



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

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Inquiry into Integrity Testing

November 2011

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## ABBREVIATIONS

ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
AFPA	Australian Federal Police Association
AGD	Attorney-General's Department
CCC	Western Australian Corruption and Crime Commission
CEO	Chief Executive Officer
committee	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
Customs	Australian Customs and Border Protection Service
Customs Act	<i>Customs Act 1901</i>
LEIC Act	<i>Law Enforcement Integrity Commissioner Act 2006</i>
Ombudsman	Commonwealth Ombudsman
PFA	Police Federation of Australia
PJC-ACLEI	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
WAPOL	Western Australia Police





# RECOMMENDATIONS

## Recommendation 1

**3.50** The committee recommends that an integrity testing program be introduced for certain Commonwealth law enforcement agencies.

## Recommendation 2

**3.51** The committee has received evidence about types of integrity testing and recommends that targeted integrity testing be the preferred method.

## Recommendation 3

**4.6** The committee recommends that an integrity testing program initially apply to law enforcement agencies within ACLEI's jurisdiction.

## Recommendation 4

**4.21** The committee recommends that the Integrity Commissioner and heads of agencies under the jurisdiction of ACLEI be given the ability to authorise integrity tests in the course of their investigations into corruption issues.

## Recommendation 5

**4.56** The committee recommends that relevant legislation be amended, or if necessary, created, so as to allow covert policing powers to be used for the purpose of targeted integrity testing of an officer or employee of an agency under the jurisdiction of ACLEI, or group thereof, where there are allegations or suspicions of corrupt behaviour.

## **Recommendation 6**

**4.64** The committee recommends that legislative amendments be made mirroring the relevant parts of controlled operations legislation so that the Commonwealth Ombudsman is enabled to provide an annual report to Parliament on the use of integrity testing and associated covert policing powers.

## **Recommendation 7**

**4.66** The committee recommends that:

- the Integrity Commissioner be notified of any integrity test that is to be conducted by an agency within ACLEI's jurisdiction as well as the outcome of such tests; and
- the Integrity Commissioner may at his discretion be involved in or take control of the integrity test.

## **Recommendation 8**

**4.69** The committee recommends that as part of the committee's annual examination of the ACLEI annual report, ACLEI provide a private briefing to the PJC-ACLEI on the number and outcome of integrity tests conducted.

# CHAPTER 1

## INTRODUCTION

### Terms of reference

1.1 On 7 July 2011, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the committee) initiated an inquiry into the possible introduction of a law enforcement integrity testing framework at the Commonwealth level, pursuant to the committee's duties set out in subsection 215(1)(d) of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).

1.2 In particular, the committee resolved to consider:

- (a) the various integrity testing models, including the advantages and disadvantages of random and targeted integrity testing, effectiveness as a corruption deterrent, and possible entrapment issues;
- (b) the legislative and administrative framework required to underpin an integrity testing regime;
- (c) the Commonwealth agencies to whom an integrity testing regime could apply;
- (d) the potential role of the Australian Commission for Law Enforcement Integrity in integrity testing; and
- (e) any other relevant matters.

### Conduct of the inquiry

1.3 The committee advertised the inquiry in *The Australian* newspaper and on the committee's website. In addition, the committee wrote to a number of organisations inviting submissions.

1.4 The committee received a total of 11 submissions, 10 of which are published on the committee's website. One submission was received as a confidential submission. A list of submissions is contained at Appendix 1.

1.5 In addition, the committee held public hearings in Canberra on 19 August 2011 and in Perth on 9 September 2011. *In camera* hearings were also held in Sydney on 16 September 2011 and in Canberra on 13 October 2011.

### Structure of the report

1.6 The remainder of this report is split into three chapters. Chapter 2 provides an overview of integrity testing, including established programs around Australia and internationally. Chapter 3 examines the arguments for and against introducing integrity testing in Commonwealth law enforcement agencies. Chapter 4 concludes

with discussion and recommendations about the design of an integrity testing program if it were to be introduced.

### **Acknowledgements**

1.7 The committee wishes to express its appreciation to all parties who contributed to the conduct of this inquiry, whether by making a written submission, by attending a public hearing or, as in many cases, by making both written and oral submissions.

### **Note on references**

1.8 References to the committee *Hansard* are to the proof *Hansard*: page numbers may vary between the proof and the official *Hansard*.

## CHAPTER 2

# INTEGRITY TESTING: AN OVERVIEW

### Introduction

2.1 Integrity testing is a term that is used to describe a range of activities designed to assess compliance with the integrity requirements of an office. In essence, integrity testing involves putting an individual in a simulated situation where corrupt behaviour can occur, and observing the individual's behaviour. Such a test can be arranged on a targeted basis as a result of specific intelligence about an individual or group, or on a randomised basis in order to provide a general deterrent. Targeted integrity testing of police officers occurs in a number of jurisdictions, including New York City, Hong Kong, London and in most Australian states, although not currently at the Commonwealth level.

### What is integrity testing?

2.2 A number of descriptions of integrity testing were provided in submissions. For example, the Australian Commission for Law Enforcement Integrity (ACLEI) described integrity testing as follows:

As an anti-corruption measure, an integrity test is an observed, covert, simulation that tests an employee's adherence to the law (relating to the employee's duties) or to key agency guidelines through a 'realistic scenario' which is designed to allow a subject a clear choice to pass or fail. A subject will 'pass' an integrity test if his or her conduct was consistent with organisational and legislative requirements. A subject will 'fail' an integrity test if, for example, he or she engaged in corrupt activity or criminal behaviour.<sup>1</sup>

2.3 The Attorney General's Department gave a similar description, submitting:

Within the law enforcement context, integrity testing refers to the act of covertly placing an officer in a simulated situation designed to test whether they will respond in a manner that is illegal, unethical or otherwise in contravention of the required standard of integrity. The test must provide the subject with an equal opportunity to pass or fail the test. Depending on its severity, the consequences of failing integrity tests can include disciplinary action, termination of employment or criminal charges.<sup>2</sup>

2.4 The defining factor in integrity testing is therefore the simulated nature of the scenario in which an individual is placed. This differentiates it from traditional anti-

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1 ACLEI, *Submission 4*, p. 4.

2 AGD, *Submission 5*, p. 1.

corruption investigation tools, which seek to substantiate corrupt behaviour that has already occurred.

2.5 Most of the examples of integrity testing provided to the committee are targeted at police officers. Typical scenarios might include:

- a covert operative handing in a wallet containing cash to a police officer or police station, and observing that correct handling protocols are observed<sup>3</sup>;
- leaving valuable goods at a simulated crime scene, such as at a burglary or in a stolen vehicle, to test whether an officer steals the items<sup>3</sup>;
- a covert operative offering an officer a bribe<sup>3</sup>;
- handling and or on-selling of illicit substances such as drugs;<sup>4</sup> or
- putting false information in a database so that a person who you suspect of unlawfully disclosing that information to another person would then see that information and then disclose it.<sup>5</sup>

2.6 While failing the tests set up in these examples would probably constitute a criminal offence, in practice, integrity testing can be used to target behaviour ranging from minor misconduct to serious corruption.

2.7 At the less serious end of the spectrum, ACLEI notes that 'mystery shopper' programs that test the quality of customer service is a form of integrity testing – in this case, testing that employees are meeting department standards of service.<sup>6</sup>

2.8 Reflecting on the different uses of integrity testing, ACLEI submitted:

[D]epending on the behaviour being tested and the design of the program, the results of individual tests may be used for training purposes, for disciplinary purposes, or to found criminal charges. Again, depending on the program design, a scenario may specifically test behaviour that may constitute corruption, or may test lower-level wrong-doing that, if left unchecked, would contribute to a poor ethical culture and may lead to corrupt conduct becoming widespread. In both types of model, the policy purpose includes creating an “omnipresence” – a wide deterrence effect based on the prospect that wrongdoing is more likely to be detected than not.<sup>7</sup>

2.9 Submissions and witnesses also distinguished between integrity tests that are conducted on a targeted or random basis. A targeted integrity testing regime is

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3 Anti-Corruption Resource Centre, Corruption and possible cures FAQ, <http://www.u4.no/helpdesk/faq/faqs2b.cfm>, accessed 5 November 2011.

4 Mr Philip Moss, *Committee Hansard*, 13 October 2011. p. 2.

5 Mr Philip Moss, *Committee Hansard*, 13 October 2011. p. 5.

6 ACLEI, *Submission 4*, p. 5.

7 ACLEI, *Submission 4*, pp 4– 5.

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intelligence-based and targets individuals or groups suspected of engaging in corrupt conduct. For a targeted test to occur, some kind of trigger is required, such as a complaint, allegation, identified pattern of behaviour or some other basis that gives rise to suspicion.

2.10 In contrast, integrity testing may also be conducted on a random basis, where individuals or groups are tested in the absence of any suspicion of corruption. All individuals with the organisation have an equal chance of being subject to a test. In practice, the committee is aware that the distinction between random and targeted testing is not clear cut. For example, an integrity testing regime that targets particular sections of an organisation on the basis of higher corruption risk, but in the absence of any intelligence about corrupt behaviour, could be considered either random or targeted depending on the definition used. The terms 'random' and 'targeted' are at either end of a spectrum of integrity testing methodologies.

2.11 A key difference between the two categories is that random testing is focused on deterring unacceptable conduct whereas targeted testing is primarily for detecting or investigating unacceptable conduct (although there can be a flow-on deterrent effect).<sup>8</sup> As the Attorney General's Department submitted:

Random integrity testing involves the testing of officers who are not under suspicion for any specific corruption or misconduct. Its primary goal is deterrence from engaging in such behaviour. Random integrity testing can be applied widely within an organisation, or only to specific areas or units that may be subject to a higher risk of corruption. Random integrity testing is not an investigation, although its outcomes may lead to one.

