablets.
14. The constable admitted to disposing of the tablets in an unapproved way, claiming that he had flushed them down a police station toilet. The constable also stated that he knew at the time that his actions were wrong and described the AFP's procedures, based on the AFP National Guideline: ACT Policing Property, Exhibit and Drug Handling, which he should have followed. There was no witness to the claimed disposal of the tablets, which was said to have occurred in a police station.
15. The constable admitted also that he had failed to report a declarable association with a known drug-user (his girlfriend at the time of the event under investigation), although he knew of the requirement on him to do so.
16. The investigation revealed no evidence that the constable had kept the tablets. In explaining his actions in disposing of the tablets in a manner contrary to the guidelines, the constable stated that:

"...On a busy night like that, there may only be three members on [duty]... but to receive drugs it generally takes a car ... off the road for a period of maybe one to two hours while we exhibit them, lodge them out at – with the Winchester Centre. ...At the time, getting rid of them ourselves by myself flushing them down the toilet and keeping a car on the road ... was the reason I did that."

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17. Other witnesses shared a perception that the ACT Policing Property, Exhibit and Drug Handling guidelines can be onerous, in the ways described by the constable. However, this investigation found no indication that other officers have avoided proper procedures in relation to drug or property handling.
18. The guidelines have regard to legal responsibilities and accountability objectives. Adherence to these procedures is vital, not only to protect evidence for use in court proceedings, but also to protect police officers from the type of inference which was the subject of this investigation.
19. The perception that the guidelines are onerous may indicate that officers are not sufficiently conscious of the guidelines' purpose and of their obligations under drug control laws, or that they feel a competing obligation to stay on patrol.
20. Such a situation poses a corruption risk whereby the use of 'work-arounds' and avoidance of proper procedure may become accepted and not routinely reported. This situation opens the possibility that seized drugs could be used, sold or given away unlawfully by police officers, without the prospect of detection.
21. I note that the ACT Chief Police Officer, of his own initiative, is presently trialling revised arrangements for the lodgement of confiscated drugs.

OTHER INTEGRITY ISSUES

22. The constable made other admissions, namely that he had:
 - (a) retained for himself some property (of minor value) that he had found while on duty, despite that he knew of his obligation to register and deposit the property;
 - (b) made use of police vehicles to provide lifts to friends when he was on duty and had himself used such lifts when off-duty (the so-called 'blue-light taxi'); and
 - (c) accepted free drinks and preferential treatment while off-duty from the management of licensed premises which were part of his patrol.
23. The risks to ACT Policing from actions such as those admitted by the constable are various.
24. When the constable took for himself the property he had found, he profited by keeping it. The property should have been properly processed so it could have been returned to its rightful owner (if one could be identified) or handled in accordance with AFP requirements. The unlawful retention of property by the constable may give rise to a criminal offence.

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25. The use of AFP vehicles for private purposes, such as providing lifts to off-duty employees, involves a financial cost to the public. It also means that the vehicles taken offline are unavailable during that time for legitimate ACT Policing requirements. Such conduct may also amount to a criminal offence.
26. Receiving free drinks from licensed premises or accepting other benefits, such as priority in queues, creates a number of risks for ACT Policing appointees. It may lead to a perception among the public that the business in question is favoured by police and will not receive the scrutiny it should. It may lead to requests for favours—indeed, the constable reportedly received a request (which he refused, but did not report at the time) from a manager of licensed premises for him to access an AFP database—and difficulty in refusing those requests.

OPINION

27. If the lapses of integrity identified in this report were widespread, they could contribute to inappropriate risk-taking behaviour and undermine the AFP's substantial investment in measures to prevent corrupt conduct.
28. In the present case, more than one officer came forward to report aspects of the constable's conduct through official channels. Accordingly, I consider that this investigation does not reveal a wider integrity problem in ACT Policing.
29. It is relevant to note that the events which were the subject of my investigation took place in 2007 and 2008. As an assurance measure, ACLEI and ACT Policing have arranged to undertake a strategic assessment of corruption risk in the community policing context.

ACTIONS UNDER PART 10 OF THE LEIC ACT

BREACH OF DUTY

30. Part 10 of the LEIC Act outlines what the Integrity Commissioner may do with evidence and information obtained during an investigation. Section 146 requires the Integrity Commissioner to bring to an agency head's notice evidence of a breach of duty or misconduct by a staff member. This requirement arises when the Integrity Commissioner is satisfied that the evidence may justify terminating the staff member's employment or initiating disciplinary proceedings against the staff member and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so.
31. In my view, the constable's actions involved breaches of discipline. It is not certain why the constable acted as he did. Nevertheless, he admitted that he knew his actions were wrong or that he could have found out what he should have done.

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32. Accordingly, during the course of my investigation, I disseminated evidence concerning the constable's actions to the AFP Commissioner, to allow him to take what action he considered appropriate. The AFP Commissioner has since informed me that, as a result of this evidence and other information gathered by the AFP, he has dismissed the constable.

EVIDENCE OF AN OFFENCE

33. In accordance with section 142 of the LEIC Act, I have provided to the AFP evidence of possible offences against the criminal law obtained during my investigation.

FINDING

34. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
35. Having regard to the constable's admissions and the conduct engaged in, I do not find that the constable engaged in corrupt conduct. Any evidence that he had retained the drugs may have led to a different conclusion.



Philip Moss
Integrity Commissioner

29 June 2011

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SUMMARY OF REPORT 02/2011

An investigation into the conduct of an Australian Federal Police (Australian Capital Territory Policing) appointee concerning his association with the manager of a prostitution enterprise

Regulation 20(e) of the *Law Enforcement Integrity Commissioner Regulations 2006* requires a summary of the outcomes of the investigations completed during the reporting period, together with any recommendations and any action taken as a result of the investigations, to be presented in the Integrity Commissioner's annual report.

Report 02/2011 was provided to the Minister for Home Affairs and Justice on 30 June 2011 and has not been made public. A summary of the report appears in chapter six of the Integrity Commissioner's 2010-11 annual report, available at www.aclei.gov.au, and is reproduced below.

The AFP requires its appointees to disclose certain associations which may cause a conflict of interest. The AFP has this requirement in order to manage any risk so created, for example, by adjusting duties or by requiring an appointee to remove himself or herself from a potential conflict.

The subject of this investigation (the appointee) was in a relationship with a person who was managing a brothel, but the appointee did not disclose that relationship to the AFP. While prostitution is lawful in the Australian Capital Territory, it can be associated with criminal activity. The risks to the AFP from his association should have been apparent to the appointee.

The Integrity Commissioner found that the appointee did not engage in corrupt conduct, rather the Integrity Commissioner observed that the appointee's decision not to disclose his association was unwise and ill-judged.

The Integrity Commissioner recommended that the AFP Commissioner consider strengthening the existing training in support of the National Guideline relating to integrity reporting and the Practical Guide on dealing with conflicts of interest. The aim would be to ensure that appointees understand that they are required to declare any personal connection with businesses and occupations, even if nominally lawful, which a reasonable person would associate with incidental criminal conduct or with a corruption risk.

The AFP Commissioner has agreed to the Integrity Commissioner's recommendation.

In addition, the Chief Police Officer of ACT Policing has decided to apply remedial sanctions to the appointee who was the subject of this investigation.