



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

RESISTANCE TO CORRUPTION

A pilot review of the internal
anti-corruption arrangements of
the Australian Crime Commission
and the Australian Federal Police

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

30 June 2009

The Hon. Brendan O'Connor MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

Report: Resistance to Corruption in the ACC and AFP

I am pleased to present the report of a co-operative pilot review by the Australian Commission for Law Enforcement Integrity (ACLEI) of the present and planned anti-corruption arrangements of the Australian Crime Commission (ACC) and the Australian Federal Police (AFP).

Combating organised crime is one of the Australian Government's national security priorities. It is recognised that corruption, including law enforcement corruption, may facilitate organised crime, for instance by providing protected information or through other forms of collusion. Professional standards in Australian Government law enforcement agencies are generally high, particularly in the ACC and AFP. However the risk of corruption is ever-present, and anti-corruption measures require frequent assessment.

Corruption is a pervasive and insidious problem. It adapts to exploit new and changing environments. Effective integrity systems need to be dynamic, and comprise detection and deterrence measures that are specifically designed to counter the threat that corruption presents.

ACLEI, the ACC and the AFP work in an 'integrity partnership' to address the risk of corruption and infiltration by organised crime. Each agency's skill and expertise is brought to bear to strengthen the integrity of Commonwealth law enforcement agencies. This review is a further example of that cooperative effort.

The report demonstrates some of the challenges involved in ensuring that an agency's anti-corruption measures remain matched to its risks and vulnerabilities.

Yours sincerely

A handwritten signature in black ink that reads 'Philip Moss'.

Philip Moss
Integrity Commissioner

About the Integrity Commissioner and ACLEI

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 is to provide assurance that Australian Government law enforcement agencies and their staffs act with integrity. ACLEI may do this by:

- detecting, investigating and preventing corruption in law enforcement agencies;
- working collaboratively with agencies, to maintain and improve the integrity of their staff;
- conducting inquiries into matters, such as laws or administrative action, that affect the integrity of staff members of law enforcement agencies; and
- collecting and processing intelligence on corruption in law enforcement.

Those entities subject to the scrutiny of the Integrity Commissioner are staff members of the Australian Federal Police, the Australian Crime Commission and the former National Crime Authority. Other agencies may be added from time to time by regulation.

Corruption prevention

Strengthening agency integrity and building resistance to corruption involves using effective strategies to detect and deter corruption.

One of the Integrity Commissioner's functions is to collect, correlate, analyse and disseminate information in relation to corruption in law enforcement (s 15(e) of the LEIC Act).

ACLEI is the only Australian Government agency which has as its sole purpose the control of corruption. Through investigation, research and analysis, ACLEI is building a picture of the contours of corruption, and how it may be prevented.

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1. Introduction

Corruption in law enforcement undermines the effectiveness of legitimate measures that are designed to protect the Australian economy, businesses and individuals from the threat of serious and organised crime. Accordingly, the control of corruption is a central concern of government.

Under the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act), the Integrity Commissioner shares responsibility for the integrity of law enforcement agencies with the heads of those agencies, currently the Australian Crime Commission (ACC) and the Australian Federal Police (AFP). The Integrity Commissioner, who is supported by the Australian Commission for Law Enforcement Integrity (ACLEI), provides independent assurance to the Australian Government that law enforcement agencies and their staff members act with integrity.

Presently, ACLEI provides this assurance through the independent assessment and investigation of corruption issues, and through the oversight of investigations that the Integrity Commissioner decides may be conducted by other agencies.

ACLEI has gained a valuable insight into the nature of corruption, and the challenges of its control. An important aspect of ACLEI's work is to transfer this knowledge to strengthen the resistance to corruption of the ACC and AFP, and other agencies with law enforcement functions that face similar threats.

The ACC Chief Executive Officer (CEO) and the AFP Commissioner each direct considerable attention and resources to ensure that their agencies have a high resistance to corruption. They do this mainly through their professional standards arrangements, promotion of leadership and values, policy and governance frameworks, and other practical measures.

In June 2008, the heads of the ACC and the AFP agreed to participate with ACLEI in a pilot review of each agency's anti-corruption arrangements. The aim of the pilot review was to help build a corruption risk profile for each agency, and to gain a high-level understanding of the strategies presently deployed or planned by each agency to address those risks, and to identify where ACLEI may contribute to those efforts in future.

This report, *Resistance to Corruption*, sets out the outcomes of the pilot review.

2. Corruption risks in law enforcement

When any official role involves a discretionary power, there is the potential for corruption to arise. However, it is generally recognised that there is a particular risk that corruption may arise in law enforcement environments, unless appropriate counter-measures are in place to meet the risk. There are a number of reasons for this view.

