



Australian Government

Australian Commission for
Law Enforcement Integrity

INTERNATIONAL SERIOUS AND ORGANISED CRIME CONFERENCE 2013

*“The corruptor and the corrupted:
examining the link between organised crime
and law enforcement corruption”*

Philip Moss, Integrity Commissioner

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CHECK AGAINST DELIVERY

[Acknowledgements]

Thank you for those words of introduction.

As Integrity Commissioner and head of the Australian Commission for Law Enforcement Integrity—or ACLEI as it is known—my responsibilities bring me into close cooperation with Federal law enforcement agencies, other integrity agencies and, increasingly, many State and Territory police forces.

Accordingly, it is a privilege for me to be here among law enforcement colleagues and others, as we meet together to share observations about recent trends in the organised crime threat picture, and to consider possible responses.

[Concealment]

Before I move into the main points of my address, let me reflect on the nature of corruption, and why we might discuss it at a conference about organised crime. These points are basic ones, yet they are worth returning to from time to time.

When corrupt conduct occurs, three characteristics are likely to be present.

First, corruption inevitably involves a “trusted insider”—a person who, usually for profit, perverts or misuses the tools, resources, discretions and privileges that are available to him or her as an insider. That is to say, the corrupt officer has a commodity to sell or trade, and whether for money or misplaced loyalty, the officer is prepared to do so.

Secondly, in serious or systemic forms of corruption, the “trusted insider” will collaborate with other willing participants to achieve his or her objective. I will talk more about this collaboration in a moment.

Thirdly, and most significantly, “concealment” is a key element of corruption. In fact, it is one of the great advantages that the corrupt insider may bring to the serious crime business model. Concealment delivers the capacity for criminals to cover their tracks. It also offers the prospect of being able to replicate a crime, almost endlessly.

Accordingly, the focus of my address today is about *concealment*, and what I describe as “the detection challenge”. It is a problem that we in the anti-corruption space, and those of you in the serious crime space, have in common.

[Corruption Handshake]

In 2010, when last I addressed this forum, I gave a speech entitled “*Accountability and Beyond: using integrity partnerships to combat organised crime*”.

In that address, I used the phrase “corruption handshake” to encapsulate the potential relationship that may form between corrupt law enforcement officers (on the one hand) and organised criminals (on the other). I raised the prospect of one day combining the investigation and treatment of law enforcement integrity matters with the investigation and treatment of organised crime. My proposition reflected what ACLEI and others then recognised as changing circumstances in the organised crime threat picture.

Accordingly, the point I made in 2010 was that greater flexibility in approach would be needed, whereby integrity concerns about individual officers would no longer be sequestered away one-by-one as “disciplinary matters”, to be dealt with in ways that are divorced from their context, or from their potential as an intelligence source. In particular, I intended that we should get away from the “bad apples” approach to internal investigations.

I noted the potential for law enforcement and integrity agencies to work together in integrity partnership, and to build the necessary trust that would be needed to try something different and have it be effective. The fundamental proposition was that, by finding a corrupt officer, he or she would lead investigators to their criminal collaborators.

Today, with the benefit of three years’ further operational experience, I can report to you the benefits of tackling corruption and organised crime using this joined-up approach.

[Operation Heritage-Marca]

Many of you here today will be aware of alleged corrupt activity by Commonwealth officials at Sydney International Airport, which has been reported widely in the media over the past year. The conduct investigated was uncovered by ACLEI *Operation Heritage* and Australian Federal Police *Operation Marca*.

Operation Heritage–Marca commenced in early 2011 with allegations about two possible persons-of-interest, communicated to us through a notification of a corruption issue by the Australian Customs and Border Protection Service. To date—following more than two years’ investigation—four Australian Customs and Border Protection Service officers have been arrested for a range of corruption and drug importation offences. One of these officers has since been convicted and sentenced to seven years in jail for his role in the scheme.

Another 17 people—including one baggage handler and an officer from the Department of Agriculture, Fisheries and Forestry—have been arrested for suspected offences relating to the alleged conspiracy. The investigation is still underway and more arrests are possible. Further disruption of corrupt conduct has been achieved through code of conduct and other administrative procedures.

