



**Submission by the  
Commonwealth Ombudsman**

**INQUIRY INTO INTEGRITY TESTING**

Submission by the Commonwealth Ombudsman, Mr Allan Asher

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## **INTRODUCTION AND SUMMARY**

Thank you for the opportunity to make a submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity Inquiry into Integrity Testing. I have taken the opportunity to make some general observations in relation to integrity testing. The focus of my submission is that corruption prevention is an institutional issue, and not about catching a few "bad apples".

## **BACKGROUND**

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Commonwealth Ombudsman's complaint handling, investigation and audit functions make an important contribution in identifying potential areas that could foster misconduct or corruption. The Ombudsman:

- uses complaints and investigations as a window to identify maladministration and misconduct, precursors to possible corruption issues across government
- can, by his own motion, investigate and expose systemic administration issues that can undermine the integrity and probity in government
- strengthens agencies' administrative systems by, for example, meeting regularly with agencies to discuss complaint issues and trends, and to participate in integrity training programs of these agencies
- publishes education material such as Better Practice Guides and fact sheets.

The Commonwealth Ombudsman is also the Law Enforcement Ombudsman and is responsible for looking into police officer misconduct, including serious misconduct, and other law enforcement matters that do not amount to corruption.

A further role envisaged for the Ombudsman is that of public interest disclosure oversight. The Australian Government has committed to developing legislation to facilitate public interest disclosures in the Australian public sector being made by public officials. It also committed to establishing the Commonwealth Ombudsman as

the integrity agency for overseeing all public interest disclosures, other than those relating to Commonwealth intelligence and security agencies. Public interest disclosures may include matters of corruption, misconduct and maladministration. If the Commonwealth Ombudsman was to oversee this area, disclosures will provide further and valuable insight into public administration.

## RESPONSE TO TERMS OF REFERENCE

Integrity testing was first introduced by the New York City Police Department in the 1970's. Its purpose was and remains to provoke a response from a targeted police member to ascertain whether that member shows sufficient integrity to resist the temptation of personal gain and avoid committing a criminal offence or disciplinary breach. Integrity testing has been adopted by a number of Australian state law enforcement agencies.

Whilst there is already a wide range of mechanisms available to police to aid accountability, integrity testing appears to be an attractive option for police administrators. Understandably, it provides a significant deterrent to unethical behaviour and has proven quite successful at identifying behaviour that is unacceptable. The success of these programmes in identifying misconduct suggests that integrity testing may be an essential anti-corruption device.

However, and while appealing in its simplicity and its ability to 'catch out' the unwary, integrity testing may not necessarily be an effective means of preventing corruption, being a symptom of a broader problem. That is not to say that it doesn't have its benefits, but it is important to understand what it can do and what it can't, and to weigh those benefits against resourcing constraints.

### INDIVIDUAL VS INSTITUTIONAL

While integrity testing will identify corrupt conduct and may deter individuals, it will not remove opportunities and temptations for corruption. Further, and although some intelligence may be gained – an integrity litmus test if you like – it does not further the understanding of the corruption problem or how it might be addressed. Unfortunately, integrity testing is not so much about prevention as it is about catching a few 'bad apples'. That, in my view, is the wrong approach to be taken by a federal anti-corruption agency.

The United Nations Convention Against Corruption is aimed at promoting measures to prevent and combat corruption. Its focus is very much on a multi-faceted approach, including promotion of integrity, accountability and proper management of public affairs and property. Indeed, it recognises that anti-corruption will not be adequately fought by focusing on individuals.<sup>1</sup> An entire chapter of the Convention is devoted to preventative measures focused at the institutional level and the reduction of temptation and opportunity.

Charles Sampford's analysis of criminal investigations in *Parliament, Political Ethics and National Integrity Systems*, could be readily applied to the question of integrity testing:

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<sup>1</sup> United Nations Convention Against Corruption. Available at: <http://www.unodc.org/unodc/en/treaties/CAC/index.html>.

*[It does] not address the key institutional questions of why the 'bad apples' got to such positions of power and were tempted to abuse that power for their own ends...The point is that many of the problems are essentially institutional rather than individual and you cannot fix institutional problems by punishing individuals.<sup>2</sup>*

The 'bad apple' theory of corruption envisions a police agency of integrity as one from which all morally defective individual officers have been removed and in which vigilance is maintained to prevent their entry or emergence. This theory is flawed, and it is well accepted that a police agency of integrity is one whose culture is highly intolerant of corruption.

