



Australian Government

**Australian Commission for
Law Enforcement Integrity**

“Matching measures to risks”

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CHECK AGAINST DELIVERY

Acknowledgements

Thanks for those words of introduction. I am glad to be in the presence of people who are so interested in integrity issues.

At the outset, I would like to acknowledge Barry Munns (CPN Chairman) and Paul Malone (Australian Taxation Office – ATO) and others who have organised this occasion. I understand that it is a joint initiative of the Corruption Prevention Network and the Australian Taxation Office to hold this inaugural Canberra meeting. I commend the Corruption Prevention Network and the ATO for taking this step. As you know, the Corruption Prevention Network has a long history of enabling information sharing about anti-corruption issues. Indeed, my view is that one of the key integrity measures is collaboration with like-minded agencies. Thank you for the opportunity to speak on this notable occasion.

The contours of corruption

Corruption is about power and authority and their misuse. In the context of government, the power and authority of public officials, is entrusted to us by the community although it is a transaction in

which citizens have little choice. Corruption runs contrary to that trust.

It's a simple idea, yet we should be careful not to classify every mistake, every misunderstanding, or even poor judgement, as corruption. It does matter *why* things go wrong. For instance, the betrayal of the community's trust may be worse if greed or misplaced loyalty were to be found at the base of a public official's improper dealings.

Corruption is not a new challenge. It is an enduring problem and well known even to the earliest civilisations. Paul (Malone), you would appreciate that many reported instances seem to involve tax collectors.

All of us would be excused for thinking that not much has changed down the centuries in relation to corruption. If there were an enduring message, it is that you must maintain a focus to counter corruption.

The Australian Commission for Law Enforcement Integrity, or ACLEI as it is known, is concerned with the problem of corruption in law enforcement. ACLEI is the only Australian Government agency which has as its sole purpose the control of corruption. Yet ACLEI's interest in understanding corruption takes us beyond the sphere of law enforcement corruption.

The contours of corruption, and their study, hold many clues for us about how corruption may be treated. I intend to share some thoughts as Integrity Commissioner that may assist you with your own work.

Treating corruption

Corruption is a problem that requires treatment to counter it, in order to reduce its incidence or impact. It appears to be the case that power or authority of any kind, and which is not regulated in some way, cannot remain free of corruption for long. I doubt also that there is any one measure that will defeat the tendency for corruption to manifest.

Others before me, such as Royal Commissioners Fitzgerald and Wood, made the same assessment. So it is required of us to keep thinking of improving the ways in which to counter corruption.

Criminalisation

Addressing corruption was in the minds of the Founders of Federation. At the Commonwealth level, the abuse of public office was addressed in one of the early Federal statutes, namely the *Secret Commissions Act 1905*. This legislation, which survived until it was subsumed in 2000 into the *Criminal Code*, sought to criminalise bribery and the giving or receiving of gifts or other benefits associated with fulfilling the duties of public office.

An interesting feature of the original Act is that it removed the right to silence (or privilege against self-incrimination) during investigations. The legislation that governs my role, the *Law Enforcement Integrity Commissioner Act 2006*, provides a similar provision that may be used in ACLEI investigations in the context of hearings. Therefore the recognition that special powers are needed to deal with corruption has deep roots in our Federal legal system.

However, the point I want to make is that Australia's first response to corruption was to criminalise its manifestations – among them: bribery of public officials, fraud, unauthorised disclosure of official information and secrets, and perverting the course of justice.

Fraud deserves a special mention here, as it is a significant part of most agencies' solution to addressing corruption risk. I must say that our present approach to fraud control may let us down when it comes to the crunch.

For instance, how do our present Fraud Control Plans help us face the challenges of those who:

- Look after their mates in job selection processes;
- Who engineer homogenous workplaces where misplaced allegiances may form and develop;
- Misuse their authority and access to information to allow criminals to conduct illegitimate business; or
- Who stand over and extort favours from those they are supposed to regulate fairly.

I note that the Commonwealth has not created the offence of corruption, and probably for some very good reasons. Corrupt conduct changes over time, and because it adapts to different circumstances, it is difficult to define. In any case, I wonder

whether criminalisation offers the complete solution to corruption that we often hope it may.