By covertly observing the individuals over an extended period—and, in particular, by not jumping in too early to remove “bad apples” (as can happen in integrity investigations, partly as a means of managing risk)—the Taskforce team members were able to form a picture of the whole network. They also developed a deeper understanding of the methods that could be used by criminals to circumvent law enforcement controls at the border. These observations are now being used to inform target-hardening measures in all of Australia’s international airports.

The arrests in Operation Heritage-Marca were the product of a joint investigation which used the resources and powers of ACLEI, the Australian Federal Police, the Australian Customs and Border Protection Service, the Australian Crime Commission, and New South Wales Police. Accordingly, the investigation was able to deploy surveillance resources, employ other covert policing methods, and use the coercive hearing powers that are available to the Integrity Commissioner. The involvement of several agencies also meant that a long operation—of more than two years' duration—could be sustained.

I regard this disruption of a criminal network as a joint achievement, and I acknowledge all of these agencies for their role. It is an achievement of those who were prepared to try something different to achieve a common objective—namely, to protect Australia's borders from risks associated with organised crime. The “corruption handshake” investigation method worked, and the concept is now well established in ACLEI's jurisdiction.

The results of this work can be measured in many ways—arrests, dismissals, resignations, target hardening measures, legislative change, an extension of ACLEI's jurisdiction, and a significant cultural transformation process which is now underway at Customs and Border Protection. The detection and disruption of a corrupt cell is noteworthy, yet it is by no means the full story.

I have published an interim report about Operation Heritage-Marca. If you are interested in the details, you can obtain a copy from ACLEI's website.

For today's purposes, I want to reflect now on some of the broader lessons—and possibly a warning sign—that we might take from the Sydney International Airport scenario.

[Risk Aggregation]

The conduct seen in Operation Heritage-Marca was the result of an aggregation of factors.

- It wasn't the result just of a few "bad apples", although there were some.
- Neither can it be explained entirely or satisfactorily by a poor workplace culture of lax standards and poor supervision, although that was the case in some instances, and clearly was an enabling factor.
- Various vulnerabilities in systems and practices also played a role, and these were exploited to facilitate crimes. However, several of those vulnerabilities had been present for many years, and appear not to have been exploited in any systematic way.
- An immature and underdone integrity system also played a part, not least because it proved to be an insufficient deterrent.

At least to some extent, all of the factors I have mentioned were in the control of Customs and Border Protection. Much is now being done to strengthen arrangements, and I commend the Service for the work it is doing, under the guidance of the Customs Reform Board and with assistance from ACLEI and others.

However, dissecting the role of Customs and Border Protection would be to miss the bigger picture—namely, that the last few years has seen a shift in external factors that will put pressure on many government agencies and officials. Operation Heritage-Marca exposed a scenario whereby external pressures combined with internal weaknesses—a scenario that could well emerge in other areas of government. It represents a warning, that this case is unlikely to be isolated. It is not just a story about Customs and Border Protection, but points to a broader implication for other Australian agencies.

Let me explain.

[The international context]

Australia is an attractive market for transnational criminal enterprises. We have well-established illicit markets, and organised distribution networks, all of which help to regulate supply, price and profit.

For some years, Australia has enjoyed robust economic conditions at a time when other developed countries have endured recession and low economic confidence. This situation means that there are lucrative profits to be made in Australia for criminal groups that trade in goods, such as illicit tobacco and border-controlled drugs, for which there is high demand.

The profits at stake can be enormous. One estimate is that the Australian illicit drug market is worth as much as \$7 billion annually.¹ Disregarding for a moment the devastating and shameful effect that illicit drug use has on our communities, these are large sums of money.

Many of you in this room will be familiar with the extreme disparity in the price of cocaine in a source country, such as Columbia, and here in Australia. From wholesale prices below \$2000 per kilogram in South America, a kilogram of cocaine at lower levels of purity can be worth more than \$200,000 if landed in Australia. This increment is higher than other first world countries, including the United States and United Kingdom.

High profit margins are also associated with steroids and precursor chemicals, including pseudoephedrine, both of which were allegedly imported by the corrupt network identified in Operation Heritage-Marca.

