



10 August 2011

Committee Secretary  
Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

aclei.committee@aph.gov.au

Dear Committee Members

## INITIAL AUSTRALIAN FEDERAL POLICE ASSOCIATION RESPONSE PJC ACLEI INQUIRY INTO INTEGRITY TESTING

Thank you for providing the Australian Federal Police Association Branch of the Police Federation of Australia (AFPA) with the opportunity to present our initial views regarding a possible integrity testing regime for the Australian Federal Police (AFP).

The AFPA's initial views are as follows:

- A. Integrity testing should not be undertaken by the Australian Federal Police for the following reasons:
1. The AFP's current integrity regime, under Part V of the *Australian Federal Police Act 1979*, established as a result of the *Fisher Review*, is a highly effective mechanism in fighting misconduct and corruption.
  2. AFP employees are subjected to the most personal intrusion of any Australian Police Service as part of the AFP Integrity regime which includes:
    - (a) Initial and then regular security clearance processes
    - (b) Initial and regular financial disclosure of assets & debts
    - (c) Random and Targeted drug testing (currently 100% of the workforce is tested per annum);
    - (d) Random and Targeted alcohol testing;
    - (e) Critical Incident drug and alcohol testing;
    - (f) Loss of superannuation as a result of corruption offences;
    - (g) Criminal sanction for failing to answer or mislead a PRS Investigator whilst under direction, provided under section 40VE of the AFP Act;
    - (h) The AFP Confidant Network
    - (i) A requirement to provide a body sample under Direction
    - (j) Compulsory DNA testing (currently in development);
    - (k) The integrity/governance framework which includes:
      - Commissioners Order 2 (Mandatory reporting)
      - Fraud Control & Anti Corruption Plan
      - Security Plan
      - Internal Audit Program
    - (l) The Commonwealth Ombudsman including self-initiated investigations;
    - (m) The Australian Commission for Law Enforcement Integrity (ACLEI) where

*'ACLEI investigators can access coercive and other powers used in law enforcement, such as telephone interception, electronic surveillance, undercover and controlled operations, search warrants, and passport confiscation. Special ACLEI powers include: the power to enter the premises of a law enforcement agency without prior warning to carry on an investigation and seize articles; and the power to apply to a judge for the arrest of a person refusing or attempting to evade giving evidence.'*<sup>1</sup>

- (n) The Parliamentary Joint Committee on Law Enforcement.
  - (o) And, of course, members of the AFP are subject to criminal sanctions.
3. There is currently no evidence that has been put before us that the current robust integrity system outlined above is not effectively deterring and detecting corruption or misconduct.
  4. As well as *integrity*, the AFP operates on the core value of *trust*. Integrity testing would undermine the AFP's core value of trust and therefore also, the professional capacity of the independent office of constable. It is incongruous to the professional policing model.
  5. Integrity testing has been shown to create a negative effect on morale, since police feel they are not trusted, and it generally fails to promote a professional and ethical workplace. It has also been found to impede efficiency since police are constantly 'looking over their shoulders' wondering if they are being checked.<sup>2</sup>
  6. Integrity testing initiated and conducted by AFP employees will be divisive in the AFP. Former AFP Commissioner Mick Palmer AO APM noted that integrity testing would *'Incur the rancor and indignation of the rank and file and it could be argued that the divisiveness and acute circumspection they create militates against a unified agency and destroys positive as well as negative aspects of the police subculture.'*<sup>3</sup>

Accepting however that this inquiry is being conducted and acknowledging that interest does exist the AFPA makes the following points.

- 1 The Australian Commission for Law Enforcement Integrity (ACLEI) is the only appropriate body to undertake integrity testing of AFP Employees. ACLEI has the objects under s3(1) of the *Law Enforcement Integrity Commissioner Act 2006*:
  - (a) to facilitate:
    - (i) the detection of corrupt conduct in law enforcement agencies; and
    - (ii) the investigation of corruption issues that relate to law enforcement agencies; and
  - (b) to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations; and
  - (c) to prevent corrupt conduct in law enforcement agencies; and
  - (d) to maintain and improve the integrity of staff members of law enforcement

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<sup>1</sup> Australian Commission for Law Enforcement Integrity, URL: [http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About\\_Us](http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us) [Accessed 5 February 2009] Last modified 22 January 2007.