First, because the duties of law enforcement officers bring them directly into the path of opportunity, there may be a temptation to use their discretionary power to gain a benefit. Law enforcement work necessarily includes engaging in legitimate activities that carry a high corruption risk, often with limited opportunity for supervision, including:

- dealing direct with criminals (including in covert operations or through criminal informants);
- seizing and handling property, firearms and illicit drugs;
- having a high degree of control over an investigation or interdiction, including charging and arresting of individuals; and
- having access to law enforcement information data sources.

Secondly, law enforcement agencies and their staff are at risk of being compromised by criminals. Specific temptations may be offered to individual law enforcement officers or other staff to recruit them to a criminal cause. These attempts may occur opportunistically or in a planned and targeted way, and may also involve infiltration of the agency. Equally, a staff member who wished to act maliciously or opportunistically, may find a ready market for restricted information.

Thirdly, if these inherent risks were left uncontrolled or unmitigated, a number of other factors could combine to magnify the threat that corruption could manifest. For instance, the strong bonds that exist amongst staff in law enforcement agencies may result in sub-cultures of misplaced loyalty and accompanying loss of objectivity, which in turn may lead to a reluctance to report misconduct or, in some cases, to a propensity to cover-up wrongdoing.

Finally, as corruption control expert Professor Malcolm Sparrow characterises the problem, corruption not only seeks to remain invisible and undetected, but also involves combating ‘a conscious opponent’.¹ While these characteristics present a challenge to corruption control generally, in the case of law enforcement corruption the opponents are likely to be well-versed in law enforcement detection and investigation methods, and skilled at countering them.

For these reasons, law enforcement agencies have an inherently high exposure to corruption risk. The specific risk will vary within each agency, according to the specific activities being undertaken, and the counter-measures deployed to mitigate each risk or vulnerability.

¹ M. Sparrow (2008) *The Character of Harms: Operational challenges in control*. Cambridge University Press, p 199.

3. Reviewing Anti-Corruption Arrangements

3.1 MANAGING RISK IN COMPLEX ENVIRONMENTS

Law enforcement agencies operate in complex environments involving many risks and threats, only one of which is the risk that corruption may take hold.

Risk Plans are the usual way for government agencies to record and map risks. Most Australian Government agencies are required to have a Fraud Control Plan, prepared in accordance with the *Commonwealth Fraud Control Guidelines 2002*. A number of agencies consolidate fraud and corruption risks into one Plan. The AFP uses this approach, while the ACC has a Fraud Control Plan and an overall ACC Risk Plan, both of which have linkages to corruption control.

Risk Plans provide a high-level overview of how an agency assesses and seeks to control its risks.

3.2 METHOD

The pilot review was conducted jointly between ACLEI and the ACC and AFP respectively.

The purpose of the pilot review was to build a general picture of the strengths and weaknesses of each agency's risk and control environment.

The specific goals of the pilot review were to understand:

- the process that each agency uses to identify and assess its integrity risks;
- the general risk profile of each agency;
- what controls and strategies are in place to mitigate or manage identified corruption risks; and
- what changes to the control environment are already planned.

The evidence-gathering phase of the pilot review consisted of:

- detailed briefings provided to ACLEI review staff;
- structured interviews; and
- consideration of relevant policies, program documents and agency anti-corruption plans.

The analysis was supplemented by additional inputs, such as published research about law enforcement corruption and its control. ACLEI's own observations and experience were also included.

Where opportunities for improvement were identified during the Pilot review, these issues have been included in this Report.

4. Australian Crime Commission

4.1 ACC CORRUPTION-RISK OVERVIEW

The ACC is a national law enforcement agency with special powers, including coercive information-gathering powers. The main functions of the ACC are to assist partner agencies by collecting and analysing intelligence about serious and organised crime in Australia and conducting investigations of serious and organised crime.

As part of its functions, the ACC enhances and administers a national database of information that is relevant to the investigation of organised crime in Australia. The ACC works in partnership with other law enforcement agencies under task force, joint operations and intelligence-sharing arrangements. The ACC provides specialist advice on national criminal intelligence priorities and delivers criminal intelligence products such as the *'Picture of Criminality in Australia'* which informs the strategic decision-making and priority setting of the ACC, its Board and key stakeholder agencies.

To gather intelligence and investigate criminal activity, the ACC uses its coercive powers and traditional law enforcement techniques such as physical and technical surveillance, controlled operations and Covert Human Intelligence Sources (informants).

In summary, because of the ACC's role in combating organised crime, every step of the intelligence value chain – collection, collation, analysis, evaluation and dissemination – carries with it a risk of compromise. Likewise, investigations, which involve contact with criminals and exposure to criminal opportunity, carry an inherent risk of corruption.

Approximately 90 per cent of ACC operations involve staff members from other agencies who are seconded to the ACC. These seconded officers participate in joint operations or participate in ACC task forces. These arrangements provide the ACC with flexibility to meet changing demands, but also introduce corruption risks. For instance, not only may members of other agencies bring with them a mixed approach to professional standards, but the ACC is also limited in its ability to use 'loyalty to the ACC' as an anti-corruption strategy to manage the risk.