¹ 'Sellers' addiction to profit driving drugs market', Sydney Morning Herald, 22 June 2013. Accessed online at <http://www.smh.com.au/national/sellers-addiction-to-profits-driving-drugs-market-20130621-2oo9d.html> on 25 July 2013.

In order to make these profits, organised crime groups must circumvent regulatory and law enforcement controls. Though criminal methods are numerous, seeking corrupt assistance from relevant law enforcement and regulatory officials is one available option. High profit margins make this method affordable.

Of course, ACLEI's role—and perhaps your role—is to make corruption impractical and unachievable, including by driving up the price for collusion.

The experience in other western countries is that organised crime groups use deliberate and persistent tactics—such as grooming, softening and suborning individuals who are well-placed in organisations—to gain access to what the organised crime group needs, whether that commodity is information or influence over decision-making.

Large bribes can be offered. Infiltration or extortion can be used as methods. The conditions for use of these tactics exist in Australia now, and there is evidence that it is occurring on an organised basis.

If we are to defeat these emerging methods, we must address the problem from many different approaches. Starving criminal groups of the proceeds of crime is a central strategy. Clamping down on avenues for money laundering is another aspect. Collecting criminal intelligence and focussing disruption efforts on the big players, who are also the potential corruptors, is another method.

However, if we accept that corrupting public officials is a risk—and one that is increasing—then we also need to address the “detection challenge”. We need to make concealment as difficult as possible.

[The policy response]

Australian Government policy, at the highest levels, recognises the corruption threat arising from organised crime.

For instance, the Commonwealth Organised Crime Strategic Framework notes that:

“Criminal networks will continue to seek out individuals within law enforcement and other public sector agencies and industry for the purpose of infiltration, corruption or facilitation, to further their criminal activities.”²

Likewise, the National Security Strategy, released earlier this year, takes account of the “persistent threat from terrorism and increasingly sophisticated serious and organised crime, aided by money laundering and corruption.”³

This understanding at a policy level—that corruption is a tool used by organised crime to exploit opportunities, as much as the old frame of reference which sees corrupt conduct as a moral failing of individuals who take advantage of their office—has created new opportunities for detecting, disrupting and deterring both corruption and organised crime.

Let me touch now on some of the opportunities I see for an enhanced detection capability.

² Australian Government, Commonwealth Organised Crime Strategic Framework, Overview, 2009, p. 9.

³ Australian Government, National Security Strategy, January 2013, p. 3.

[The practitioner response]

The “corruption handshake” means that just as the corruptor and the corrupted work together, so too must agencies dedicated to disrupting organised crime and corruption.

Law enforcement and integrity agencies can respond to “the corruption handshake” from complementary perspectives. Key agencies—such as the Australian Crime Commission and the Australian Federal Police, and their counterparts at State and Territory level—contribute an understanding of organised crime, while agencies like ACLEI (and its counterparts) bring to bear specialist knowledge of corruption risk factors.

The ability to conduct penetrating investigations of corrupt law enforcement officers is necessary to maintain an effective deterrence, and is a substantial part of the ACLEI model. The most easily recognised opportunity for collaboration in this space is the joint investigation of serious corruption involving organised crime, in conjunction with law enforcement partners, just as we have seen in Operation Heritage-Marca.

I believe that the greatest opportunity over the next two years will be in increasing the sophistication of our joint detection activities.

I take you back to my earlier statement—Operation Heritage is not just a story about Customs and Border Protection. There is a warning in there to the law enforcement community—namely that we can expect to see corruption in high risk areas, particularly if that risk were underestimated, or if complacency were to exist. Agencies which have been regarded, or have regarded themselves, as well-protected from corruption, may now be at heightened risk from the pressures of infiltration and other forms of corrupt compromise.

I do not wish to overstate the problem. However, if we expect to see corruption risk increasing, how should we go about detecting it? If we were to desire greater assurance of integrity, are we sufficiently sophisticated in our approach to be able to find corruption when concealment is a primary tactic?

Improving our ability to detect corruption will undoubtedly require a joined-up approach, and would look for instances when risks aggregate. Ideally, such a detection system will collect information from at least four perspectives.

