

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Customs Legislation Amendment (Augmenting Offshore Powers and Other Measures) 2006

AUSTRALIAN FEDERAL POLICE

Senator Ludwig asked the following question at the hearing on 22 January 2007:

You might want to take it on notice. I want to understand the position of the Australian Federal Police in circumstances of joint operations where that power is exercised. The Australian Federal Police are then subject to ACLEI—I will use the acronym—and the Australian Customs Service is not. It seems that in those circumstances the Australian Commission for Law Enforcement Integrity could examine the role of the Australian Federal Police but not that of the Australian Customs Service, and that may then lead to an unhappy result whereby you cannot actually determine what happened or, alternatively, where you cannot clear all of those involved in the joint operation.

The answer to the honourable senator's question is as follows:

The jurisdiction of the Integrity Commissioner, assisted by ACLEI, is confined to investigating and reporting on corruption issues that relate to the staff members of law enforcement agencies. Presently, the Australian Federal Police and the Australian Crime Commission are prescribed as law enforcement agencies for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act 2006).

Consequently, circumstances will arise in which the Integrity Commissioner cannot investigate the actions of all staff members who are involved in a joint policing operation about which a corruption allegation has been made. However, the following points should be borne in mind.

If there was an allegation of corruption against AFP and Customs officers concerning the exercise of these proposed powers during the course of a joint operation, the AFP would be required to report that to the Integrity Commissioner. Allegations of misbehaviour of Customs officers are subject to the *Ombudsman Act 1976* and the *Public Service Act 1999*, which includes the APS Code of Conduct. Criminal misbehaviour by any Customs officer is also covered by the *Crimes Act 1914* and subject to investigation by the AFP. (It should also be noted that the *Commonwealth Fraud Control Guidelines* (2002) require Australian Government agencies to notify all bribery and corruption issues to the AFP.)

Section 10(1) of the LEIC Act provides that a person is to be regarded as an AFP staff member if the person is an employee of a government agency who has been seconded to the AFP pursuant to section 69D of the *Australian Federal Police Act 1979*. If a joint operation is being undertaken by people seconded to the AFP for that purpose, they will be subject to the jurisdiction of the Integrity Commissioner. The agency from which a person is seconded must be notified if the Integrity Commissioner is investigating the conduct of the secondee, and the Commissioner can refer the issue to that agency for investigation (section 29 of the LEIC Act).

The Integrity Commissioner can deal with a corruption issue by referring it to the AFP for investigation (section 26(1) of the LEIC Act). In addition, the Integrity Commissioner can decide to manage or oversee the AFP's investigation (sections 61, 62 of the LEIC Act). In the example given by Senator Ludwig, the AFP investigation could look at the actions of both the AFP and Customs officers. Through the reporting and supervision process outlined in the LEIC Act, the Integrity Commissioner would have an opportunity to at least comment upon the scope and rigour of the AFP's investigation.

The Integrity Commissioner can conduct a joint investigation with another government agency (section 26(2)). Thus, an allegation of corruption that relates to a joint AFP-Customs operation could be investigated jointly by the Integrity Commissioner and the Commonwealth Ombudsman.