To deliver its outcomes in 2009–10, the ACC will receive an appropriation of \$94.9 million and its average staffing level is expected to be 505 (not including secondees from other government agencies). The ACC maintains offices in most major Australian cities.

4.2 ACC ANTI-CORRUPTION MEASURES

The pilot review received a comprehensive briefing on the development of the ACC's integrity environment, including present risks and current and planned measures, as summarised in the following pages.

Stage One Development

In 2003 and 2004, two State police officers, seconded initially to the former National Crime Authority and then to the ACC, were investigated for corruption-related offences by the NSW Police Integrity Commission and the Victoria Police Ethical Standards Department.

These investigations were a key moment in the development of the ACC's integrity framework, as the cases caused the ACC to strengthen its anti-corruption measures, particularly the clarification of policy and procedures, and increased supervision of high corruption-risk activities such as drug-handling.² The changes, which were implemented in 2004, can be characterised as a 'rules-based approach' to integrity.

The corruption investigations revealed the immaturity of the ACC's integrity framework at the time, and sounded a caution about the under-estimation of corruption risk. The ACC recognised at the time that the many changes to be implemented were only a 'first response' to the systemic shortcomings that had been revealed by the corruption cases, and that a more mature approach would need to be developed.

In that initial period, the ACC continued to add incrementally to its integrity framework, as follows:

■ *Compliance with rules*

From 2004 to 2008, the ACC's approach to corruption risk was based on 'ensuring compliance' with the agency's rules and procedures which, in 2004, had been updated to strengthen resistance to corruption. This approach remains as a feature of the present ACC integrity framework.

The ACC has achieved this compliance objective by engaging senior managers in structured random audits of key records such as vehicle log books, telephone records and official diaries. In addition, compliance audits are routinely undertaken of high corruption-risk activities, such as records relating to the management of Covert Human Intelligence Sources (informants), and exhibit handling (relating to drugs, money and property).

Staff responsible for integrity programs also conduct Corruption Resistance Reviews. These audits are based on a method developed by the NSW Independent Commission Against Corruption, and are administered systematically across geographical and functional areas of the ACC to assess and address local-level risks.

Over the coming months, the ACC intends to extend its audit programs to provide greater assurance by examining more closely the individual elements of investigations, such as affidavits that underpin warrant applications. The ACC's rationale is that, by further strengthening its scrutiny and deterrence measures, it will also build awareness about corruption.

2 For a discussion of these changes, see:

- Commonwealth Ombudsman (June 2004) *Own motion investigation into a review of the operational and corporate implications for the Australian Crime Commission arising from alleged criminal activity by two former secondees*; and
- Commonwealth Ombudsman (November 2004) *The Australian Crime Commission's implementation of recommendations*.

By these means, the ACC has sought to improve professional standards by:

- demonstrating management commitment to integrity;
- increasing high-level scrutiny of the operational environment; and
- raising staff awareness of corruption risks.

■ *Other measures*

Over the same period, the ACC developed and adopted its *Professional Standards and Integrity Management Plan*. The Plan is based on a ‘professionalism’ model, which seeks to inculcate agency values and the standards expected in work practice. The Plan is updated every three years.

The ACC also tightened its entry requirements by deploying a more thorough pre-employment integrity-checking regime, particularly in relation to seconded police officers and former police officers. Now, before the ACC accepts a secondee the relevant Commissioner is required to confirm there are no known integrity concerns relating to the officer. This initiative recognises that corruption may arise not just because of systemic weakness, but because of the ill-intent of individuals who may be prepared to exploit those weaknesses.

Stage Two Development

In 2008, the (then) ACC Chief Executive Officer (CEO) appointed a Manager of Professional Standards to guide the next stage of development of the ACC’s integrity system. This step marked the commencement of a new phase of cultural maturity for the ACC: ethics-based integrity, comprising education and governance arrangements designed to enhance integrity by addressing broad issues of judgement and decision-making.

Because of this initiative, each member of ACC staff will have received ethics-based corruption-awareness training by the end of 2009. This strategy focuses on developing commitment to professional standards. The training also emphasises the need to escalate matters to management attention soon after a suspicion is formed, and includes information about reporting corruption issues to ACLEI as an alternative to internal reporting.

During 2009–10, all ACC staff with managerial responsibilities will undergo two days of advanced level corruption-resistance training, with emphasis on managerial strategies and realistic risk assessment to further raise awareness, reduce the opportunities for corruption to arise, improve the chances of detection and create an environment conducive to reporting suspected misconduct and corruption.

In this period, the ACC also strengthened its information-handling arrangements. For instance, in response to an incident, new control measures were introduced to the ACC’s electronic document handling system in consultation with ACLEI, and further measures are planned. To complement these technological solutions, the ACC’s corruption-awareness training is reinforcing the need to keep official information secure.

The ACC is introducing drug and alcohol testing with effect from 1 July 2009.