<sup>2</sup> *Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian Police Officer*, Final Report Vol. II, Commissioner The Hon. GA Kennedy AO QC January 2004, p 157.

<sup>3</sup> <sup>3</sup> Detective Senior Constable Stephen Newton, "Integrity Testing as an Anti-Corruption Strategy", *Australian Police Journal* December 1997, p 224.

agencies.

- 2 Both the AFP and ACLEI have access to the Controlled Operations legislation contained in Schedule 1 of the *Measures to Combat Serious and Organised Crime Act 2001 (Cth)* which allows both agencies to lawfully investigate and prosecute AFP employees involved in criminal conduct, subject to appropriate controls and safeguards.
  - a. A system of integrity testing must be *authorised* and *directed* by ACLEI and be *Targeted* integrity testing only.
  - b. *Targeted* integrity testing should only be adopted for use in the AFP where intelligence analysis suggests corruption exists, as it is defined under section 6 of the *Law Enforcement Integrity Commissioner Act 2006*.

***Law Enforcement Integrity Commissioner Act 2006 S6(1):***

- (1) For the purpose of this Act, a staff member of a law enforcement agency ***engages in corrupt conduct*** if the staff member, while a staff member of the agency, engages in:
  - conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
  - conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
  - conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.
- (2) If the law enforcement agency is one referred to in paragraph (d) of the definition of ***law enforcement agency***, the staff member ***engages in corrupt conduct*** only if the conduct relates to the performance of a law enforcement function of the agency.

- 3 The integrity testing system must be legislated in an Act of the Commonwealth Parliament, such as amendment to the *Law Enforcement Integrity Commissioner Act 2006*, with scope to cover the following:
  - (a) The relationship between law enforcement agencies with respect to integrity testing; and
  - (b) The authorisation of the testing agency to conduct integrity testing operations being subject to supervision and controls; and
  - (c) The provision of immunity to testing officers from certain criminal and civil sanctions; and
  - (d) clarification of the operation of concurrent legislation.
- 4 ACLEI should furnish detailed reports to the Parliamentary Joint Committee on ACLEI regarding integrity testing undertaken on an annual basis similar to the Ombudsman's required appearance in camera under section 218 of the *Law Enforcement Integrity Commissioner Act 2006* with respect to controlled operations.
- 5 Any testing officer or agency must apply to the Integrity Commissioner for authorisation for ACLEI to direct the conduct of an integrity test by the AFP, of a similar respective process to either:
  - (a) The granting of a warrant under the *Telecommunication (Interception and Access) Act 1990 (Cth)*; or Schedule 1 of *Measures to Combat Serious and Organised Crime Act 2001 (Cth)* where the Integrity Commissioner is the authorising officer.
  - (b) The granting of a warrant, or the authorisation of integrity testing operations must be on the basis of '*reasonable suspicion of serious corruption by a member of the AFP.*'
- 6 All integrity tests must be fair and appropriate to the type of corruption which is suspected.

Based on advice from other policing jurisdictions, the implementation of integrity testing would require an additional Government budget appropriation to cover the initial and ongoing substantial costs of the program.

To summarise:

We see appropriate checks and safeguards in any integrity testing model as critical to integrity itself. The mentioned controlled operations Legislation could be used as a vehicle to either to amended to include Integrity Testing as well as narcotic offences or as a model for future dedicated legislation to provide for integrity testing of AFP Employees.

If implemented at all, integrity testing on AFP employees should be conducted only on reasonable suspicion of seriously corrupt behavior of AFP employee/s. Every integrity test should be subject of a detailed affidavit style application to ACLEI and include details of previous integrity tests on the same target and other investigation avenues already pursued. A process of Ministerial reporting or reporting PJC on ACLEI would be imperative.

Yours sincerely,

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