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Australian Government

Australian Commission for
Law Enforcement Integrity

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Dr Mark Rodrigues
Inquiry Secretary
House of Representatives Standing Committee
on Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Dr Rodrigues

Supplementary submission – Inquiry into whistleblowing protections within the Australian Government public sector

ACLEI would be pleased if the Committee would consider the following clarification as a supplement to ACLEI's initial written submission (August 2008) and oral evidence (given October 2008).

Disclosure to third parties in a law enforcement context

ACLEI remains of the view that law enforcement agencies should not be exempted from a scheme that allows a 'whistleblower' to make disclosures to a nominated external agency, notwithstanding the secrecy or confidentiality legislation that would otherwise apply to staff members and former staff members of the law enforcement agency.

ACLEI notes that several submissions to the Inquiry have suggested that there are sound policy reasons to provide a 'last resort' mechanism for a public servant, or former public servant, to be able to make a protected disclosure to a third party (such as to the media, or as an internet broadcast) in certain circumstances, the person having exhausted all other reasonable alternatives.

The Integrity Commissioner noted in his evidence (*Hansard*, 23 October 2008, p2), and we reiterate here, that such recourse should not be available to staff members of law enforcement agencies. We hold this view because there are a number of special considerations that, in our opinion, make it inappropriate for recourse to a third party to be made available to those who work in a law enforcement context.

First, staff of law enforcement agencies can have access to confidential databases and other sensitive information such as law enforcement methods and national security information. The need to protect that type of information is of greater importance than the symbolism of having access to a 'last resort' mechanism of disclosure.

Secondly, the handling of law enforcement corruption issues raises particular challenges because of the ability of corrupt law enforcement officers to avoid detection due to their knowledge of investigation methods and how to counter them.

This problem is made more difficult by the readiness of some law enforcement officers to lie to protect colleagues, irrespective of the circumstances, and the possibility that there may be links to serious and organised crime. For example, one method that could be used to disrupt legitimate investigations is to assert that a corruption investigation is a 'reprisal for whistleblowing'. As the Integrity Commissioner put it in his evidence to the Committee, "When you fight corruption, corruption fights back" (*Hansard*, 23 October 2008, p2). Providing a mechanism for lawful disclosures to be made outside of the system designed to handle them would make the task of corruption investigation more difficult.

Finally, partitioning law enforcement agencies from a scheme that enables lawful disclosure to third parties is reasonable because:

- There are established arrangements in place for the receipt and handling of corruption information in the Australian Federal Police (AFP) and Australian Crime Commission, including a 'professional reporting' regime in the AFP;
- ACLEI already exists as a specialist external agency to which whistleblower disclosures can be lawfully brought, and protection against reprisals can be arranged;
- The results of the Integrity Commissioner's investigations are required to be published each year (Regulation 20(e) of the *Law Enforcement Integrity Commissioner Regulations 2006*), thus providing transparency;
- The Parliamentary Joint Committee on ACLEI monitors and reviews the Integrity Commissioner's performance of his or her functions (section 215 of the *Law Enforcement Integrity Commissioner Act 2006*), thus providing scrutiny and accountability.

Accordingly, we suggest that staff members and former staff members of law enforcement agencies that are subject to Integrity Commissioner's jurisdiction under the *Law Enforcement Integrity Commissioner Act 2006*, should not be afforded relief from secrecy or confidentiality obligations if they make unauthorised disclosures to third parties.

If it would assist the Committee, ACLEI is happy to provide additional information to the Inquiry.

Yours sincerely

Peter Bache
Executive Director (A/g)