Stage Three Development

With the appointment of the new CEO, who commenced in March 2009, a third stage of development is occurring. For example, new emphasis has been given to ‘how you do the job, not just getting the result’. This ‘high-performance team’ approach leverages off the professionalism model introduced in 2008.

The ACC’s approach to investigating misconduct is also changing. Internal investigations now go beyond examining the conduct of individuals, and seek to understand the environmental factors that may have contributed to the behaviour, with a view to strengthening organisational resistance to corruption. This method will support an ‘associated networks’ approach, with a view to identifying who else may be involved in risky behaviour and will also strengthen opportunities for organisational learning.

Until recently, the ACC had outsourced the investigation of many of its complex misconduct investigations. Presently, the ACC is examining options to establish its own internal investigation capability, to better enable this organisational learning approach to occur. Part of the solution may involve closer collaboration with other law enforcement agencies that have the economy of scale to support larger Professional Standards areas. While considering its options for external assistance, the ACC understands that it still requires an internal capability to manage its integrity investigations.

A new misconduct policy, now being developed, will introduce a mandatory ‘Professional Reporting’ (whistleblower) program, whereby staff will be obliged to raise integrity concerns, but may do so in confidence. It is planned that staff will also have the option of discharging their obligation by reporting corruption issues to ACLEI direct. Through this measure, the ACC is seeking to address the problem of under-estimating its corruption risk.

The ACC is currently assessing other options for developing its integrity framework further. Some of the options being canvassed are to:

- introduce data-mining techniques to identify anomalies in access to information databases;
- ensure that the terms of employment for all positions are matched to the level of corruption risk and sensitivity of the positions, for instance by introducing a ‘loss of confidence’ dismissal power;
- improve security vetting; and
- strengthen counter-intelligence arrangements to guard against grooming and infiltration by organised criminal groups.

4.3 SUMMARY OF OPINION (ACC)

Strengths

The ACC is realistic about the corruption risks posed to its operations by criminal infiltration, grooming and corruption. Its integrity system is evolving, and reflects organisational learning and awareness of practices adopted by other organisations.

ACC senior management has been prepared to reorganise the ACC's operations to reduce corruption risks, and to undertake the difficult work of cultural change.

Informed and competent management is driving the 'values-based' program, based on an integrated Professional Standards Plan. The strategy is well-directed and reflects contemporary thinking on integrity design for law enforcement agencies.

Key integrity policies and practices are in place. ACLEI notes that assessing the success of individual measures was not within the scope of the pilot review.

Whole-of-agency training in professional standards is being delivered.

Presently, the ACC is engaging closely with its security risks, particularly risks of compromise to sensitive information holdings. This approach demonstrates the agency's willingness and ability to respond flexibly to emerging issues.

Areas identified for improvement

The ACC's integrity framework is still developing, and is presently being transitioned from a 'rules-based' and 'compliance-based' culture to a 'values-based' culture. To continue the transition, the ACC will need to strengthen further its Professional Standards area and requires the dedication of additional resources.

Presently, the ACC's capacity to conduct internal investigations is limited. The pilot review notes that the ACC is currently exploring options to strengthen its internal investigations capability, and is seeking to collaborate with the AFP to ensure that integrity strategies in the ACC can be kept up-to-date. The options being considered should seek to ensure that sufficient emphasis is given to detection of misconduct, through data-mining and pattern analysis. Consideration should also be given to ensuring that best practice is followed in the management of corruption issues, particularly by restricting access to the knowledge that corruption issues are being investigated, or are in prospect.

The ACC should consider strengthening its management and governance structures outside of Canberra, so that the responsibility for integrity and corruption risk management is made clear in each office. In this respect, ACLEI notes that presently the ACC is conducting a review of its governance and administrative arrangements. It is understood that the issues raised in this report are already, or will now be, considered by the ACC within the context of that broader review.

The ACC should also consider undertaking a systematic stock-take of corruption risks to inform the creation of Corruption Risk Management Action Plans for each of its Regional Offices. The Plans should be nationally coordinated, but be prepared by each Office, and should actively engage local staff in the identification of risks and the design of counter-measures. This process would build on the present awareness-raising campaign, and ensure that Plans are locally relevant and sufficiently detailed. National coordination would provide a safeguard against under-estimation of inherent risk, or over-estimation of the adequacy of controls.

5. Australian Federal Police

5.1 AFP CORRUPTION-RISK OVERVIEW

The AFP was established by the *Australian Federal Police Act 1979* to deliver policing services for the Australian Government. The AFP has since grown to provide a diverse range of national and international policing functions and programs, including:³

- Preventing and investigating serious organised and complex criminal activity affecting Australia's interests, particularly countering the threats posed by:
 - Transnational crime;
 - Technology-enabled (high-tech) crime;
 - Drug trafficking;
 - Money laundering;
 - Major fraud;
 - Criminal tax offences;
 - Identity crime; and
 - People smuggling and human trafficking.
- Addressing national security issues, particularly countering the threat of terrorism;
- Law enforcement response for other Commonwealth laws, including protecting the property of the Commonwealth, and for Family Law;
- Providing assistance to strengthen law and order in the Pacific region and other areas of national interest;
- Providing community policing services to the Commonwealth territories of Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay; and
- Airport Policing, provided under the Unified Policing Model.