## CHANGING THE CULTURE

Integrity testing within an organisation will send a message that the organisation does not tolerate corrupt behaviour and help to instil a culture that is resistant to corruption. Integrity testing by an oversight agency has no such benefits. Cultural change must be initiated from within an organisation; it cannot be driven from outside.

Integrity testing by an external agency is far more likely to encourage a closing of ranks, a problem that any oversight agency needs to work tirelessly against if it is to be effective. Such an agency must build a relationship that breaks down those walls. The relationship needs to be based on fairness and professionalism, for above all else, our law enforcement agencies respect professionalism and are quick to weigh the justness of an action. Integrity testing will not always be perceived as fair.

Cultural change is also best promoted through positive encouragement. Fear is a poor motivator. It seems likely that integrity testing, regardless of whether it is conducted by police or by an oversight agency, is likely to encourage behaviour that minimises the chance of being caught by such a program, but is less likely to encourage long term or permanent change. There is certainly no guarantee that it will change the incidence of or way that more serious corruption, which cannot be integrity tested, is viewed.

## PREVENTATIVE ACTIVITIES

The activities required to be undertaken by an anti-corruption agency, if it is to successfully prevent corruption, are numerous and diverse, covering most aspects of good governance. A usual range of corruption prevention topics includes: prevention of the conflict of interest, declaration of assets, ethics and transparency and financial control over the use of public funds. There is a broad range of other tasks, such as developing educational and training programs; organising public awareness campaigns; working with media, civil society and business; and serving as focal points for international co-operation.<sup>3</sup>

Co-ordination, monitoring and research are three further functions. Where different agencies are responsible for detecting and investigating corruption, as they are in the Australian Commission for Law Enforcement Integrity's (ACLEI) 'partnership' arrangement, a co-ordinating function is essential; in addition to the co-ordination of policy development and co-ordination of implementation measures. Monitoring and

<sup>2</sup> Charles Sampford, *Parliament, Political Ethics and National Integrity Systems*, p.2

<sup>3</sup> Organisation for Economic Cooperation and Development (OECD), *Specialised Anti-Corruption Institutions – Review of Models*, 2007. p.15

analysis of implementation and research are vital supporting functions, which are required for the success of anti-corruption policy and implementation measures.<sup>4</sup>

Promotion of integrity is also an important function, and not only involves education, but participation in the implementation of behavioural rules and restrictions and overseeing the administration of disciplinary punishment for non-compliance. Ensuring financial controls are appropriate will certainly help. Finally, there needs to be an effort to promote transparency and public access to information.

I am not suggesting that ACLEI can do all that itself, and it will need to actively leverage off other agencies and coordinate those efforts. The point is that there are a large number of tasks to be undertaken to fight corruption at an institutional level, and more than enough work to be done – work that will have a long term effect and help to drive cultural change that makes the federal law enforcement agencies more resistant to corruption.

From my perspective as Law Enforcement Ombudsman and taking complaints about our federal law enforcement agencies, overseeing conduct management within the Australian Federal Police and undertaking compliance auditing, there is much work to be done at the institutional level to fight corruption. While ACLEI has not detected any serious corruption over the last five years, and is perhaps looking at new ways to do so, I can advise that, for all the good attributes of our law enforcement agencies, and there are many, there are also problems that warrant further inquiry.

Like most law enforcement agencies, there exists a closed culture. There is a deep seated unwillingness to admit fault and officers will close ranks to protect their own, even where there may be fault. My report earlier this year under Part 5 of the *Australian Federal Police Act 1979* identified some real concerns about the use of excessive force and is a case in point. It is in a closed environment that corruption can take root.

What we need to recognise is that one does not need to identify corruption to fight corruption. Corruption exists at the end of a continuum that starts with maladministration, moves to misconduct and then to corruption. If you can identify where serious maladministration and misconduct exists and tackle those problems effectively, you remove many of the opportunities for corruption to take root. If you can identify corruption, it's probably too late - fighting corruption is about prevention.

Prevention of corruption is about taking the long term view. It is about removing opportunities and temptations. It is about building up systems that can withstand corruption and reduce corruption risk. To be successful at preventing corruption, much more needs to be done than simply catching a few 'bad apples'. That is not the job of a federal anti-corruption agency.

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<sup>4</sup> Ibid