



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

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# INVESTIGATION REPORT

***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***

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*

REPORT 02/2011

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# ABOUT ACLEI REPORTS

## INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

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### *THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006*

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The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) established the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

### *THE ROLE OF THE INTEGRITY COMMISSIONER AND ACLEI*

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The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corrupt conduct in the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police (AFP) and the former National Crime Authority. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

### *CORRUPT CONDUCT*

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'Corrupt conduct' is where a staff member of a law enforcement agency:

- abuses his or her office;
- perverts the course of justice; or
- having regard to his or her duties and powers, otherwise engages in corruption.

The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption.

### *DEALING WITH CORRUPTION ISSUES*

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A corruption investigation, conducted by ACLEI, can commence in different ways.

- The Minister may refer to the Integrity Commissioner an allegation or information that raises a corruption issue.
- The head of a law enforcement agency within ACLEI's jurisdiction must notify the Integrity Commissioner of any allegation or information that raises a corruption issue which relates to that agency.
- Any person or government agency (eg the Commonwealth Ombudsman) can refer to the Integrity Commissioner an allegation or information that raises a corruption issue. A referral may be anonymous, or on behalf of another person. A person in custody can make a referral by a secure communication channel.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

## ABOUT ACLEI REPORTS

The Integrity Commissioner may decide that ACLEI will investigate a corruption issue, allow a law enforcement agency to conduct its own investigation, conduct a joint investigation with a law enforcement agency, or decide that an investigation is not warranted. The Integrity Commissioner can manage or oversee an investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the AFP, the Integrity Commissioner can refer the issue to the AFP for investigation and may manage or oversee that investigation.

An allegation concerning an employee of a State or Territory agency (the home agency), seconded to an Australian Government law enforcement agency, can be referred to the home agency or to the relevant State or Territory police force or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

### INVESTIGATION POWERS

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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

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The Integrity Commissioner may conduct a hearing for the purposes of a corruption investigation. A hearing, or part of a hearing, may be conducted in public or in private.

The word 'hearing' as used in the LEIC Act, has no significance other than to describe a process whereby the Integrity Commissioner may gather information and evidence, and exercise certain coercive powers, for the purposes of an investigation. The purpose of a hearing is not to decide an issue, but to progress an investigation by assisting the Integrity Commissioner to discover facts that may lead to further action being taken.

### STANDARD OF PROOF

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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.

# ABOUT ACLEI REPORTS

## GRADES OF CORRUPTION

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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

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Investigations conducted by the Integrity Commissioner culminate in a report made under section 54 of the LEIC Act. The Integrity Commissioner's report must be provided to the Minister and to the head of the relevant law enforcement agency.

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.

# THE INVESTIGATION



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# THE INVESTIGATION

## EXECUTIVE SUMMARY

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The Australian Federal Police (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 (Sergeant A) was in a relationship with a person who was managing a brothel, but Sergeant A did not disclose that relationship to the AFP.

While prostitution is lawful in the Australian Capital Territory, it is subject to regulation and it appears that the brothel may have been operating outside the regulatory framework. As well, prostitution can be associated with criminal activity (including an offence for which Sergeant A's partner and her business associate are now awaiting trial).

There is no evidence to suggest that Sergeant A took an active role in managing the brothel, received any financial benefit from it, exercised any official AFP power or function in relation to it or anyone associated with it, or had direct knowledge of any criminal or regulatory offence that may have been associated with the prostitution enterprise. Nevertheless, the risks to the AFP from his association should have been apparent to Sergeant A, an experienced police officer.

Sergeant A appears to have applied a narrow and literal interpretation of the AFP's requirements to report his associations and to have disregarded the purpose of those requirements. The Integrity Commissioner found that Sergeant A did not engage in corrupt conduct; rather Sergeant A's decision not to disclose his association with Ms B was unwise and ill-judged.

The Integrity Commissioner has 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. Specific training would aim 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 INVESTIGATION

## THE CORRUPTION ISSUES

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1. In June 2008, the Commissioner of the Australian Federal Police (AFP) notified me of a corruption issue, concerning an AFP appointee (Sergeant A) in Australian Capital Territory Policing (ACT Policing). The information suggested that Sergeant A may have been closely associated with an unlawful prostitution enterprise, namely a brothel operating from leased residential premises in Canberra under the management of the Sergeant's domestic partner, Ms B.
2. The AFP had become aware of Sergeant A's relationship with Ms B during an investigation into sexual servitude offences allegedly committed by Ms B and Mr C (who was a business associate of Ms B).