Targeted integrity testing involves the selection of officers for testing based on intelligence gathered by other methods. Targeted integrity testing can be conducted in relation to individuals or groups. Its primary goal is to proactively 'catch' or 'clear' the target. Targeted integrity testing can be conducted as part of a formal criminal investigation relating to corruption.<sup>9</sup>

2.12 In the following chapter, the committee considers the relative merits of targeted and random testing regimes in the context of the possible introduction of a Commonwealth integrity testing regime.

### **History of integrity testing**

2.13 Police integrity testing appears to have been first introduced by the New York City Police Department (NYPD) in the 1970s. The Commission to Investigate Alleged Police Corruption (Knapp Commission) found that traditional investigative techniques

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8 AFP, *Submission 10*, p. 3.

9 AGD, *Submission 5*, p. 2.

were of limited value and obtained greater success using undercover police in 'sting' operations.<sup>10</sup>

2.14 Its purpose was and continues to be 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.<sup>11</sup>

2.15 Following the Knapp Commission, the NYPD instituted an ongoing integrity testing regime. Historically, operations included:

- an undercover policeman giving a uniformed officer a 'found' wallet full of money and observing whether protocol was observed in logging the lost property;
- 'set-up' arrests of undercover personnel who possessed measured quantities of narcotics or cash, with subsequent testing to ensure that these amounts were tendered as evidence; and
- Planting of valuable contraband in a police car or at the scene of a supposed burglary, to observe the behaviour of the attending officer.<sup>12</sup>

2.16 The NYPD used both random and targeted integrity tests. However, in 1996, a KPMG report found that the results of randomised testing did not justify the cost. The NYPD subsequently moved to higher levels of targeted testing, though it retained a reduced randomised regime.<sup>13</sup> Nevertheless, the committee understands that random testing remains a significant part of the NYPD's overall integrity testing strategy.

2.17 Hong Kong's Independent Commission Against Corruption also has a long-running integrity testing program, which it deploys across the public sector, as well as in relation to police.<sup>14</sup>

2.18 In the United Kingdom, integrity testing was introduced into the London Metropolitan Police in 1998, with potential expansion to cover constabularies then foreseen.<sup>15</sup>

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10 T. Prenzler and C. Ronken, *Police Integrity Testing in Australia*, Criminology and Criminal Justice, 1(3) 2001, p. 320.

11 Commonwealth Ombudsman, *Submission 1*, p. 3.

12 Vincent Henry, Lifting the Blue Curtain: some controversial strategies to control police corruption, National Police Research Unit Review 6, 1990, pp 51–52.

13 *Executive Summary: 1. New York City Police Department: Random Integrity Testing Program*, NYC Commission to Combat Police Corruption, 1996.

14 ACLEI, *Submission 4*, p. 4.

15 Prenzler and Ronken, p. 323.



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## *Integrity testing in Australia*

2.19 New South Wales adopted police integrity testing measures as part of the Wood Royal Commission in the 1990s.<sup>16</sup> The NSW regime, which involved targeted rather than random testing, drew heavily on the NYPD model.<sup>17</sup> The actual testing is conducted by the Professional Standards Command within the NSW Police, and enabled by specific legislative provisions.<sup>18</sup>

2.20 Of the 90 integrity testing operations conducted in NSW until 1999, 37 per cent were failed, 27 per cent were passed, 12 per cent were forwarded for further investigation and 24 per cent were inconclusive or were discontinued. 51 criminal charges followed from the failed tests, of which 54 per cent were against police, 23 per cent against staff and 23 per cent against civilians.<sup>19</sup>

2.21 Sworn members of the New South Wales Police can be targeted for a test on the basis of intelligence, including complaint patterns. The *Police Act 1990* supports the integrity testing program by providing that actions committed for the purpose of running an integrity test are considered lawful.<sup>20</sup>

2.22 Victoria introduced targeted testing for its police force in 1998.<sup>21</sup> Victoria Police operates an Integrity Testing Unit, within its Ethical Standards Department.<sup>22</sup> As with other Australian jurisdictions, Victoria Police operates a targeted, not random, integrity testing regime. The Victorian capability is supplemented by the Office of Police Integrity's own dedicated integrity testing unit.

2.23 Western Australia Police (WAPOL) can authorise targeted integrity tests. In 2005, WAPOL and the Corruption and Crime Commission (CCC) formed a joint Targeted Integrity Testing Unit that provided integrity testing with the benefits of the CCC's legislative powers and WAPOL's operational experience.<sup>23</sup> Proposed changes to legislation may enhance the state's ability to conduct integrity testing. The CCC

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16 Prenzler and Ronken, p. 320.

17 Prenzler and Ronken, p. 328.

18 *NSW Police Act 1990*, s. 207A.

19 Prenzler and Ronken, p. 329.

20 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 47.

21 Prenzler and Ronken, p. 331.

22 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 165.

23 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 194.

itself can conduct both random and targeted tests on police officers, although it is unclear that any random tests take place.<sup>24</sup>

2.24 In Queensland, the Crime and Misconduct Commission conducts integrity tests on Queensland Police officers, on a targeted basis only. Criteria have been developed in order to assess the seriousness of the response against the seriousness of the case. For example, integrity testing would only be used in cases where a criminal offence which might warrant dismissal is suggested.<sup>25</sup>

2.25 Similarly, in South Australia, targeted integrity testing is also an available tool that has been used to aid internal investigations, generally conducted by the South Australian Police Anti-Corruption Branch rather than the Internal Investigations Section. Random integrity testing is not used on the basis that it raises significant resource issues.<sup>26</sup>

2.26 Tasmanian legislation also allows for the Tasmanian Police to conduct integrity tests, but this does not occur in practice.<sup>27</sup> Northern Territory Police does not conduct integrity tests due to resource constraints.<sup>28</sup>

2.27 While police integrity testing regimes have been introduced in most Australian states, there has been no integrity testing regime for Commonwealth law enforcement officers. In the next chapter, the committee considers whether the introduction of integrity testing at the Commonwealth level is desirable.

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24 Mr Robert Sutton, CCC, *Committee Hansard*, 9 September 2011, p. 2.

25 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 119.

26 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 132.

27 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 153.

28 Porter, L. & Prenzler, T. (2011). *A National stocktake of police integrity strategies*. Brisbane: Australian Research Council Centre of Excellence in Policing and Security, Griffith University, p. 84.

## CHAPTER 3

### SHOULD THE COMMONWEALTH ADOPT INTEGRITY TESTING?

#### **Committee's previous findings in relation to integrity testing**

3.1 The committee has previously considered the merit of introducing integrity testing in the course of its inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act).<sup>1</sup>

3.2 In the interim report for that inquiry, tabled in February 2010, the committee noted that a careful balance must be achieved between better enabling law enforcement agencies to deter and detect corruption through the introduction of an integrity testing program, and the need to remain alert to the ethical challenges of entrapment. The committee further noted the costly and time-consuming nature of integrity testing. These issues are further considered in this chapter.

3.3 The committee supported, in principle, the introduction of an integrity testing program within the Australian Federal Police (AFP). On the evidence then before it, the committee considered that such a regime should be targeted or intelligence-based and not random. Further, the committee considered it critical that ACLEI be assigned responsibility for monitoring such a regime, with a view to maintaining the balance of priorities outlined above.

3.4 The committee also noted that, in addition to the AFP, there may be merit in introducing an integrity testing regime across a 'broader range of agencies with law enforcement functions'. The committee observed that, on the surface, it made sense to extend such a measure to other agencies with a similar corruption risk profile to that of the AFP. On this basis the committee suggested that this issue be further explored, including an expanded role for ACLEI in such a regime.

3.5 Accordingly, the committee recommended that the Australian Commission for Law Enforcement Integrity be assigned responsibility for the monitoring of an integrity testing regime, should one be introduced, and that the LEIC Act be amended to include this function accordingly.

3.6 In this chapter and chapter 4, the committee considers these and other issues, including a possible model for integrity testing within certain Commonwealth agencies.

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1 For a full account of the committee's findings relating to integrity testing in that inquiry, see *Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006*, Interim Report, February 2010.

## Support for integrity testing

3.7 Of the eleven submissions received in the course of the inquiry, a number supported the introduction of integrity testing within certain Commonwealth law enforcement agencies, including ACLEI, the AFP and the Australian Crime Commission (ACC).

3.8 In its evidence to the committee, ACLEI stated its support for the introduction of an integrity testing capability within the LEIC Act, submitting:

While there is no 'corruption crisis' in Commonwealth law enforcement, the emergence of targeting of government officials by organised crime groups in some jurisdictions means that integrity testing now warrants close consideration by agencies that may be vulnerable to such attacks.<sup>2</sup>

3.9 Elaborating on this comment, Mr Philip Moss, Integrity Commissioner, stated:

I have spoken with this committee in recent years and in my annual reports about the aggressive tactics used by organised criminal groups to achieve their aims. The risk of infiltration and corrupt compromise in agencies engaged in the fight against organised crime continues to engage ACLEI. I have spoken also about the problems of the conscious opponent and the invisibility of corruption. These phenomena make it difficult to detect and gather evidence about corrupt conduct in a law enforcement environment, and we should not underestimate the challenge involved. Accordingly, I believe it would be timely now to add integrity testing to the options available to combat corruption. It will not be a panacea and it will not be the right method for every agency or in every instance; however, for the right situations, it will be useful to have the ability to conduct integrity testing.<sup>3</sup>

3.10 In particular, ACLEI sees value in integrity testing being used as an investigation tool. ACLEI informed the committee that the method overcomes evidence collection problems that can otherwise face anti-corruption investigators, namely:

- the familiarity of a subject with sophisticated methods to conceal his or her own subterfuge;
- conspiracy between individuals to obstruct investigations; and
- collecting direct, contemporary evidence about conduct that does not rely on:
  - inference;
  - uncorroborated information (the 'disreputable witness' and 'self-interested co-conspirator' problems);

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2 ACLEI, *Submission 4*, p. 5.

3 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 2.