Values-based control

So, let's continue with our survey of corruption treatments.

An important measure is to promote a *values-based* culture. Put simply, the theory is that a person would be less inclined to steal, for example, from an organisation with which she or he has an alignment.

In the Commonwealth, we have the APS *Values* and the APS Code of Conduct, as part of the Australian Public Service Act. The *Values* serve a number of purposes: they both promote an ethical workplace by setting professional standards, but their transgression may also attract penalty. Those staff whose own values do not align with the Commonwealth's perhaps may be dissuaded from their course, provided they reckon the chance of being detected is high, and that they fear the penalty.

Now, I do not wish to reflect adversely on measures that are designed to lift ethical tone, and that have provided a vehicle to communicate expectations about standards of conduct. Values are crucial and, in my view, mandatory treatments. Rather, my message is that, as anti-corruption practitioners, we must think purposively, and about effectiveness. Like the criminalisation approach, we cannot rely just on the values approach to safeguard our agencies from those members of our staffs who would do us harm.

Those of you who are investigators probably know this already.

External investigators

Corruption is an invasive problem, and needs comprehensive solutions. You might expect me, as Integrity Commissioner, to suggest that what is needed is a large external agency to stamp out corruption on your behalf, as is the approach in a number of Australian States. But that is not my view. Let me explain.

The 'criminality', and the 'fraud control' and the 'values and ethics' approaches I have touched on, are detection and prevention measures to counter corruption. It is useful to see anti-corruption agencies as part of the suite of available measures.

I think that it is important to understand also that anti-corruption models need not all be the same, and that the models need not stay static (and probably should not stay static).

Take my agency for example. ACLEI was established to deal with corruption issues that may arise in two Commonwealth law enforcement agencies which, because of the work they are involved in, have a high inherent risk of corruption. I speak of the Australian Crime Commission and the Australian Federal Police.

Yet ACLEI was not established because of crisis or serious doubt about the integrity of the ACC or the AFP. Rather, ACLEI was created because of the recognition by Government that things could go wrong.

What do I mean? ACLEI was not regarded as a 'hostile takeover', and has not met with resistance from the ACC or AFP. Neither is there a competition, for want of a better word, for who is best at fighting corruption – each has its role to play. And neither has ACLEI been forced into a paternalistic oversight role, fighting corruption from a distance.

I draw a contrast here. I was there on day one when the office of the Inspector-General of Intelligence and Security commenced. The Hope Royal Commissions had twice previously inquired in Australia's intelligence and security agencies and had recommended an ongoing oversight agency.

Some of the intelligence agencies took some time to get used to that form of accountability, although we got there in the end. Ministers saw the value in having an agency that could provide them with external assurance. Productive relations have since prevailed.

This situation contrasts also to that faced by my State counterparts when they were established – the Independent Commission Against Corruption and the Police Integrity Commission in New South Wales; the Crime and Misconduct Commission in Queensland; the Corruption and Crime Commission in Western Australia; and the Office of Police Integrity in Victoria. All were established when there was loss of public confidence in the

integrity of law enforcement, and in some cases, other public sector agencies.

The ACLEI framework may have something to do with the acceptance of our role. For example, ACLEI largely investigates in private, and if needed, my investigation reports are provided only to the Minister and to the head of the agency that was the subject of my investigation. In these two ways, the ACLEI model is significantly different from our counterparts.

These unique origins are crucial to how ACLEI operates.

The ACLEI model

I'm not sure that, when ACLEI commenced in late 2006, anyone had much idea about what issues the agency would face. It is likely that the expectation was that there would be not much work at all, as the impression was that there was no corruption problem.

In just under two and a half years, ACLEI has been notified of, or had referred to it, over 100 corruption issues. Of these, just over 80 have been assessed. About 40% of those issues have warranted one form of investigation or another – some major, some minor. Our scrutiny reassures the agencies and the Minister that corruption issues are dealt with properly.

Despite this unanticipated workload, and sometimes because of it, we have put our attention to where ACLEI can be most effective.