## JURISDICTION

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3. The information relating to Sergeant A raised a corruption issue within the meaning of section 7 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). The corruption issue in question was whether Sergeant A's relationship with Ms B may have led to an abuse of his office or corruption of any other kind.
4. In the circumstances, I formed the view that the use of my hearing powers under the LEIC Act would be needed to gain the confidence of witnesses and obtain the evidence required. Accordingly, I decided to investigate the corruption issue under section 26(1)(a) of the LEIC Act.
5. Section 26(2) of the LEIC Act provides that the Integrity Commissioner may investigate a corruption issue either alone or jointly with another government agency. Since the AFP was already investigating related offences about sexual servitude, I decided to conduct the investigation jointly with AFP Professional Standards (PRS).

## INVESTIGATION

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6. Methods used by the joint investigation included telecommunications interception, a listening device and physical surveillance. PRS provided me with relevant lawfully obtained information from these sources. In conjunction with these strategies, the Australian Commission for Law Enforcement Integrity (ACLEI) conducted interviews and made other enquiries. In addition, I issued notices to financial institutions to produce information and summonsed a number of witnesses to attend private hearings.

# THE INVESTIGATION

## CONSIDERATION OF THE ISSUES

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7. The investigation established that Sergeant A:
  - (a) was in a domestic or similar relationship with Ms B;
  - (b) was present on several occasions at the brothel which Ms B managed;
  - (c) was introduced to a number of the women who worked as prostitutes at the brothel;
  - (d) was present on some occasions when Ms B discussed by phone the services and prices that the prostitution enterprise offered to prospective clients (Ms B apparently had a mobile phone with her at all times to receive such calls); and
  - (e) stayed overnight on one occasion at the brothel with Ms B and left his AFP uniform hanging on a door and, while wearing his AFP uniform, was in a private motor vehicle with Ms B and one of the prostitutes from Ms B's brothel.
  
8. There is no evidence to suggest that Sergeant A:
  - (a) took an active role in managing the prostitution enterprise;
  - (b) handled any money earned by the prostitution enterprise or answered any of the calls made to Ms B's mobile phone;
  - (c) received any financial proceeds from the prostitution enterprise;
  - (d) obtained access to information from AFP sources about the prostitution enterprise and those associated with it;
  - (e) exercised any official AFP power or function in relation to the prostitution enterprise or anyone associated with it; or
  - (f) had direct knowledge of any criminal or regulatory offence that may have been associated with the prostitution enterprise.
  
9. There is some doubt about how early in their relationship Sergeant A became aware that his partner, Ms B, was involved in managing the prostitution enterprise and that a brothel was operating at the premises that he visited with Ms B. For the purposes of this report, it is sufficient to note that Sergeant A told the investigation that he reduced his presence at the brothel when he became aware of what was occurring there.

## THE INVESTIGATION

10. At no time did Sergeant A disclose to the AFP his association with Ms B, despite his obligation to do so under the AFP requirements in force at the time, namely the *AFP National Guideline on Reporting Obligations*. These requirements stated, at section 3.3 *Responsibilities*:

*The [contact incident reporting] scheme should also be utilised to report contact or association with criminals or persons of doubtful repute both on and off duty where there is the possibility that an AFP employee's integrity may become the subject of scrutiny. The circumstances are many and varied, however as a guide, extends to family members, friends and associates, secondary employers, neighbours, sporting clubs and social events.*

...

*... An employee must consider the circumstances of each incident and determine whether there is a reporting obligation under this Guideline.*

*It is incumbent on all AFP employees to remain vigilant to the security issues which surround the AFP. Contact incident reporting ensures information is able to be collated and disseminated to the appropriate area for action.*

*Contact incident reporting is also a means for members to safeguard their integrity when presented with situations which lend themselves to compromise or may be perceived as such.*

11. In addition to the National Guidelines framework, AFP appointees are required to uphold the professional standards of the AFP, which are established by the *Australian Federal Police Commissioner's Order on Professional Standards*, and issued as a binding direction to appointees under the *Australian Federal Police Act 1979*.
12. Sergeant A claimed that his reasons for not disclosing his relationship with Ms B were that:
- (a) prostitution is legal in the ACT; and
  - (b) he had 'self-managed' any risk by going to the premises only twice after he realised that a brothel was operating there.
13. Prostitution is lawful in the ACT, provided it is conducted in accordance with regulatory requirements under the *Prostitution Act 1992 (ACT)*. In this case, the evidence suggests that the brothel may have been operating outside of the regulatory frameworks.
14. Moreover, prostitution is an activity that can be associated with criminal enterprise. The sexual servitude charges which Ms B and Mr C are facing provide one example of these risks. Other examples may include unlawful migration, tax evasion, money laundering, drug trafficking and offences against minors.