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- information only about past events (the 'one step behind' problem); or
  - testimony of witnesses or whistle-blowers who would otherwise be exposed and placed in jeopardy.<sup>4</sup>

3.11 The AFP recognised the deterrent effect of integrity testing, and was of the view that the introduction of an integrity testing regime would further strengthen the AFP's toolkit in combating corruption. However, it noted that integrity testing should not be pursued to the detriment of other capabilities such as education and training, early detection, a strong leadership culture, and effective guidance to assist AFP appointees to make ethical decisions.<sup>5</sup>

3.12 The ACC also supported targeted integrity testing of its officers on the basis that it would further strengthen the ACC's existing integrity framework. The ACC indicated its support for several models, including integrity testing conducted by ACLEI, by itself (in consultation with ACLEI), jointly with ACLEI or by another agency authorised by ACLEI.<sup>6</sup>

3.13 In addition, CrimTrac, noting the committee's recommendation in a previous inquiry to include CrimTrac in a second-tier ACLEI jurisdiction, informed the committee that it would have no objection to being subject to an integrity testing regime.<sup>7</sup>

3.14 The Australian Federal Police Association (AFPA) and the Police Federation of Australia (PFA), however, were generally opposed to the introduction of integrity testing, particularly on a random basis, at the Commonwealth level.<sup>8</sup> AFPA opposed the introduction of integrity testing within the AFP for reasons canvassed in the issues section below, while the PFA raised concerns about the potential effects of a Commonwealth integrity testing regime on seconded state and territory police officers.<sup>9</sup>

3.15 In addition to the views described above, a number of other organisations provided evidence elaborating on various issues relating to integrity testing. This evidence is presented below.

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4 ACLEI, *Submission 4*, p. 6.

5 AFP, *Submission 10*, p. 6.

6 ACC, *Submission 11*, p. 3.

7 CrimTrac, *Submission 8*, p. 1.

8 AFPA, *Submission 6*, p. 1.

9 PFA, *Submission 7*, p. 1.

## Issues raised

3.16 In evidence provided to the committee, a number of issues associated with integrity testing were raised, including cost, impact on morale, legal issues such as inducement, and the effectiveness of integrity testing as an integrity measure.

### *Cost*

3.17 ACLEI, the AFP, and the Attorney-General's Department (AGD) all noted that integrity testing is a resource intensive exercise.<sup>10</sup> Because integrity testing requires the creation of detailed, highly realistic scenarios that are tailored to the circumstances of each particular case, preparing a test can be a costly proposition. In addition, specialist teams may be required to assist with the execution of a test, including undercover operatives, often seconded from other agencies, and surveillance or telecommunication intercept capabilities.

3.18 The AFP informed the committee that the costs for an agency conducting an integrity testing regime would vary depending, for example, on whether the regime was fully internal or fully outsourced. A fully internal, dedicated integrity testing unit within the AFP was estimated to cost \$8 million, while other options included contracting another agency on a user-pays basis, or a hybrid of the two models.<sup>11</sup>

3.19 The Western Australian Police, however, noted that their own integrity testing program was no longer run by a stand alone unit, but was instead conducted by a broader unit with covert operations specialisation. As Detective Superintendent Tony Flack explained:

If I simply had officers sitting there trying to drum-up integrity tests, I do not think I would be getting value for money. But inside a covert services/covert investigations cell, where all the investigators are trained in looking for integrity tests, there are opportunities to be very cost effective in using existing investigation resources than trying to run integrity tests.<sup>12</sup>

3.20 ACLEI emphasised its preferred approach to integrity testing was the introduction of a 'low-level, low-cost' option. The Integrity Commissioner explained:

[W]hat I would be hoping for if a decision was made to proceed with integrity testing, would be a very low level, low-cost approach to integrity testing, and it being added in that sense of another option rather than the more expensive possibility of integrity testing units and all the expense and issues that go with that.<sup>13</sup>

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10 ACLEI, *Submission 4*, p. 6; Assistant Commissioner Leanne Close, AFP, *Committee Hansard*, 19 August 2011, p. 16; AGD *Submission 5*, p. 1.

11 AFP, *Submission 10*, p. 5.

12 Detective Superintendent Tony Flack, Western Australia Police, *Committee Hansard*, 9 September 2011, p. 10.

13 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 3.

3.21 The committee notes that the cost of integrity testing is one reason why many police forces choose to conduct targeted rather than random testing, as it is considered that targeted tests provide greater value for money.

*Negative effects on morale and capacity to act.*

3.22 The effect of integrity testing on the morale, and capacity to act, of officers within an agency was raised as a concern, particularly in relation to a random testing program.

3.23 In ACLEI's view, any approval of the notion of integrity testing would need to balance the positive anti-corruption benefits against the possible unintended negative effects, including erosion of:

- the trust-relationship between an employee and their employer; and
- the preparedness of public officials to act with confidence, especially in a law enforcement environment in which fast judgements are required and officers have a large degree of discretion in the performance of their duties.<sup>14</sup>

3.24 Similarly, AFPA expressed concern that integrity testing would have a net negative effect as a result of reduced trust between officers and lower staff morale. AFPA noted that this could undermine the operation of a professional and ethical workplace, while impeding efficiency as police constantly 'look over their shoulders'.<sup>15</sup> Mr Jim Torr, AFPA, elaborated on this issue, observing:

Policing requires trust. The AFP has one of its core values as trust. In the environment out there, the hostile, quick moving environment, trust is everything. You do not really have a lot of time to second guess everything that comes your way before you start making decisions. In an intangible and philosophical sense: how do you reconcile an organisation and a profession that runs on trust where you have established a pretty big structure that says, 'We do not trust you and we are going to test you at every turn because we do not trust you'? It is another side to the issue.<sup>16</sup>

3.25 The AFPA referred the committee to comments by the former AFP Commissioner, Mr Mick Palmer AO APM, who argued that integrity testing would:

...incur the rancour 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>17</sup>

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14 ACLEI, *Submission 4*, p. 6.

15 AFPA, *Submission 6*, p. 2.

16 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, p. 49.

17 Detective Senior Constable Stephen Newton, 'Integrity Testing as an Anti-Corruption Strategy', *Australian Police Journal*, December 1997, p. 224.

3.26 Western Australia Police also provided comment on the issue of staff morale, observing that day to day morale was not necessarily the same as agency *esprit de corp*. As Detective Superintendent Flack remarked:

My view from 31 years experience is that police officers would get over it if it were to become random. Yes, in the initial view they would beat the drum and say, 'I don't like it; it's an infringement; you don't trust us,' and the rest of it. But, at the end of the day, it will be judged on whether you are maliciously using a random test or whether it is effectively targeting, even on a random basis, those areas of highest risk.

It will certainly have a detrimental effect on the morale of an office if you do one on an office and it comes up a negative—or a positive. We find if there is a problem in there it will in the short term have an impact on morale, but there is a difference between morale and *esprit de corps*. Morale can change on a day-to-day basis, depending on whether you had an argument with your partner when you left in the morning. *Esprit de corps* is that commitment to the body, commitment to the profession, commitment to the organisation, and I suspect that would not change whether you had random or targeted tests.<sup>18</sup>

3.27 The Ombudsman also noted the potential for integrity testing to be accepted over time:

I would just go back to my point about the internal culture, it might be that initially there would be difficulty in an industrial sense, but based on the evidence as I understand it from overseas forces who do this, eventually it is the workforce itself that agrees to these regimes because they see it as a way of controlling those with a propensity to corruption and it also enables them to have a higher degree of individual integrity. It is something that then grows organically within the organisation rather than it being seen as being imposed from without.<sup>19</sup>

3.28 The committee notes that the effect of any proposed integrity testing program on the morale of an agency is an important consideration, however, the committee also notes the corrosive impact upon an agency of corrupt conduct and the need for organisations to have the appropriate tools to combat such corruption.

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18 Detective Superintendent Tony Flack, Western Australia Police, *Committee Hansard*, 9 September 2011, p. 6.

19 Mr Allan Asher, Commonwealth Ombudsman, *Committee Hansard*, 19 August 2011, p. 41.



## *Inducement*

3.29 Several witnesses observed possible legal issues relating to integrity testing, in the form of inducement. AGD used the example of provisions within the controlled operations legislation, noting that integrity testing involves similar considerations. Authority for a controlled operation cannot be granted if the operation is likely to induce a person to commit an offence that they would not otherwise have intended to commit.<sup>20</sup>

3.30 AGD further noted that if it is considered that an integrity test induced an individual to commit an offence, the evidence may be excluded from court. If the outcome of the test was used to inform disciplinary action or termination of employment, procedural fairness issues would apply.<sup>21</sup>

3.31 AFP witnesses, appearing before the committee in 2009 explained that a working group had been established to consider in depth the way in which an integrity testing regime might work. One of the issues under consideration then was entrapment. Commander Walters noted that:

One of the roles of the working group at the moment is to get very clear definitional parameters around exactly what sort of integrity testing the AFP would want to implement. That could be an incremental approach over a period of time. We might start with some very focused integrity tests and build on that over a period of time. Certainly the issue of entrapment is something that has been worked into the development of the regime that has also been looked at by the working group.<sup>22</sup>

3.32 Assistant Commissioner Paul Jevtovic assured the committee at that time that:

Existing and prevailing legislation would continue in the area of entrapment, particularly the robust entrapment legislation in our controlled operations legislation, so we would see no weakening or diminishing of that existing legislation and we would be working within it; that is for sure.<sup>23</sup>

3.33 The committee explored inducement further and was advised that:

The term 'entrapment' is also linked to the term 'inducement', and that is the term more commonly used in our legal framework, but the two are the same. It is when an inducement is inherent or when a fact is inherent in the integrity test that leads a person who is the subject of the test to make the wrong decision. The inherent principle of integrity testing is that there be clear, equal opportunity for a person who is subject to the test to pass the test or fail the test. An inducement would be where the factors relating to

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20 AGD, *Submission 5*, p. 3.