To deliver these programs, the AFP uses a number of strategies and ancillary services, including:

- Criminal investigations;
- Intelligence collection and dissemination, including a national surveillance capability;
- 'Undercover' operations;
- Technical intelligence services, including telecommunications interception and surveillance device capabilities;
- Drug-handling facilities and registries;

3 Australian Government, *2009–10 Portfolio Budget Statements – Attorney-General's Portfolio*, pp 151–201.

- Armouries;
- Internet policing;
- Aviation security;
- Protection services, including protection of dignitaries and witness protection;
- Forensic services; and
- International deployment.

To deliver these outcomes in 2009–10, the AFP’s average staffing level is expected to be 5,361, at an anticipated cost of \$1.25 billion.⁴

The AFP also provides a community policing service to the Australian Capital Territory (ACT), under arrangements made with the ACT Government. In 2009–10, the average staffing level for this service is estimated to be 904, at a cost of \$138.5 million.⁵

In summary, the size, complexity, geographical spread, law enforcement methods, activities and information holdings of the AFP, mean that the agency operates in a high corruption risk environment. Some areas of its work are more susceptible to corruption than others (for example community policing, informant management, drug-handling and international deployment, particularly in cultures where corruption may be commonplace). Apart from the high inherent risk, these same factors also lead to the likelihood that sub-cultures could arise that, if unchecked, could undermine organisational integrity.

5.2 AFP ANTI-CORRUPTION ARRANGEMENTS

The *AFP Integrity Framework*, compiled by the Professional Standards Integrity Framework Development Team, provides a snapshot of the agency’s misconduct and corruption control measures. The pilot review was briefed on all elements of the Framework.

The Framework demonstrates a first-hand acquaintance with the kind of response required to address the problem of corruption control in a medium to large law enforcement agency, and reflects a very high degree of commitment from the AFP’s leadership to ensuring the success of the measures.

It is not within the scope of this pilot review to assess how well each of the AFP’s present control measures are working, although that may be a topic of interest for future reviews.

The pilot review was briefed on several recent integrity initiatives, as summarised in the following pages.

4 Ibid, Table 2.1, pp 161–162.

5 Ibid, pp 201–202.

Refinement and reinforcement of integrity messages

A key feature of a mature integrity system is the successful inculcation of positive organisational values. This type of measure is designed to communicate clear expectations about ethical conduct, emphasising concern for ‘how things are done’ rather than the more corruption-prone approach of ‘get the job done any way you can’.

Accordingly, this measure promotes allegiance to ‘professional standards’ and to the organisation, thereby resisting the formation of sub-cultures that could undermine integrity or that could inhibit whistleblowing. The ‘values approach’ also has the benefit that it can be reinforced in other ways, for example by adopting the ‘do it right’ approach in relation to internal security.

Important elements in the success of values-based treatments include constant reinforcement and concrete explanation of the message, so that individuals can exercise appropriate judgement with little supervision.

AFP Professional Standards education programs and activities are designed to impart knowledge, expertise and professionalism. A fundamental goal of the education strategy is to reinforce the values and principles governing professional conduct and encourage an organisational culture of integrity and honesty. The AFP adopts a ‘cradle to grave’ approach to promoting professional standards, whereby a number of integrated strategies are designed to ensure that AFP appointees are regularly exposed to the professional standards message from the time they join the AFP until they leave.

The pilot review was informed that the AFP has introduced a number of new initiatives to support this measure, with other proposals still being evaluated.

■ *‘Career protection’*

The AFP has recently changed its Professional Standards marketing to emphasise the concept of ‘career protection’. This refinement is intended to communicate that there are organisational rewards for professional behaviour and that there are potentially severe consequences for intentionally bad behaviour.

■ *Senior management integrity ‘musters’*

During 2008–09, the Commissioner, the two Deputy Commissioners and the Chief Operating Officer, between them attended every AFP post and station and held staff meetings (‘musters’) to communicate personally the AFP’s emphasis on upholding the organisational values, and to explain the concept of ‘career protection’.

■ *AFP Culture Survey*

In 2009–10, the AFP will survey its entire staff as part of an ongoing workforce planning, consultation and integrity assurance strategy. It is planned that a number of scenario-based questions will focus on ethical issues that have contemporary meaning for the AFP. This simple measure will contribute to establishing a baseline of ethical-awareness in the AFP, through measuring the tolerance of AFP employees to corruption.