- In our investigations, we focus only on those issues where we can add value – either because of the hearing power or because of our independence from the ACC and AFP. In this way, ACLEI is able to do something that the ACC and AFP cannot do for themselves.
- We have formed 'integrity partnerships' with the agencies we work with. In this way, we encourage the free flow of information, to build up a picture of the corruption issues and risks that face each agency, so that we may contribute to solutions in a more informed way. ACLEI initiates joint investigations whenever it is appropriate to do so.
- We are determined to find ways of taking the lessons we learn about corruption, and corruption investigations, and

cooperatively with the agencies, translating them into policy and practices to strengthen the corruption detection and control environment.

Understanding the problem of corruption

I want now to set out some of those lessons that I have been alluding to.

Invisibility

Corruption is usually an invisible problem, and its aim is to remain undetected. Sometimes, a complaint about misconduct may be the only indicator of a more serious problem. It pays to focus on the environment in which the issue arose, rather than just the conduct of the individual. What was it about the corrupt conduct that led to its coming to light? What does the explanation for the conduct tell you about the person and his or her supervisors and peers? What aren't you seeing?

Improve the system

Each corruption issue reveals something about the corruption risk. Even when corrupt conduct is found not to have occurred, frequently the facts will point to vulnerabilities in your control environment – the 'near miss'. Sometimes your resources are better spent strengthening controls rather than continuing to pursue an errant individual.

Assess risks realistically

The greatest corruption risk is to think that there is no threat. Be alert to areas that under-estimate their risks, and over-estimate the effectiveness of their controls. Many systems rely on supervision and trust, and the absence of controls makes them more vulnerable. Know where your 'hot-spots' and weak points are, and concentrate most effort there. You may never know how much potential for corrupt conduct exists, but you should take great care to map your risks as accurately as possible.

Reject mythology

Mythology can arise about the invulnerability of systems. Know the limits of your systems. Consider how you would get around them. For instance, How are your pre-employment checks? What risk factors are you screening for?

Inadvertent corruption risk

Most corrupt officials justify their actions to themselves. The disgruntled employee is certain that his or her actions are justified by how poorly they have been treated by managers. Managers may inadvertently increase corruption risk by treating workers unfairly, or creating that perception.

Misplaced allegiance

As people, our colleagues and friends matter to us. If the workplace sub-culture builds allegiance to individuals greater than to the agency's professional standards, a problem may arise. Over-identification may occur, and good judgement could become obscured, and self-justification can freely manifest.

Organised crime

If your agency holds assets or information that would be attractive to organised crime, you have a high inherent risk of corruption. Never underestimate the reach and capacity of organised crime to find the weaknesses that you didn't know were there.

Understand corruption

Know corruption in your context. Understand the ways in which it may arise, and what makes that prospect more likely. Link in with others who study corruption. Apply your mind to the evidence. Don't just rely on your Fraud Control Plan to tell you what your corruption risk is. It won't necessarily tell you to look for the high-performing individual or a group of people who all work together and get along with each other just fine. You will need to understand corruption so that you can properly interpret the evidence that you will inevitably be presented with.

Conclusion

I want to close with the following comments.

All of us here have the same interest, which is to prevent corruption. Through cooperation, we can help to improve public confidence in government administration, and we need that public confidence in order to achieve the society we want to live in.

These relationships should be based on mutual interest and mutual respect. We can learn from each other in order to develop integrity partnerships. My agency would be glad to assist where we can, and we are keen to learn from your own approaches.

The corruption control environment has changed since the 1980s and 1990s when concern was raised about the ethical conduct of public sector employees, particularly in policing. The response was seen in Royal Commissions, Inquiries, taskforces, high profile resignations and jail terms for corrupt officials.

I think that the example of ACLEI shows that the Commonwealth has entered a new phase of treating corruption. We are moving beyond waiting to see the evidence of corruption before we act, and replacing it with a 'precautionary approach'.

Inherent in this approach is the concept that through investigation, research and analysis, we identify and understand more fully the challenges. It can only be through taking an informed approach that we may assess our corruption risks accurately and be sure that we craft our measures to match.

Thank you for your attention. I would welcome any questions or discussion.