21 AGD, *Submission 5*, p. 3.

22 Commander Mark Walters, AFP, *Committee Hansard*, 23 October 2009, p. 18.

23 Assistant Commissioner Paul Jevtovic, AFP, *Committee Hansard*, 23 October 2009, pp 18–19.

how the test was developed and then applied would skew that need for an equitable approach.<sup>24</sup>

3.34 ACLEI advised that inducement and entrapment have been previously considered by the High Court:

Bunning v Cross is the leading case around admissibility of evidence and the factors that are to be taken into account if evidence is improperly obtained. Ridgeway was specifically on the issue of entrapment, and that is where the High Court said that there is no defence of entrapment at law in Australia, but under certain circumstances taking into account factors, it may be appropriate for certain evidence not to be admissible.<sup>25</sup>

3.35 Noting that integrity testing has been used in states and territories, the committee sought evidence on whether there had been any failed case because of bad operational procedures on integrity testing. The NSW Police and WA Police, as well as ACLEI, advised that that they were not aware of any case law specifically on a failed integrity test in Australia.<sup>26</sup>

3.36 AGD confirmed that controlled operations legislation already contains constraints relating to inducement and would enable some types of integrity testing:

In those provisions, you cannot approve a controlled operation if it would induce an individual to commit an offence they would not otherwise have committed. That exclusion from controlled operations is expressly directed at that situation, so you cannot offer someone who would never have otherwise contemplated undertaking criminal activity an opportunity that induces them to do something that they would not otherwise have done. Otherwise officers will lose their immunity from criminal liability and civil liability because the authorisation would be invalid.<sup>27</sup>

The department's view is that if you are going to conduct an integrity test that involves the officers who are setting up the test engaging in criminal activity or incurring civil liability, the controlled operations regime is the appropriate way to do that. A lot of thought has been put into the authorisation arrangements and thresholds and safeguards in that regime. We think it would be more appropriate to consider whether some adjustments needed to be made to that regime in those circumstances. Leaving \$20 or a wallet on a table does not require the use of a controlled operation, and does not require legislation.<sup>28</sup>

3.37 The committee further considers the use of covert policing powers in its consideration of a possible legislative framework for integrity testing in chapter 4.

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24 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 4.

25 Ms Sarah Baker-Goldsmith, ACLEI, *Committee Hansard*, 19 August 2011, p. 4.

26 Ms Sarah Baker-Goldsmith, ACLEI, *Committee Hansard*, 19 August 2011, p. 5.

27 Ms Sarah Chidgey, AGD, *Committee Hansard*, 19 August 2011, p. 20.

28 Ms Sarah Chidgey, AGD, *Committee Hansard*, 19 August 2011, p. 24.

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### ***Potential for abuse***

3.38 AFPA highlighted the risk of an integrity testing program being abused, citing previous instances of police corruption in state jurisdictions where senior officers in charge of internal security were implicated.<sup>29</sup> Mr Torr suggested:

Let us suppose that a junior whistleblower was starting to express concerns [about corrupt conduct at senior levels], what a good way to sort him out and send him a few dirty emails, see what he does with them, 'You have failed our internet usage policy, good bye.' Of course it is in the high levels of all organisations that the risk is the greatest.<sup>30</sup>

3.39 In order to mitigate such risks, AFPA advised the committee that any integrity testing program should be subject to strict accountability measures, specifically, oversight by ACLEI and the Parliament.<sup>31</sup>

3.40 ACLEI similarly noted that it would be reasonable to expect that accountability arrangements would be established to guard against misuse of official powers, although it did not suggest a specific form of accountability.

### ***The relationship between integrity testing and other integrity measures***

3.41 The committee considers it important to understand how the possible introduction of integrity testing would work in conjunction with, or on top of, existing integrity measures.

3.42 AFPA observed that, in the case of the AFP, a considerable number of integrity measures are already in place, and it did not see why the addition of integrity testing was justified. Mr Jim Torr elaborated on this point, remarking:

We are also alert to the fact that every new idea or notion in relation to scouring police for fault and searching for failure is heaped on police in the first instance before anyone else. There are many other professions which we would argue are just as accountable and just as subject to compromise by corrupt conduct as police forces, and yet police in the first instance always seem to attract these sorts of intrusions.

These are intrusions which come on top of many, many other accountabilities that our members already face. We were also jointly responsible for developing security in the AFP context: comprehensive security clearance processes, which actually look at family members and friends, et cetera; initial and regular financial disclosure of assets and debts; random and targeted drug testing of which the AFPA was a joint partner in developing the AFP program; critical incident drug and alcohol testing; loss of superannuation for corruption offences; of course all the criminal

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29 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, p. 47.

30 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, p. 47.

31 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, p. 47.

sanctions; the obligations to provide information under direction; and there are many other aspects to the accountability we already provide.

Having said all that, we have not seen the argument put in front of us that would now justify another intrusion into the normal process of police business and police accountability.<sup>32</sup>

3.43 The Commonwealth Ombudsman noted that while integrity testing is appealing in its simplicity, he remained unsure as to whether it is an effective means to prevent corruption, preferring approaches aimed at developing a culture of integrity. Specifically, the Ombudsman described integrity testing as a means to catch 'bad apples', rather than helping to prevent corruption. For this reason, the Ombudsman saw it as the wrong approach for a federal anti-corruption agency.<sup>33</sup>

3.44 However, ACLEI argued that integrity testing was warranted as an efficient investigation tool, justifying its introduction. As the Integrity Commissioner explained:

...[I]n terms of efficiency, if you can cut through by the use of one method and get to a result where otherwise you might take the long way around using other methods, I think this is to be welcomed. The other point I have just been reminded of is that sometimes it is not just a question of detecting corrupt conduct; sometimes it is a question of disruption. You might have an officer or a group of officers who are under suspicion and we just cannot quite get the evidence that they are engaging in corrupt conduct or how they are engaging in corrupt conduct. But integrity tests might reveal something lesser, such as a sound reason for disciplinary procedure, and that would certainly be applied. There is that consideration also in an integrity testing regime.<sup>34</sup>

3.45 The Integrity Commissioner noted in evidence to the committee that there is no crisis of confidence in federal public administration generally or in law enforcement agencies. However, problems of the conscious opponent and the invisibility of corruption:

...make it difficult to detect and gather evidence about corrupt conduct in a law enforcement environment, and we should not underestimate the challenge involved. Accordingly, I believe it would be timely now to add integrity testing to the options available to combat corruption. It will not be a panacea and it will not be the right method for every agency or in every instance; however, for the right situations, it will be useful to have the ability to conduct integrity testing.

It would be ill-advised to rely only on shared values and trust, as important as those factors are. This principle reminds us that a seemingly appropriate culture and a seemingly effective control environment will not always mean

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32 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, p. 44.

33 Commonwealth Ombudsman, *Submission 1*, p. 3.

34 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 8.

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that everyone will resist temptation or manipulation by outside forces. It also reminds us that not all opportunities for corrupt conduct can be easily removed or controlled. Accordingly, some checking is required, and the form that this checking takes must be matched to the challenge.

The integrity testing method offers an additional option for skilled investigators to dismantle the levels of secrecy and deceptive behaviour that characterise corrupt conduct. For these reasons, I see a place for integrity testing. When used in the right circumstances, the method would improve the efficiency of corruption investigations.<sup>35</sup>

3.46 ACLEI accordingly sees the introduction of integrity testing as a useful adjunct to existing integrity measures. The Integrity Commissioner noted that previous investigations could have benefited from the application of an integrity test.<sup>36</sup>

3.47 The different components of corruption risk, including the means of disrupting each component, were depicted in a diagram in ACLEI's 2010-11 Annual Report. This diagram, reproduced at Appendix 3, indicates that integrity testing is particularly useful in disrupting corruption risk by increasing the possibility of detection and changing the risk calculation for those who might undertake corrupt actions.

#### *Committee view*

3.48 The committee notes the importance of considering integrity testing in the context of the broader integrity platform adopted by an agency. Integrity testing is just one of many measures that may be in place and it is important to assess the right mix of measures in light of limited resources.

3.49 The committee is mindful of the above issues, and notes that any integrity testing regime will have to be carefully designed. On balance, however, the committee reiterates its previously stated in-principle support for integrity testing, and further recommends that an integrity testing regime be introduced for certain Commonwealth law enforcement agencies. The committee discusses how such a scheme might look in chapter 4.

#### **Recommendation 1**

**3.50 The committee recommends that an integrity testing program be introduced for certain Commonwealth law enforcement agencies.**

#### **Recommendation 2**

**3.51 The committee has received evidence about types of integrity testing and recommends that targeted integrity testing be the preferred method.**

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35 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 2.

36 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 2.



## CHAPTER 4

### DESIGNING AN INTEGRITY TESTING PROGRAM

4.1 Further to its recommendation, in principle, to introduce an integrity testing program for Commonwealth law enforcement agencies, the committee has sought to draw out discussion on the ideal design of such a program in this chapter.

4.2 While the committee does not wish to be overly prescriptive in stipulating the design of an integrity testing program, there are a number of areas where the committee makes express recommendations.

#### **Jurisdiction**

4.3 The committee notes advice from the Australian Public Service Commission (APSC) that certain low-level integrity tests (i.e. those that do not require special police powers) could take place within the broader Australian Public Service (APS) under existing legislative arrangements.<sup>1</sup> The committee agrees with the APSC, however, that, given the resource intensity of integrity testing, the introduction of a formal integrity testing program across the APS is not warranted at this time.

4.4 The committee is instead of the view that integrity testing is a measure suited to high risk agencies, which have previously been identified as being those agencies currently under ACLEI's jurisdiction: the AFP, ACC and the Australian Customs and Border Protection Service (Customs), as well as agencies that have been previously suggested for inclusion in a second tier ACLEI jurisdiction.<sup>2</sup> The committee notes that at the time of adopting this report, the Government had not yet responded to the recommendation to create a second tier jurisdiction included in the LEIC Act inquiry.<sup>3</sup>

4.5 The committee therefore recommends that if an integrity testing capability is pursued, integrity testing programs should apply to those agencies within ACLEI's jurisdiction, as this represents the appropriate matching of measures to risk.