■ *Tailored integrity-awareness training*

Based on risk assessments, internal investigation data, and managerial insights, AFP Professional Standards has initiated integrity training that is tailored to ‘high-risk’ work areas. This program ensures that appointees who work in these areas are conscious of the specific corruption risks associated with their work and given the opportunity to discuss how ethical issues that are encountered can be resolved. This measure also guards against the emergence of ‘sub-cultures’.

■ *‘Sunshine policy’*

AFP Professional Standards is at the hub of dealing with misconduct and corruption issues in the AFP, and has a unique perspective as a result. Presently, the AFP is evaluating the prospect of publishing on the AFP intranet the de-identified results of internal investigations that may illustrate contemporary ethical issues. This measure may support other strategic purposes – for instance to demonstrate that disciplinary decisions are taken fairly (a key factor in the preparedness of individuals to report wrongdoing in future), and to keep corruption prevention in the front of the minds of AFP employees.

■ *Enhancement of mandatory reporting obligations*

AFP appointees are obliged to report contraventions of professional standards to the AFP. The obligation arises from a written direction issued by the AFP Commissioner, known as *Commissioner’s Order on Professional Standards* (Commissioner’s Order Two). Presently, reports can be made to Professional Standards, or through the AFP’s ‘professional reporting’ system, known as the Confidant Network.

In response to a recommendation⁶ made by the Parliamentary Joint Committee on ACLEI, requesting that the Australian Government review whistleblower arrangements in law enforcement agencies, the AFP Commissioner is considering this aspect of Commissioner’s Order Two. The change being considered is to allow AFP appointees the option to report suspected misconduct direct to ACLEI, in fulfilment of their obligation to make such reports. The option of making a professional report to an independent agency may be more palatable to some individuals in certain circumstances.

6 Recommendation 7, Parliamentary Joint Committee on ACLEI, *Inquiry into Law Enforcement Integrity Models*:

‘The committee recommends that the Australian Government review existing obligations on employees of Commonwealth law enforcement agencies to report misconduct. The review should consider whether these arrangements need to be strengthened, including by legislative means, and whether there are sufficient measures in place to support and protect whistleblowers.’

New corruption detection and deterrence measures

Evaluating and updating deterrence and detection measures is an important aspect of matching measures to risks. This practice is particularly important in a corruption context, due to the presence of the ‘conscious opponent’.⁷ Presently, the AFP is developing a number of additional measures to enhance its corruption-detection capacity. It is anticipated that these measures, if introduced, would also strengthen the deterrence regime.

■ *Integrity testing*

Covert integrity tests simulate corruption opportunities, thereby examining the honesty of individuals in a controlled (and observed) situation. Several Australian State police services have integrity testing programs as part of their anti-corruption framework. Presently, the AFP is developing an integrity testing model and engaging with stakeholders. ACLEI and the AFP are considering what role ACLEI should have in such a regime, if introduced.

■ *Review of drug testing policy*

Under its governing legislation, the AFP has the power to administer tests to detect the presence of illicit drugs among its staff, usually determined by urine analysis. Presently, all staff members are tested each year. The AFP is reviewing this policy with a view to reducing the predictability of the testing regime and to increasing scrutiny of individuals and teams most at risk of using illicit drugs. ACLEI has been invited to contribute to the AFP’s review of its drug testing policy.

Governance arrangements

The design of governance arrangements for anti-corruption measures is a significant factor in the effectiveness of a control regime. For instance, appropriate governance will seek to ensure that measures are fit-for-purpose, appropriately targeted, cost-effective, and working.

The AFP’s integrity system has developed in step with the changes in character of the agency and the challenges it has faced, but has been influenced also by developments in integrity and organisational theory. For example, the past decade has seen the granting of dismissal powers to the AFP Commissioner (in 2000⁸) and the subsequent demise (in 2006⁹) of the Federal Police Disciplinary Tribunal – both measures that have seen the AFP move from a system of discipline to a managerial model that is based on values and professional standards.

7 M. Sparrow (2008) *The Character of Harms: Operational challenges in control*. Cambridge University Press, p 199.

8 *Australian Federal Police Legislation Amendment Act 2000*.

9 The Tribunal, which had been established by the *Complaints (Australian Federal Police) Act 1981*, was dissolved in 2006 with the repeal of that Act. This change occurred as part of a package of reforms which formed a government response to a review, initiated by the AFP, into the AFP’s complaint and professional standards regime, conducted by Justice William Fisher AO QC, and tabled in Parliament in December 2003.

Analogous changes have occurred also in the external oversight system. For instance, the role of the Commonwealth Ombudsman¹⁰ changed focus from being an external reviewer of individual complaints about the AFP, to one of ensuring that the AFP's own complaint handling system is working well.¹¹ At the same time, ACLEI was created to ensure that corruption issues in the AFP and ACC are properly dealt with.