## THE INVESTIGATION

15. In the present case, the corruption risks arising from Sergeant A's undeclared association with a brothel include:
  - (a) the (apparently unrealised) risk that Ms B could have used her personal association with a uniformed member of ACT Policing to infer to the prostitutes she managed (none of whom was fluent in English) that she enjoyed police protection;
  - (b) the risk (unrealised) that Sergeant A could be the subject of an extortion attempt and thereby corrupted; and
  - (c) the risk (which was realised) that a police investigation may take place into the prostitution enterprise, and that his association would bring his integrity into doubt.
16. Had Sergeant A declared his association with Ms B, the AFP would have been alerted to these risks. As a consequence, the AFP would have been in a position to manage the risks and to provide appropriate guidance or direction to Sergeant A.
17. In deciding to 'self-manage' the situation, Sergeant A appears to have applied a narrow and literal interpretation of the AFP's requirements to report his associations and to have disregarded the purpose of those requirements. The risks to the AFP's operations, and to his own reputation, should have been apparent to Sergeant A, an experienced police officer.

## FINDING

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18. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues that have been investigated.
19. I find that Sergeant A did not engage in corrupt conduct; rather his decision not to disclose his association with Ms B was unwise and ill-judged.

## ACTIONS UNDER PART 10 OF THE LEIC ACT

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20. Part 10 of the LEIC Act outlines what the Integrity Commissioner may do with evidence and information obtained during an investigation. Section 146 of the LEIC Act requires the Integrity Commissioner to bring to the notice of an agency head 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.

## THE INVESTIGATION

21. Accordingly, I have notified the AFP Commissioner of the information I have obtained in relation to Sergeant A's failure to report his association with a prostitution enterprise.

## OBSERVATIONS

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22. The requirement for staff members to disclose associations which may cause a real or perceived conflict of interest is a key integrity measure and corruption risk control for law enforcement agencies. Such a requirement enables agencies to manage the risk that may be created by such an association, for example, by adjusting a staff member's duties or by requiring a staff member to remove himself or herself from a potential conflict of interest. A failure to report "declarable associations", as they are called, may jeopardise investigations or the reputation and effectiveness of a law enforcement agency and is therefore not a minor matter.
23. When the integrity of law enforcement officers is in doubt, especially in the area of off-duty conduct, it is not uncommon to find that they have judged their own conduct on the basis of "*Is it lawful or allowable to do something?*" without taking the next step of asking "*Should I do it?*". Not to take this step leads to deficient outcomes, since it involves personal risk-taking that can erode professional standards. It also deprives the law enforcement agency of the opportunity to manage its risks effectively.
24. In 2010, the AFP updated its National Guidelines and Practical Guides relating to integrity reporting. Amongst other areas of concern, the review strengthened guidance relating to declarable associations. The revised policies are well constructed, and address the concept of risk, thereby causing appointees to reflect and ask the question, "*Should I do it?*".
25. Also in 2010, to assist all staff to consider the ethical dimensions of situations and respond appropriately, the AFP introduced an *Ethical Decision Making Model*, and commenced an associated awareness raising campaign. The Model provides a framework for AFP staff members to identify and take into account ethical matters when making choices and decisions in the course of their work.
26. The awareness raising campaign could be developed further to help staff members appreciate the integrity risk to themselves and AFP that is presented by declarable associations. The campaign should encourage AFP appointees to consider, as a matter of routine, the relationship between their private interests and their AFP role.

## THE INVESTIGATION

27. Given the circumstances of this investigation, the AFP should consider providing explicit training to its staff about avoiding certain types of recurring corruption risk. I note that, although a prostitution enterprise was the backdrop for this investigation, there are other industries and enterprises which may be lawful but which can sometimes be associated with criminal activity, and therefore with a risk of corruption.

### RECOMMENDATION

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28. I recommend 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. Specific training would aim 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.



**Philip Moss**  
Integrity Commissioner

30 June 2011

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