#### **Recommendation 3**

**4.6 The committee recommends that an integrity testing program initially apply to law enforcement agencies within ACLEI's jurisdiction.**

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1 Australian Public Service Commission, *Submission 3*, p. 5.

2 See *Final Report, Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*.

3 See *Final Report, Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*.

## Conduct of integrity tests

### *Who should authorise and conduct the tests?*

4.7 In introducing an integrity testing program, it is important to establish who would be able to authorise a test, and which agency, or agencies, would actually conduct the operation of the test.

4.8 If integrity testing is introduced, the

4.9 AFP has expressed a desire to retain control of its own testing program (estimated cost of conducting the entire program in-house \$8m), but has also considered the outsourcing of the testing capability to another agency.<sup>4</sup>

4.10 ACLEI has expressed a preference for it to be given the ability to conduct an integrity test as part of its corruption investigations. It notes that, had the option been available, it would have been of use in past investigations. ACLEI's preference would be to have access to a regime conducted by someone else:

In terms of whether ACLEI would have the staff to conduct integrity testing, I doubt that we would, but I note that where integrity testing is part and parcel of the work of integrity agencies in the Commonwealth, and I think here in particular of the Corruption and Crime Commission in Western Australia and of the Police Integrity Commission in New South Wales, that they do not have separate integrity testing units; they merely use integrity testing as another method among other powers and methods they have in their investigation.<sup>5</sup>

4.11 The AFPA, while against integrity testing for its members, has submitted that, if it were to be introduced, it would prefer ACLEI to conduct the tests, under a system of strict parameters and accountability:

From the outset we have talked to the ACLEI commissioner, and we would want to see ACLEI have the chief responsibility of approving any sort of integrity test process, being satisfied that the integrity test itself was not a breach of the integrity of the organisation and that would mean an approval process where a degree of suspicion is satisfied. We would see ACLEI taking responsibility that the testing process is reasonable in all the circumstances, that approval of the process is appropriate. We would expect them to ask questions such as, 'How many times have you targeted Sergeant XYZ? Eight times and you still have not caught him? Is there a bigger picture here?' It would be very much a similar arrangement to a conventional search warrant or telephone intercept application. We would invest our trust in ACLEI as a separate organisation from the AFP to be able to bring that perspective and that impartiality. Of course we would expect that from time to time they do it with AFP assistance. A great deal of

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4 AFP, *Submission 10*, pp 5–6.

5 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 3.



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investigational expertise rests within the AFP and ACLEI obviously has a big mission and a limited amount of budgetary support. Serious corruption offences therefore should be the focus.

We do not support the notion of an in-house in-AFP idea of the AFP deciding to check Constable Joe Blow. We do not support it in the interests of both the AFP in our view and of course in the interests of our members. That is a summary of what we think on the subject.<sup>6</sup>

4.12 However, the Commonwealth Ombudsman expressed a preference for integrity testing that is conducted by the affected agency itself, as integrity testing by an agency on its own employees might send a message that corruption will not be tolerated, and hence instil a positive culture.

I think that there is some potential there but the very scale of the Australian Federal Police as you describe it is such that the capacity of ACLEI to have a meaningful role would be severely challenged without them having to divert significant resources from the very useful systemic work done now. I think you would need a much larger organisation to be able to do that. Secondly, and I would just go back to my point about the internal culture, it might be that initially there would be difficulty in an industrial sense, but based on the evidence as I understand it from overseas forces who do this, eventually it is the workforce itself that agrees to these regimes because they see it as a way of controlling those with a propensity to corruption and it also enables them to have a higher degree of individual integrity. It is something that then grows organically within the organisation rather than it being seen as being imposed from without.<sup>7</sup>

4.13 The Ombudsman notes that this benefit is lost if the testing is undertaken by an outside oversight agency. Conversely, the Ombudsman notes, testing by an external agency is likely to encourage a closing of ranks, making an oversight agency less effective. In response the AFPA stated that:

I spent many years working with AFP professional standards and now I have spent many years defending or supporting our people who are subject of professional standards investigations and in my experience of investigations of serious matters I have never seen a gram of enthusiasm lacking in the AFP investigators who are investigating complaints against those of their fellow members. As I said before, that is why we invest our confidence in an organisation, namely ACLEI. Obviously, it does not know the ins and outs of every aspect of AFP conduct and for it to be effective, if you really are concerned at serious level corruption, it is hard to see how you could proceed without some of the AFP staff involved in the investigation.<sup>8</sup>

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6 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, pp 45-46.

7 Mr Allan Asher, Commonwealth Ombudsman, *Committee Hansard*, 19 August 2011, p. 41.

8 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, p. 48.

4.14 Other potential models include a joint model where agencies collaborate in the design and conduct of tests. Such an approach may be appropriate given the way corruption issues are handled under the LEIC Act, as indicated by the ACC:

In the first instance, if we had that suspicion, we would refer that to the Integrity Commissioner. The act requires if we suspect there is significant corruption or a breach of integrity, we would have to refer it to the ACLEI commissioner, and then he has a range of tools he could use to investigate that matter for us. If he came back and said—which I do not think he would—that he could not investigate that, and we perceived the risk to our agency to be too significant, that is the time I could see that we would want to work with them on an integrity testing regime. In the first instance, if I had that suspicion about a person, that would definitely go to the Integrity Commissioner as 'this appears to be a problem', and then they would take it from there. Mostly, if it was a serious allegation, they would deal with it. If it was a lesser threshold allegation, they do sometimes return them to us saying, 'You investigate it and tell us what you find and we will decide what to do.' Nothing would change in that, except that they might want to say to us, 'We want you to run this integrity test using controlled operations or telephone interception for this purpose' and I guess that is where you would want to be able to do it if they asked you to do it in that case.<sup>9</sup>

4.15 When asked if the ACC would accept the fact that there may be an occasion where ACLEI might want to conduct an integrity test without the knowledge of ACC management, the ACC noted:

Yes. I think they have that jurisdiction, and they would do it. They would make that decision based on the seriousness and the reach of the allegation. I expect that is exactly what they would do. I understand that there have been cases in the past referred to ACLEI, although not by us, and that is a matter for them to investigate and take action on. If we identified the integrity issue and forwarded it to ACLEI, the general process is that we then continue to have a dialogue about what will happen.<sup>10</sup>

4.16 The committee notes that, in order to conduct an integrity test, certain capabilities need to be used or accessed. In relation to tools needed to implement integrity testing, the committee was told that:

Integrity testing uses other powers. It is not used alone: you would use surveillance as you indicated, you would use telecommunications interception and you would use listening devices as necessary. There is a convergence of powers and measures involved in integrity testing.<sup>11</sup>

Some of those tools that may be used in an integrity test are things like covert police surveillance and some of the technical aspects around that. Going to what the commissioner said, that does not need to be a part of a

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9 Ms Jane Bailey, ACC, *Committee Hansard*, 19 August 2011, p. 32.

10 Ms Jane Bailey, ACC, *Committee Hansard*, 19 August 2011, p. 30.

11 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 10.

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program as a standalone. I think the AFP draws out in its submission some of the requirements around covert police surveillance.<sup>12</sup>

4.17 The AFP supported the above views, noting the need for some additional integrity testing specific training:

Certainly we would have the majority of skills that would be required: we already operate with our surveillance officers, we have telephone interception capabilities, and we have our normal investigative and operational processes. They would all go towards this type of framework. Some more specific training would be required of officers involved in that in terms of the governance around what would be involved and the operation of legislation if that was appropriate. There would need to be some specific training for our officers in that regard.<sup>13</sup>

4.18 Customs advised the committee that they do not have the capability or supporting legislation to be able to conduct integrity testing:

We have got some limited investigative powers strictly related to the pursuit of infringements or breaches against the Customs Act and associated acts which gives us a degree of limited investigative powers in relation to general citizens who might be breaching the Customs Act, say, in terms of importation. Even there, where, if you like, serious investigative firepower has to be brought to bear such as warrants, listening devices and the like, we work in partnership with police forces, predominantly the Federal Police but others as well. Where relevant, we partner with the Crime Commission in the sorts of matters that Ms Bailey was referring to in her evidence. We actually start from a different starting point. We are in effect public servants and the only investigative powers we have are the general administrative inquiry powers that any public servant has pursuant to a delegation from the agency head, in our case, the CEO of the Australian Customs and Border Protection Service.<sup>14</sup>

4.19 The committee is of the view, however, that the authorisation of integrity tests should be the purview of the Integrity Commissioner and agency heads. Specifically, the committee recommends that the Integrity Commissioner be given the ability to authorise and conduct an integrity test in the course of an investigation of a corruption issue under the LEIC Act.

4.20 The committee is also of the view that heads of law enforcement agencies within ACLEI's jurisdiction should have the ability to conduct integrity tests within the agency, but would have to notify ACLEI of their intention to do so. This would be necessary to ensure a certain level of accountability, and also to avoid conflict with any investigation that ACLEI may be conducting, or considering conducting.

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12 Mr Stephen Hayward, ACLEI, *Committee Hansard*, 19 August 2011, p. 3.

13 Assistant Commissioner Leanne Close, AFP, *Committee Hansard*, 19 August 2011, p. 12.

14 Mr Michael Pezzullo, Customs, *Committee Hansard*, 19 August 2011, p. 37.

## **Recommendation 4**

**4.21 The committee recommends that the Integrity Commissioner and heads of agencies under the jurisdiction of ACLEI be given the ability to authorise integrity tests in the course of their investigations into corruption issues.**

4.22 The committee recognises that in giving agency heads discretion to conduct integrity tests, appropriate accountability mechanisms are also required. An accountability framework is proposed at the end of this chapter.