First, it would involve an effective means to understand the external threat environment, including identifying who the “corruptors” may be and where their efforts are likely to be directed. I’ve already spoken about one—namely, the buoyant conditions for trafficking drugs into Australia, which means the border and supply chain are under increased pressure from criminal groups and from the trusted insider alike. There are likely to be other trends that we haven’t currently identified, or that will emerge over time. The Australian Crime Commission has a central identification and analysis role in this work.

Secondly, the detection system would overlay information about jurisdictional and agency specific risks, including systemic vulnerabilities and possible targets. Customs and Border Protection has recently completed a round of Program Integrity Risk Assessments which examine in detail the vulnerabilities associated with its highest risk business lines. The assessments answer the simple question: “If you were to be corrupt, how would you do it?” The same agency has just initiated a system of Corruption Impact Statements, which will assess the potential for corruption risk to increase or decrease as a result of changing modes of program delivery. These are sensible and effective strategies for keeping abreast of risk.

Thirdly, the detection system would ensure agency-level systems and practices are in place that will work to protect employees who may be at risk from a corrupting approach. Elsewhere, these systems have been called “early-warning” or “red flag” programs, and are based on data mining. I consider the challenge will be to involve staff and managers in a program of awareness-raising, whereby events or indications that are out of the ordinary are reported. Of course, such mechanisms are for agencies themselves to establish and manage, since an integrity system should rely on the principle that an agency head retains primary responsibility for the integrity of his or her people.

Fourthly, the detection architecture would be attuned to protecting those assets or commodities that organised crime groups seek to obtain, particularly sensitive law enforcement information.

Some of this work already occurs, mainly on an agency-by-agency basis. For instance, it occurs at the ACC-led National Criminal Intelligence Fusion Capability, and as part of the biennial Organised Crime Threat Assessment, which the ACC also coordinates.

Other work is happening too, to develop our detection capability in the Commonwealth. Having regard to risks-in-common, including the potential for corruption to occur across organisational boundaries, a number of agencies share with one another information about corruption risk and emerging issues. This approach—and the appetite to do something about corruption risk—is one of the marked differences I have observed during my time as Integrity Commissioner over the last six years. I intend to find a way in coming months to regularise the exchange of this information, and improve the effectiveness of such exchanges. I have recently commissioned some work on a broad-based Detection Strategy for this purpose.

I should say that ACLEI does not seek to be an intelligence collection agency, or aspire to be the hub of this work. I just recognise it is work that needs to be done. My focus is to ensure that we are doing all we can within the Integrity Commissioner's jurisdiction to ensure there is a sophisticated, proportionate and joined-up approach to detection within and between Commonwealth law enforcement agencies. I would welcome State and Territory participation also. I consider this approach to be a logical extension of the integrity partnership model that underpins all of ACLEI's other activities.

Building our understanding of corruption risk—external drivers, internal risks, consideration of the law enforcement community as a whole, and commodity- as well as person-based approaches—opens up new possibilities for the detection and deterrence of law enforcement corruption.

Specific possibilities could include a joint initiative across law enforcement, or more broadly, to protect against criminal infiltration at the point of recruitment. For instance, improving information about employees or applicants who have been dismissed for misconduct would help to prevent a risky individual turning up elsewhere.

Another possibility I would like to explore is the establishment of special detection projects—for example, using criminal intelligence to shine the light on potential corruption risks in the Commonwealth.

It is worth exploring these possibilities, not just to disrupt and deter corrupt conduct, but because an enhanced corruption detection capability would assist to uncover and thwart organised crime.

[CONCLUSION]

Operation Heritage-Marca revealed an aggregation of risk factors—among them, the scale of illicit profit (on the one hand) and (on the other hand) the concentration of law enforcement information, which increases its value. These factors are not unique to Customs and Border Protection. These pressures apply across the system.

It is only by actively seeking out the indications of corrupt conduct that we can be assured that corruption risk is truly being addressed. To use commonly adopted parlance, we need to pick up rocks to see what lies underneath.

I would hope that joining-up our intelligence efforts, and focussing them, will help us to know which rocks might be picked up first. That, of course, is the detection challenge.

Thank you for your attention.