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**GOVERNMENT RESPONSE  
PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR LAW  
ENFORCEMENT INTEGRITY  
INQUIRY INTO LAW ENFORCEMENT INTEGRITY MODELS**

**JUNE 2010**

## GOVERNMENT RESPONSE

### Introduction

On 23 February 2009, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity tabled the report from its *Inquiry into Law Enforcement Integrity Models*.

The Committee made a comparative analysis of the Australian Commission for Law Enforcement Integrity (ACLEI) to its state-based counterparts to inform possible changes to the governance structure and operation process of ACLEI, to enhance its current operation and support the potential extension of ACLEI oversight to other Commonwealth agencies with a law enforcement function.

The Committee made eight recommendations to which the Australian Government is pleased to respond. The recommendations consider ACLEI's resourcing levels, capabilities, external relationships and the misconduct reporting arrangements in the agencies it oversees. Of the eight recommendations, the Government has agreed to two recommendations and agreed in principle to three recommendations. The remaining three recommendations are noted.

**Recommendation 1**

**5.12 The committee recommends that the Australian Government undertake a review of the Australian Commission for Law Enforcement Integrity's funding levels, as a matter of urgency.**

***Agreed***

The Australian Government reviewed the funding arrangements for the Australian Commission for Law Enforcement Integrity (ACLEI) prior to the 2008-09 Budget. As a result, the Australian Government committed an additional \$7.5 million over four years (including a one-off \$750,000 capital injection) to ACLEI in the 2008-09 Budget to improve its investigative capacity. This measure effectively doubled ACLEI's appropriation in 2009-10 to \$4.1 million.

The Attorney-General's Department (AGD) will continue to work closely with ACLEI on resourcing issues, including assisting ACLEI during the development of new policy proposals for Government consideration.

The Government acknowledges that the volume and complexity of ACLEI's investigative caseload has increased over the two and half years of its operation. As a result, AGD has committed to working with ACLEI to review its business practices and funding structure. This will draw on the outcomes of the three-year review of the *Law Enforcement Integrity Commissioner Act 2006*.

Any changes to ACLEI's funding arrangements will be considered by Government through normal budget processes.

**Recommendation 2**

**5.18 The committee recommends that, as a matter of priority, the Australian Government fund the establishment of a prevention and education unit in the Australian Commission for Law Enforcement Integrity. Further, the committee recommends that the prevention and education unit undertakes, but is not limited to, the following activities:**

- education of law enforcement personnel
- public education and awareness-raising
- corruption-risk reviews
- research

***Noted***

See response to Recommendation 3 below.



### **Recommendation 3**

**5.19 The committee recommends that the corruption prevention and education function be strengthened in the *Law Enforcement Integrity Commissioner Act 2006* following the review of the operation of the Act, which is due to report no later than 30 June 2010. Specifically, it is recommended that a corruption prevention and education function be included under section 15 (Functions of the Integrity Commissioner) of the Act.**

### *Noted*

Under the *Law Enforcement Integrity Commissioner Act 2006*, the Commissioner's primary function is the investigation of corruption issues. Further, the Act provides the Integrity Commissioner with significant and extensive power—specifically coercive and intrusive information-gathering powers similar to those potentially available to Royal Commissions—to carry out this primary role.

While a broad mandate for education and prevention is not provided for under the Act, there is scope for the Commissioner to undertake certain education and prevention activities incidental to the investigation function.

Careful consideration needs to be given to whether ACLEI is best placed to undertake a broader prevention and education role, given the contribution other agencies already make to education and prevention—notably the Australian Public Service Commission (APSC) and the Office of the Commonwealth Ombudsman. These agencies carry out this function at a 'whole of Government' level, whereas ACLEI's purview is limited to the Australian Federal Police (AFP) and the Australian Crime Commission (ACC).

In this context, the Government considers at this time that ACLEI's efforts are best directed to carrying out its primary role of investigation.

Any future proposals for funding a prevention and education unit would also need to be considered by Government through normal budget processes.

### **Recommendation 4**

**5.38 The committee recommends that the Australian Government initiates the establishment of a national forum through which matters of mutual interest to state and federal law enforcement integrity agencies can be addressed.**

### *Agreed in principle*

The Government agrees that there is value in an appropriate forum for state and federal law enforcement integrity agencies to discuss matters of mutual interest. The Government notes that the biennial Australian Public Sector Anti-Corruption Conference is a forum established for this purpose, and that state and federal integrity agencies, including ACLEI, participate.

The Government supports ACLEI exploring other opportunities for engagement with state law enforcement integrity agencies.

**Recommendation 5**

**5.41 The committee recommends that the Australian Government consider in the longer term the establishment of an integrity inspector to assist in the oversight of the Australian Commission for Law Enforcement Integrity.**

***Agreed in principle***

The Government considers that the existing accountability arrangements are sufficient for the current scrutiny of ACLEI. This includes the capacity for the Minister to refer ‘ACLEI corruption issues’ to a special investigator under the *Law Enforcement Integrity Commissioner Act 2006*.