### ***What type of behaviour should an integrity test target?***

4.23 In terms of what sort of activity integrity testing should be applied to, the Integrity Commissioner noted:

As to the types of targeting that ACLEI has seen by organised crime of law enforcement agencies, certainly the standout is the passing of information to organised crime. ACLEI talks in terms of the corruption handshake, which is where organised crime seeks facilitation from within to assist its criminal intent and criminal activity. So that is certainly one area. Another area is inappropriate association. But as I say, in these kinds of contexts, you have hopefully, if the committee so decides and recommends, another measure to use in this situation.<sup>15</sup>

4.24 The type of behaviour targeted by an integrity testing program would also dictate, to a certain extent, whether the results of individual tests would be used for training purposes, disciplinary purposes or to found criminal charges. Depending on the aim, tests can target serious corruption or lower level behaviour that, if left unchecked, would contribute to poor ethical culture, potentially enabling corruption.

4.25 The question of what level of behaviour to target is intimately associated with the overall design of an integrity testing program, which is explored below in the section on legislative design.

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15 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 3.

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## Targeted or random testing?

4.26 One of the key questions for the Committee during the inquiry was whether integrity testing should be targeted or random or a combination of both. The majority of submissions to the inquiry preferred targeted, rather than random, integrity testing. The random approach was seen as exacerbating the downsides of integrity testing, such as the effect on agency morale, while offering lower cost-effectiveness. For example, the Integrity Commissioner reported that, in terms of random testing:

I do not see a role for it. I see it as having many disadvantages, not countered by advantages, so from that point of view, I am looking at intelligence-led targeted integrity testing. It goes to the question of trust between the employer and the employee. It relates to the evidence already available in jurisdictions that use random integrity testing that the incidence of failure of the test is low compared to the incidence of failure when targeted integrity testing is used. You would note the Australian Federal Police Association's submission about random testing. I think there is just a general view that it adds unnecessary expense. You really want to be focused on what you are doing in terms of targeting corrupt conduct or corruption risk.<sup>16</sup>

4.27 The AFP also did not support random testing, stating:

We would prefer a targeted model to be introduced...The reason for that is that it is quite resource intensive, and we would look at these situations from an intelligence led basis. Random testing is much more generic. It is certainly an option that we have not discounted, but if such a regime is introduced, we would initially prefer the targeted approach, do some analysis of how successful that has been, do a cost-benefit analysis, and then perhaps we would look at a more random approach if that was required.<sup>17</sup>

4.28 On the basis of research reviewed by the AFP, internal deliberations and experiences to date through the Australian New Zealand Police Advisory Agency Integrity Testing Practitioners Committee, the AFP supported targeted over random integrity testing for the following reasons:

- random integrity testing has not generally promoted a professional and ethical workplace, and can have a negative impact on culture, morale and productivity;
- a targeted regime can be marketed as part of a suite of focused intervention strategies; and
- covert investigations against police are difficult as they can check databases and indices to confirm cover stories of operatives. A properly prepared test

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16 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 7.

17 Assistant Commissioner Leanne Close, AFP, *Committee Hansard*, 19 August 2011, p. 12.

requires extensive work to produce a scenario capable of withstanding security, and requires operatives unknown to the target.<sup>18</sup>

4.29 AFPA were against random testing for the AFP for similar reasons, stating:

[W]e do not want to start at the lowest level of behaviour versus dealing with serious corruption. That is where we have got to target first as far as we are concerned. We do have faith in the ACLEI process. It could independently authorise targeted testing or it could utilise one jointly with the AFP, use the resources of the AFP if it wants to, it does that on other operations, or it can use other resources. Really with a limited AFP budget we would see this random integrity testing as way down the path.<sup>19</sup>

4.30 The ACC also preferred targeted testing, observing:

I think the idea that you could randomly test people may have some appeal, but I think actually for us the issue is how we better understand if there is any particular issue or person in the agency who has, through human frailty or corruption, damaged the agency and its reputation by their actions. While I would not rule it out, I just think it is probably more suitable to the size of our agency to view it for the targeted lens initially.<sup>20</sup>

4.31 The Western Australia Police provided an alternative view. As Detective Superintendent Flack remarked:

My view from 31 years experience is that police officers would get over it if it were to become random. Yes, in the initial view they would beat the drum and say, 'I don't like it; it's an infringement; you don't trust us,' and the rest of it. But, at the end of the day, it will be judged on whether you are maliciously using a random test or whether it is effectively targeting, even on a random basis, those areas of highest risk.

It will certainly have a detrimental effect on the morale of an office if you do one on an office and it comes up a negative—or a positive. We find if there is a problem in there it will in the short term have an impact on morale, but there is a difference between morale and esprit de corps. Morale can change on a day-to-day basis, depending on whether you had an argument with your partner when you left in the morning. Esprit de corps is that commitment to the body, commitment to the profession, commitment to the organisation, and I suspect that would not change whether you had random or targeted tests.<sup>21</sup>

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18 AFP, *Submission 10*, p. 5.

19 Mr Jon Hunt-Sharman, AFPA, *Committee Hansard*, 19 August 2011, p. 49.

20 Ms Jane Bailey, ACC, *Committee Hansard*, 19 August 2011, p. 27.

21 Detective Superintendent Tony Flack, Western Australia Police, *Committee Hansard*, 9 September 2011, p. 6.

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4.32 The Ombudsman, while generally not in favour of integrity testing, did recognise that random testing enhanced the deterrent effect of integrity testing due to its unpredictability, stating:

I think the goal of random is so that the ability to be predicted is much more difficult. It also has the ability to reach all different parts of an organisation at different times without any risks through internal collusion that programs are exposed. It does have a role there, although I would say that the key to success in such a plan is where there is some evidence of an area of a force where there is suspect conduct or where there might be some evidence, although insufficient to bring charges or even arrange an investigation. Tests of that sort can then be much more effective.<sup>22</sup>

4.33 As noted in chapter 2, a key difference between the two types of testing is that random testing is focused on deterring unacceptable conduct whereas targeted testing is primarily for detecting unacceptable conduct.

4.34 In practice, the line between random and targeted testing can be blurred, particularly if a group of officers or high risk area is targeted. For example, the Police Federation of Australia noted that targeted integrity tests could include scenarios such as:

For example, it might be a traffic scenario where it may be a highway patrol officer who has a more roaming brief across western Sydney, then it would be targeted, you would expect, at highway patrol officers in that area. So, it would have a targeted aspect. I am not aware of that sort of issue being one that has been subject to a test but I do still think that it would be certainly refining your search area to a small geographic location.<sup>23</sup>

4.35 The committee recognises that the majority of witnesses and submitters to the inquiry support targeted rather than random integrity testing, and concurs that an integrity testing program should focus, in the first instance, on targeted testing. The committee notes however that the notion of targeted testing may include targeting a particular group or location where there is assessed to be a higher corruption risk, which the committee observes, may overlap with some definitions of random integrity testing. The committee further recognises that purely random integrity testing can create a significant deterrent effect and may warrant further investigation in the future.

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22 Mr Allan Asher, Commonwealth Ombudsman, *Committee Hansard*, 19 August 2011, p. 41.

23 Mr Mark Burgess, PFA, *Committee Hansard*, 19 August 2011, p. 50.

## Legislative framework

4.36 Under existing legislation, it is already possible to conduct certain types of integrity testing. However, the committee received evidence that, to be effective, an integrity testing regime will require specific legislative amendment.

4.37 The committee believes that introducing specific legislation or legislative amendments to support an integrity testing program may be of benefit for several reasons. These include clarifying the circumstances in which special police powers may be used to support an integrity test, stipulating the authorisation process for a test to commence and establishing a robust accountability framework.

4.38 AGD informed the committee that some legislative changes may be needed, stating:

We note that there is currently no general legislative impediment to integrity testing, although in practice integrity testing should be conducted fairly free of inducement and be subject to adequate oversight mechanisms. We consider it possible that an integrity testing regime could be implemented under existing legislation, but depending on the specific integrity testing model to be considered, some legislative changes may need to be considered by government.<sup>24</sup>

4.39 Both the AFP and ACLEI are of the view that, while integrity testing could occur under current legislation, legislative amendment would be beneficial to ensure the success of the scheme. The Integrity Commissioner noted:

The legislative model should not compel anyone to use the integrity testing method but enable agency heads or the Integrity Commissioner to use it as an integrity measure in relation to their functions and responsibilities if the need arises. Ideally it should also ensure that, in respect of the LEIC Act agencies, they are required to notify the Integrity Commissioner if an integrity test is to be authorised by an agency head. This measure will ensure that the action proposed does not cut across what ACLEI may already be doing or contemplating.<sup>25</sup>

4.40 ACLEI submitted that some integrity testing scenarios could presently be conducted under existing legislation, while other scenarios would not require legislation at all. It nevertheless noted that fairness issues are perhaps best addressed in legislation to put jurisdictional issues, powers and accountability arrangements beyond doubt.<sup>26,27</sup>

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24 Ms Sarah Chidgey, AGD, *Committee Hansard*, 19 August 2011, p. 19.

25 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 2.

26 ACLEI, *Submission 4*, p. 8.

27 ACLEI, answer to question on notice, 13 October 2011 (received on 5 November 2011).



4.41 The Integrity Commissioner also noted that:

The controlled operations framework where the same issue arises; that is, something illegal in that sense is done in the course of conducting the operation but for the indemnity given by the controlled operation legislation and in relation to the integrity test. That would be one of the reasons you would want a legislative framework. For instance, if you wanted to conduct an integrity test, you might put false information in a database so that a person who you suspect of unlawfully disclosing that information to another person would then see that information and then disclose it, and that would be a form of integrity testing. But the placing of the data in the first place, without the coverage, would be an illegal act.<sup>28</sup>

4.42 The AFP noted that, while it would be possible to run integrity testing on an administrative, rather than legislative basis, in practice it would be an important safeguard to have Parliament authorise an integrity testing regime and set down the thresholds for integrity testing operations to be triggered:

We are certainly keen that the parameters and scope of what we could do on an integrity testing regime are very clear and endorsed by parliament. It gives us very clear guidance to work towards and allows us to structure our internal governance mechanisms beneath that. The question of whether or not thresholds for covert policing powers should be altered in any way to allow for integrity testing is another big set of policy issues that needs to be considered separately.<sup>29</sup>

4.43 The AFPA were strongly in favour of a legislative framework:

As we also stated in our submission, the integrity testing scheme under consideration should be strictly defined in legislation so as to exclude any operation on state and territory police officers. It should also contain strict guidelines on the consequences for a state and territory police officer who is indirectly implicated in the result of testing.<sup>30</sup>

4.44 The committee considers that legislation-based integrity testing would have significant advantages over a purely administratively-based regime. Endorsement of an integrity testing regime by the Parliament, through legislation, would:

- enhance public confidence that integrity testing would be carried out in a consistent, accountable and transparent manner.
- be consistent with the way in which invasive measures, such as covert policing powers and the drug and alcohol testing of AFP appointees, is dealt with; and

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28 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 5.