A strength of the AFP's integrity strategy has long been an internal investigations capability. This situation remains the case, but has since been augmented by a range of other measures. As with many other Australian policing agencies, the AFP has gradually put in place an integrity system based on clear guidelines for high corruption-risk activities, a professional reporting support scheme, pre-employment screening, drug and alcohol testing, financial declarations, and awareness-raising and misconduct-prevention programs, amongst other treatments.

Over the past decade, AFP Professional Standards has had primary responsibility for the development and coordination of the integrity system. However, in the past six months the AFP has reassigned key elements of the governance arrangements relating to internal corruption.

At the time this pilot review was conducted, quite significant governance changes were occurring or in prospect. These changes are reported below.

■ *Development of the 2009–2011 Fraud and Corruption Control Plan*

Following a review in 2008 of the AFP's management of risk, a decision was taken to centralise the development of all risk plans to a Risk Management Team.

Accordingly, the *AFP Fraud and Corruption Control Plan* is now coordinated by AFP Planning and Governance, rather than Professional Standards. Under this arrangement, the *ownership* of risk management will reside with each National Manager, including the identification of risks and the development of local mitigation strategies. It is the role of Planning and Governance to ensure that a consistent methodology is applied, and to ensure the quality of results.

Some clear benefits to the new arrangement are evident. The Fraud and Corruption Plan will integrate more closely with risk reporting to senior managers using the Risk Scorecard process; changes in inherent and residual risk will be able to be tracked over time more readily; and additional resources through centralisation should allow for a rolling six-monthly review of the risk register that underpins the Plan.

It is envisaged that AFP Professional Standards will retain a role as a practical source of anti-corruption expertise, experience and data, and as 'innovator' in relation to risks and measures, and for 'over-the-horizon' advice. Professional Standards will also be engaged to advise on the quality of area self-assessments, assuring against the phenomena of 'denial', 'the desire to be rosy', and 'deceit', any of which might lead to an under-estimation of corruption risk.

10 In relation to the AFP, the Commonwealth Ombudsman may be designated as the Law Enforcement Ombudsman, *Ombudsman Act 1976*, s 4(5).

11 *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*; *Australian Federal Police Act 1979*, s 40XA.

The continued engagement of Professional Standards with the development and maintenance of the Plan will be a significant contributor to the Plan's success. Were this level of engagement not maintained, there is a risk that the other work of the Risk Management Team may overtake them, or the lack of specialist expertise relating to corruption risk identification may lead to the development of risk assessments that lack sufficient detail and that underestimate risk in crucial business areas.

The pilot review notes that the AFP is giving consideration to improving further its identification of corruption risk, including:

- Improved evidence collection;
- Mapping interdependencies between activities that may increase risk; and
- Separating the fraud and corruption elements of the Plan to give greater focus to the unique challenges of each.

■ *AFP Security Portfolio*

Another key development of the Integrity Framework is the establishment in January 2009 of a new stand-alone portfolio, AFP Security. The Security Portfolio centralises all of the AFP's functions related to assuring the integrity of the AFP's information, resources, people, assets and reputation. Due to efficiencies in the new system, the creation of the Security Portfolio has been budget-neutral.

There are two key drivers for this initiative, both related to the AFP's credibility in dealing with national security information and the modern use of interdiction and disruption as law enforcement methods:

- the desire to improve the AFP's resistance to compromise by internal or external threats, such as infiltration, corruption and electronic attack; and
- the need to ensure that the AFP embraces consistently the highest standards of information security.

By placing greater emphasis on security, particularly information security, the AFP aims to deal with one of its key corruption risks (and a key risk for all law enforcement agencies) – unauthorised disclosure of information.

The Security Portfolio will:

- articulate, and be responsible for, security policy;
- undertake a cultural change program, designed to assign prestige to good information-handling practice;
- identify, assess and design measures to counter threats, vulnerabilities and security risks;
- centralise all Information Technology and Personnel Security services; and
- enhance the Personnel Security 'after-care' program to ensure that employees remain engaged in protecting law enforcement information once they leave the AFP.

Importantly, the Security Portfolio's interest will concentrate on understanding and identifying security threats, rather than focussing on the conduct of individuals. It is intended that Professional Standards and the Security Portfolio will relate closely.

The philosophy that underpins the new area – seeking to identify and fully understand threats and vulnerabilities, rather than be concerned primarily with the conduct of individuals – represents not just a watershed in the development of the AFP's security framework, but marks also a significant maturing of the integrity framework. This type of approach to investigation holds great promise as an integrity strategy, and reflects ACLEI's own approach to investigation.

A high level of cooperation between the Security Portfolio and Professional Standards will be important to ensure that these important parts of the AFP's integrity framework are working in concert.

A further challenge will be to ensure that mechanisms are developed to ensure that ACLEI is notified¹² appropriately of corruption issues (which may simply be information that indicates the existence of corruption) under the new arrangements.