The Government notes that supplementary arrangements—including the appointment of an integrity inspector or some other model—could be considered in the future. This consideration should occur when ACLEI’s size and the complexity of its workload justifies a review of accountability measures, and/or when other new considerations arise.

**Recommendation 6**

**5.44 The committee recommends that as a priority the Australian Government fund the establishment and ongoing maintenance of a secure hearing room, associated technical infrastructure and personnel support.**

***Noted***

The Government considers that it is important that ACLEI has access to appropriate facilities. However, in view of the relatively small number of hearings currently conducted each year by ACLEI, and based on advice from the Attorney-General’s Department, it is not evident that the current arrangements—that is, utilising the facilities of other agencies as required—are inadequate.

Any funding proposal for the establishment and maintenance of a secure hearing room must be considered within the Government’s normal budget processes.



#### **Recommendation 7**

**5. 50 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.**

#### ***Agreed***

The Government recognises that the mandatory reporting of misconduct is an important element of the professional standards frameworks of the ACC and the AFP. Currently, this obligation arises under management arrangements implemented by the ACC and the AFP. The Government considers that the present arrangements are appropriate and likely to encourage reporting of misconduct as part of the professional standards frameworks of the ACC and the AFP.

The *Law Enforcement Integrity Commissioner Act 2006* allows for people to refer corruption issues—as opposed to misconduct issues—directly to the Integrity Commissioner. Other complaints about employees of Commonwealth law enforcement agencies may be made to the Commonwealth Ombudsman.

More broadly, the Government has made a commitment to introduce legislation strengthening whistleblower protections in the Australian Government public sector, which includes employees of Commonwealth law enforcement agencies.

The Government will consider whether any amendments to misconduct reporting arrangements in the ACC and the AFP are required in the context of the Government response made on 17 March 2010 to the House of Representatives Standing Committee on Legal and Constitutional Affairs Report: “Whistleblower Protection: A Comprehensive Scheme for the Commonwealth Public Sector”.

## **Recommendation 8**

**5.53 The committee recommends that the Australian Government review existing arrangements for the suspension and dismissal of Commonwealth law enforcement agency employees believed on reasonable grounds to have engaged in serious misconduct or corruption, and that the Government take action as appropriate, bearing in mind the need to respect the rights of employees.**

### *Agreed in principle*

The Government recognises the need for the AFP and the ACC to have appropriate arrangements in place to address serious misconduct or corruption.

The AFP has a strong regime under the *Australian Federal Police Act 1979* (AFP Act) and the *Australian Federal Police Regulations 1979* (AFP Regulations) to suspend and dismiss officers who the AFP Commissioner reasonably believes have engaged in serious misconduct or corruption.

Regulation 5 of the AFP Regulations allows the AFP Commissioner to suspend an AFP employee where he or she suspects on reasonable grounds that the employee has, or may have, engaged in corrupt conduct or conduct that contravenes the AFP professional standards.

Under s 28 of the AFP Act, the AFP Commissioner may at any time, by notice in writing, terminate the employment of an AFP employee. Where the termination was made because the AFP Commissioner believed on reasonable grounds that the employee's behaviour or conduct constituted serious misconduct or corruption, the AFP Commissioner may make a declaration to this effect (s 40J). Where a declaration is made, it is likely that the decision to terminate will not be subject to workplace relations laws but may be judicially reviewed.

The Government is confident that these arrangements are well adapted to the needs of the AFP and will consider any amendments should the need arise.

Employees of the ACC are engaged under the *Public Service Act 1999* (PS Act) and are required to uphold the Australian Public Service Values and the Code of Conduct and, under section 15 to the Act, the agency head may impose sanctions on an employee who is found to have breached the Code of Conduct.

The power of the Chief Executive Officer (CEO) of the ACC to suspend and dismiss employees for suspected misconduct or corruption arises from his or her status as an 'Agency Head' for the purposes of the PS Act and the *Public Service Regulations 1999* (PS Regulations). The ACC operates under the same legislative regime as the majority of the public service.

The CEO may suspend an employee in compliance with regulation 3.10 of the PS Regulations (s 28 PS Act). Suspension (with or without pay) is possible where the Agency Head believes on reasonable grounds that:

- the employee has, or may have, breached the Code of Conduct, and
- the employee's suspension is in the public's, or the Agency's, interest.



The CEO may at any time, by notice in writing, terminate the employment of an APS employee in the ACC (PS Act s29). Termination of employment is subject to rules and entitlements laid out in the Fair Work Act 2009. A notice of termination for an ongoing APS employee must specify the ground or grounds that are relied on for the termination. The grounds include non-performance, or unsatisfactory performance, of duties; breach of the Code of Conduct and any other ground prescribed by the regulations.

The regulations may prescribe grounds or procedures applicable to the termination of the engagement of non-ongoing APS employees but this does not, by implication, limit the grounds for termination for a non-ongoing APS employee.

AGD has reviewed existing arrangements for the suspension and dismissal of ACC employees believed, on reasonable grounds, to have engaged in serious misconduct or corruption and is developing options to strengthen the powers of the CEO of the ACC. This review has involved extensive consultations, taking into account the views of the Committee.