29 Ms Elsa Sengstock, AFP, *Committee Hansard*, 19 August 2011, p. 17.

30 Mr Mark Burgess, AFPA, *Committee Hansard*, 19 August 2011, p. 45.

- avert legal challenges about the legality of tests that are conducted.<sup>31</sup>

4.45 The key elements of a legislative framework for targeted integrity testing, and some of the issues that would need to be considered, as raised by the AFP, are:

- the threshold test for conducting an integrity test;
- the extent of integrity testing activities;
- the authorisation process for conducting integrity tests and the level at which authorisation must occur;
- the record keeping and reporting requirements for integrity testing;
- oversight and monitoring of the integrity testing regime;
- how evidence obtained from an integrity test can be used; and
- protection for officers conducting integrity tests (ie from civil or criminal liability).

4.46 In terms of the authorisation process the AFP noted that:

In relation to the governance framework that we would envisage being in place, for us it would be very similar to the way that we manage controlled operations activities currently. It is just not a case of the officers thinking that the scenario they are going to run is a good idea. Internally within the AFP we have several steps in the process of sign off before a controlled operation is approved. The investigators put the information together, that goes through to an independent committee of superintendents and a commander, and then there is a final assistant-commissioner-level person who reviews all of that material and signs off the controlled operation. That is the sort of governance that we put in place for controlled operations. We would envisage something of a similar nature. For this type of activity, it would probably be a higher level that we would have these operations running, and obviously professional standards would have a significant role to play in that.<sup>32</sup>

4.47 The committee is of the view that specific legislation authorising and governing the use of integrity tests is necessary and desirable.

### **Use of covert police powers**

4.48 To be effective, and depending on the specific scenario, an integrity test may require the use of covert police powers. For example, surveillance capabilities may be used to observe the behaviour of a test subject. Telecommunications intercepts could potentially be used in some circumstances, while any test that involves committing an offence would require the authorisation of a controlled operation. This last power is particularly relevant, as most operations involving illicit substances, or the planting of

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31 AFP, *Submission 10*, p. 7.

32 Assistant Commissioner Leanne Close, AFP, *Committee Hansard*, 19 August 2011, p. 17.

false information in a database (both examples of integrity testing as explained to the committee), would entail the commission of an offence. While ACLEI, the AFP and ACC are able to authorise controlled operations relating to the investigation of a corruption issue, Customs can conduct controlled operations if authorised by the AFP, ACC or ACLEI.

4.49 Police powers such as controlled operations are subject to legislative control, including thresholds that must be met before they can be used. For example, Part IAB of the *Crimes Act 1914* provides for the authorisation of controlled operations. Part IAB requires the controlled operation to be for the purpose of obtaining evidence that may lead to the prosecution for a serious Commonwealth offence or a serious state offence that has a federal aspect (including bribery or abuse of public office). Similar criteria apply to the use of telecommunication intercepts, access to records and surveillance as follows:

<b>Table 2: thresholds for covert police powers</b>	
<b>Action</b>	<b>Justified by the need for evidence for:</b>
Controlled operation	An offence punishable by at least three years imprisonment and involving a prescribed matter
Real time telecommunication interception	Offence punishable by at least seven years imprisonment and involving a prescribed matter
Accessing stored telecommunications	A serious contravention, including any offence punishable by at least three years imprisonment or 180 penalty units
Accessing telecommunication data/records	Can be authorised on prospective basis for offences subject to three years, and on a historical basis for enforcement of criminal law or a law imposing pecuniary penalty
Surveillance	Offences punishable by at least three years
Assumed identity	Necessary for one or more of the following purposes: <ul style="list-style-type: none"> <li>• the investigation of, or intelligence gathering in relation to, criminal activity;</li> <li>• the exercise of powers and performance of functions for the National Witness Protection Program; and</li> <li>• the training of persons for, and the administrative support of, those purposes.</li> </ul>

4.50 As the legislation currently stands, an integrity test could not use any of these powers or capabilities unless the specific threshold was met.

4.51 It may be that, in many cases where a law enforcement agency wished to conduct an integrity test, the seriousness of the suspected behaviour would justify the use of covert policing powers. It should be noted that most serious corruption involves an offence of a magnitude that most of the above powers could be used. A further complicating factor, however, is that in addition to the requirement of a serious offence, a certain standard of intelligence is also necessary:

When approving the use of covert policing powers, the authorising or issuing officer usually needs to be satisfied (to an objective standard) that a criminal offence has, is or will be committed. Where there is only limited intelligence indicating criminal activity, this may not be sufficient to meet the threshold test.<sup>33</sup>

4.52 The standard of intelligence required may be a barrier to the use of covert policing powers as part of an integrity test in precisely those cases where an integrity test would be of most use; i.e. where an agency wants to test suspicions of corruption.

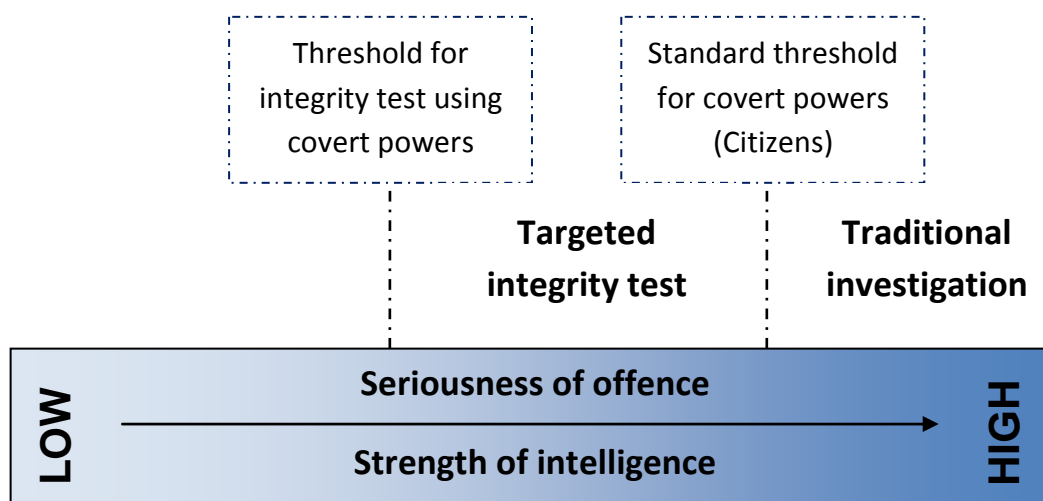
4.53 Given ACLEI's stated preference to use integrity testing in cases where there may not be enough evidence to proceed with traditional investigation techniques, the existing thresholds may mean that effective integrity tests using covert powers cannot be used. Likewise, an agency such as the AFP or ACC that wanted to test an officer who was subject to a pattern of complaints, or certain allegations, may or may not be able to conduct a useful integrity test for the same reason, depending on the nature of the suspicion.

4.54 The lowering of covert policing power thresholds for the purpose of integrity testing is a serious matter, given the intrusiveness of the powers. It should be noted, however, that the subject of these tests would not be the average citizen, for whom thresholds are currently crafted. Law enforcement officers, and other employees of law enforcement agencies occupy positions of trust. The importance of their position, the corruption risks inherent in the role, and the difficulties posed in 'investigating the investigators', justifies, in the committee's opinion, the lowering of covert policing power thresholds for the purpose of targeted integrity testing.

4.55 This is not to say, however, that the use of such serious powers in the course of an integrity test would always be appropriate, and the committee does not argue for the unconstrained use of such powers against law enforcement officers. The committee is therefore of the view that a legislative scheme enabling the use of covert powers for integrity testing would require a balance to be struck in setting thresholds of seriousness of offence and the quality of the intelligence required to authorise a targeted integrity test. These considerations are depicted in the diagram below.

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33 AFP, answer to question on notice, 19 August 2011 (received 13 October 2011).

**Figure 1: thresholds for use of covert policing powers****Recommendation 5**

**4.56** The committee recommends that relevant legislation be amended, or if necessary, created, so as to allow covert policing powers to be used for the purpose of targeted integrity testing of an officer or employee of an agency under the jurisdiction of ACLEI, or group thereof, where there are allegations or suspicions of corrupt behaviour.

**Oversight and accountability**

4.57 Due to the invasive nature of integrity testing, the oversight and reporting arrangements are key issues of interest to the committee, submitters and witnesses. The committee heard that ACLEI's role could be similar to some aspects of its role in corruption investigations:

[C]onsistent with the present framework too, that agency heads notify me of corruption issues as they become aware of them, and I would similarly require to be notified beforehand of what their intentions were, if they propose an integrity test—both to keep on top of patterns and trends of where they were seeing concerns, as well as to make sure that there was deconfliction for anything I had intended to do or was doing that they might not know about.<sup>34</sup>

4.58 The Integrity Commissioner informed the committee in relation to the notion of accountability in integrity testing:

I suggest to you I take these issues into account already in terms of when I am notified of a corruption issue or one is referred to me, or when I become aware of one through ACLEI's own work. These issues arise already: how this matter is handled; the protection of a person's reputation; and the

<sup>34</sup> Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 7.

question of a person's privacy. All of these issues arise already in terms of ACLEI's work and the decisions I make.<sup>35</sup>

With respect to oversight, this committee already oversees the use of my extensive powers. There may be some possibility for that also to be included as it could easily be in your own focus about my work and that of ACLEI.<sup>36</sup>

4.59 To ensure integrity tests were carried out appropriately, the AFP indicated that it would consider seeking legal advice possibly by consulting the Director of Public Prosecutions prior to each scenario being carried out.<sup>37</sup> The committee supports the establishment of such safeguards in the integrity test approval process.