■ *Professional Standards capability enhancement assessment*

At the time of the pilot review, the Professional Standards Integrity Framework Development Team had recently completed a 'capability enhancement assessment'. This assessment, which is part of an ongoing program of assessing the effectiveness of the AFP's integrity assurance measures, was being undertaken to ensure that the Integrity Framework is kept up-to-date, and that it integrates with other activities in the AFP such as those planned by the Security Portfolio.

As noted above, a number of new and changed measures are being actively contemplated, including introducing integrity testing and the redesign of the drug testing regime.

One other important suite of measures being contemplated relates to the development of an early warning intervention system, which forms part of the AFP's 'career protection' strategy. These measures, which may include data mining; identification and benchmarking of strategic trends, profiling of people, areas and activities; and improved coordination of those responsible for the various components of the integrity framework, would lead to a 'targeted intervention' approach, whereby early interventions in high corruption-risk activities may prevent problems from manifesting.

This strategy also shows promise, and demonstrates a further enhancement to the AFP's approach to assuring the integrity of its staff members. The pilot review endorses this approach.

¹² The heads of the ACC and AFP each have an obligation under the LEIC Act to notify the Integrity Commissioner of corruption issues: s 19 *Law Enforcement Integrity Commissioner Act 2006*.

5.3 SUMMARY OF OPINION (AFP)

Strengths

The AFP's anti-corruption system is mature, and provides a solid platform for further development to deal with emerging challenges.

A comprehensive set of policies and procedures has evolved over time, and is regularly assessed and refined in the light of experience.

The corporate ethos places value on a strong approach to measures that promote professional standards and integrity, and to combat corruption. Senior managers are actively engaged in promoting values and in encouraging professional reporting.

The AFP adapts its integrity governance arrangements to meet emerging challenges, such as to counter grooming and infiltration by organised crime.

The Professional Standards area of the AFP ensures that lessons learned from misconduct cases are incorporated into detection and prevention strategies.

The Security Portfolio arrangement, although recently created, is well-designed and promises a new approach to countering the threat of infiltration and compromise by organised crime.

Areas identified for improvement

The AFP has grown considerably in numbers, activities and locations over the last five years. It is not clear that the resources made available to Professional Standards have kept pace with the changing risk profile, even though changes to the integrity framework have delivered efficiencies. A number of new integrity measures are under assessment, and others require fundamental review. Accordingly, it would now be timely to review the resources available to AFP integrity programs.

The AFP should also consider undertaking a systematic 'stock-take' to identify areas (functions, tasks, areas) of corruption risk. For instance, this process could map the risk posed by the emergence of sub-cultures in the AFP, to apply targeted measures to counter the misplaced loyalty, or misalignment of values, that can arise in such circumstances. Such a project should inform the preparation of the AFP's Fraud and Corruption Control Plan.

As noted above, the pilot review endorses the AFP's consideration of integrity testing and other capabilities that would support its 'career protection' approach.

6. Conclusion

This pilot review provides an independent perspective on the risk factors and control frameworks of the ACC and AFP.

There are significant environmental and operational factors for both agencies that increase their vulnerability to corruption. As noted in Part Two of this report, these risks stem from the type of work undertaken by the ACC and the AFP and, in some circumstances, their possible attractiveness as targets of infiltration or grooming by organised criminal groups.

The enduring challenge of dealing with corruption is its dynamic nature, which leads to a constant need for more effective detection and prevention measures. Through their control measures, both in operation and planned, the ACC and AFP have each demonstrated their willingness to engage with this challenge.

The pilot review has shown that both agencies approach the task of addressing corruption with rigour and creativity, even though their integrity systems are at different stages of development.

ACLEI notes that anti-corruption measures can be expensive to develop and implement. Accordingly, another challenge facing both agencies is to ensure that anti-corruption measures are not only well-directed and resourced sufficiently, but are returning value for money.

Assessment of the effectiveness and value for money aspects of specific policies was outside the scope of this pilot review. However, ACLEI has made incidental observations about areas for improvement in each agency's corruption framework which deserve close consideration by the ACC, the AFP and by the Australian Government in the near future, and which may require additional resources to be invested.

The ACC, AFP and ACLEI will continue to work cooperatively to meet these challenges: to find efficiencies; draw common lessons; to gather and share intelligence; and to build robust systems and cultures. The tripartite approach will be a useful basis on which to proceed.

In relation to anti-corruption treatments, it is not expected that an approach taken by one agency would necessarily be suitable for the other. However, there is scope for increased cooperation between the ACC and the AFP, and perhaps all Australian Government law enforcement agencies. These avenues also deserve further exploration, especially in the context of the Australian Government's commitment to combating organised crime.¹³

ACLEI is pleased to be able to contribute its perspective as an independent anti-corruption agency to the challenges of integrity framework design. The initiative and openness of ACC and AFP staff has been particularly helpful, and is appreciated.

¹³ *The First National Security Statement to the Parliament*, Address by the Prime Minister of Australia, The Hon. Kevin Rudd MP, 4 December 2008.