4.60 The committee heard of keen interest in a strong reporting framework. For example, the AFPA argued that:

It is very important to get authorisation process and the management process out of the hands of the AFP, excepting that AFP investigators might be drawn in by ACLEI; they are a relatively small organisation. One of the reasons that we argued so long and hard for joint parliamentary oversight of the AFP was that accountability has to work for the credit and, as you acknowledge, the Commonwealth does invest very significant power in the AFP and in the individual investigators. It is very important to us that people in your position as elected representatives have an idea of what is going on and that the obligation rests upon ACLEI, if you go down that path, to provide reports to you.

Ultimately we would want someone from ACLEI, potentially being called before a parliamentary committee to talk about not necessarily operational details but to account for: the number of tests we have done; why we have done them; why anomalies seem on the face of it to appear, which may well be accounted for. We would have far more confidence hearing that from ACLEI after integrity tests were done than hearing it from a middle level manager in the AFP.<sup>38</sup>

4.61 AGD also suggested that it would be appropriate for reporting arrangements to be set out in legislation:

If you wanted a regime where there were mandatory requirements for reporting to parliament or producing annual reports, you would need to legislate to make that requirement mandatory. That would be one example of where you might want legislation.<sup>39</sup>

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35 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 9.

36 Mr Philip Moss, ACLEI, *Committee Hansard*, 19 August 2011, p. 8.

37 Assistant Commissioner Leanne Close, AFP, *Committee Hansard*, 19 August 2011, p. 17.

38 Mr Jim Torr, AFPA, *Committee Hansard*, 19 August 2011, pp 47-49.

39 Ms Sarah Chidgey, AGD, *Committee Hansard*, 19 August 2011, p. 24.

4.62 The committee is of the view that integrity testing, particularly if it were to involve reduced thresholds in authorising covert policing powers, should be subject to strong oversight. This is necessary to ensure that such powers are used appropriately and provide law enforcement officers with confidence that integrity testing is subject to adequate control and in the overall interest of the agency concerned. For this reason, the committee envisions an accountability structure with four elements.

4.63 Firstly, the Commonwealth Ombudsman is already tasked with ensuring that agencies comply with legislative requirements in using covert policing powers. The Ombudsman should continue in this role in relation to any relevant powers used for the purpose of integrity testing. The committee notes that the Ombudsman could potentially have a defined role in ensuring compliance with any legislation providing for an integrity testing program.

### **Recommendation 6**

**4.64 The committee recommends that legislative amendments be made mirroring the relevant parts of controlled operations legislation so that the Commonwealth Ombudsman is enabled to provide an annual report to Parliament on the use of integrity testing and associated covert policing powers.**

4.65 Secondly, the committee recommends that the Integrity Commissioner be notified of any integrity testing undertaken by law enforcement agencies. This would serve two purposes: the Integrity Commissioner would be in a position to observe whether integrity tests were undertaken for appropriate reasons, and would also ensure that agency-initiated tests did not interfere with investigations already being undertaken by ACLEI. The committee also believes the Integrity Commissioner should be informed as to the outcomes of such tests.

### **Recommendation 7**

**4.66 The committee recommends that:**

- **the Integrity Commissioner be notified of any integrity test that is to be conducted by an agency within ACLEI's jurisdiction as well as the outcome of such tests; and**
- **the Integrity Commissioner may at his discretion be involved in or take control of the integrity test.**

4.67 Thirdly, agency heads are accountable to the Minister for their conduct, and this accountability would extend to the conduct of integrity testing. The committee expects that the Minister would be briefed on the number and outcome of integrity tests conducted each year.

4.68 Finally, the committee recommends that ACLEI provide it an annual briefing, in private session, on the number and outcome of integrity tests conducted in that calendar year. This would ensure that Parliament, through the committee, would be kept abreast of the use of integrity testing.

**Recommendation 8**

**4.69** The committee recommends that as part of the committee's annual examination of the ACLEI annual report, ACLEI provide a private briefing to the PJC-ACLEI on the number and outcome of integrity tests conducted.

**Conclusion**

4.70 The committee is of the view that the introduction of integrity testing in Commonwealth law enforcement agencies will further strengthen the integrity system already in place. The creation of a legislative framework around integrity testing will ensure that integrity testing can be effective, while providing fairness and protection to the officers and employees concerned. For this reason, the committee commends its recommendations to the Government.

**Ms Melissa Parke MP**  
**Chair**



# **APPENDIX 1**

## **SUBMISSIONS RECEIVED**

- 1 Commonwealth Ombudsman
- 2 Office of the Australian Information Commissioner
- 3 Australian Public Service Commission
- 4 Australian Commission for Law Enforcement Integrity
- 5 Australian Attorney-General's Department
- 6 Australian Federal Police Association
- 7 Police Federation of Australia
- 8 CrimTrac
- 9 Confidential
- 10 Australian Federal Police
- 11 Australian Crime Commission

### **Additional Information Received**

- 1 Clarification of evidence given by Assistant Commissioner Leanne Close, Australian Federal Police, at a public hearing on 19 August 2011
- 2 Clarification of evidence given by Ms Elsa Sengstock, Australian Federal Police, at a public hearing on 19 August 2011
- 3 Document tabled by the NSW Police Force at a hearing on 16 September 2011

### **Answers to Questions on Notice**

- 1 Answers to Questions on Notice from the Attorney-General's Department for a public hearing on 19 August 2011
- 2 Answer to Question on Notice from the Australian Federal Police at a public hearing on 19 August 2011
- 3 Answers to Questions on Notice from the Australian Commission for law Enforcement Integrity for an *in-camera* hearing on 13 October 2011



## **APPENDIX 2**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**

**Friday, 19 August 2011 – Canberra ACT**

#### **Australian Commission for Law Enforcement Integrity**

Mr Philip Moss, Integrity Commissioner

Mr Stephen Hayward, Executive Director

Mr Nicholas Sellars, Director, Strategic Support

Ms Sarah Baker-Goldsmith, Principal Lawyer

#### **Australian Federal Police**

Assistant Commissioner Leanne Close, National Manager, Human Resources

Ms Elsa Sengstock, Coordinator, Legislation Program

#### **Attorney-General's Department**

Ms Sarah Chidgey, Assistant Secretary, Criminal law and Law Enforcement Branch

Mr Ben Au, Assistant Director, Law Enforcement Liaison Section

#### **Australian Crime Commission**

Ms Jane Bailey, Executive Director, People, Business Support and Stakeholder Relations

Ms Carolyn Scheetz, National Manager, People, Standards and Integrity

Mr Peter Grace, Manager, Integrity and Security

#### **Australian Customs and Border Protection Service**

Mr Michael Pezzullo, Chief Operating Officer

Ms Donna Storen, National Manager, Integrity and Professional Standards

#### **Commonwealth Ombudsman**

Mr Allan Asher, Commonwealth Ombudsman

**Australian Federal Police Association**

Mr Jonathan Hunt-Sharman, National President

Mr Jim Torr, Chief Executive Officer

**Police Federation of Australia**

Mr Mark Burgess, Chief Executive Officer

Mr Angus Skinner, Project Officer

**Friday, 9 September 2011 – Perth WA**

**Western Australian Police**

Detective Superintendent Tony Flack, Officer in Charge, Internal Affairs Unit

Detective Inspector Paul Langdon, Manager, Covert Services, Internal Affairs Unit

**Corruption and Crime Commission, Western Australia**








Mr Mark Herron, Acting Commissioner

Mr Robert Sutton, Acting Director Operations

## APPENDIX 3

### Corruption precursors, indicators and interventions

(ACLEI 2010-11 Annual Report)

PRECURSORS/ OUTCOMES	EXAMPLES	VISIBLE INDICATORS	INTERVENTIONS
<b>Opportunity</b>	Situational access to methods, information, decision-making, influence, or another commodity of value	High discretion Low or ineffective supervision	 Pro-disclosure, pro-discovery integrity culture Line management training (supervisors are the 'front line' of corruption control) Corruption risk assessment
<b>Motivation</b>	Vulnerability exploited (extortion, intimidation or compromise)  Greed, disillusionment, other personality factors  Addiction or substance abuse  Life factors (divorce, financial problems)  Desensitised to power 'Noble cause'  Conflict of obligation	Individual stress factors  Cliques	 Agency welfare programs Financial disclosure regime Drug and alcohol screening Counter-infiltration tactics Security assessment
<b>Method of initiation</b>	Cultivated for compromise by another person  Self-initiated  Behavioural norm or acculturation (systemic corruption)  Accidental/ unaware	Inappropriate associations  Counter-productive workplace sub-cultures  Associating socially among higher risk groups	 Broad-based integrity reporting, including confidential professional reporting arrangements  'Close management' in high risk environments
<b>Detection-risk calculation</b>	Deceptive or collusive conduct	Failure to take leave  High performer  Workplace harassment or dysfunction complaints  Complaints from members of the public	 Probing supervision Mandatory job rotation in high risk areas Systemic review of investigation or prosecution failures Integrity testing
<b>Commodity</b>	Information, including counter-investigation methods  Trading in influence ('green-lighting')  Drugs  Money  Other property	Failure to follow proper procedure ('work-arounds')  Asking colleagues for favours  Failure to follow direction	 IT access auditing ('red-flags') Drug-handling procedures Video surveillance for high-risk activity Compliance auditing
<b>Corrupt dealing</b>	Abuse of office  Perversion of the course of justice  Other corrupt conduct	Rumour, suspicion  Whistleblower reports  Compromise of operations from 'leaks'	 Coercive and covert investigation methods Prosecution Disruption
<b>Profit or benefit (for self or others)</b>	Unexplained wealth	Lifestyle anomalies	 Anti-money laundering

