

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

Inquiry into the integrity of overseas Commonwealth law enforcement operations

Hearing 8 August 2012

ANSWERS TO QUESTIONS ON NOTICE

Question 1

CHAIR: Just on my adding up: the breaches of the code of conduct add up to 1,741, which would be a rate of 10.5 cases per 1,000 rather than four. It looks like the commission has used the misconduct rate as a subset of the breach of the code of conduct.

Ms Fisher: It could be the case that there are multiple breaches per person. One person can breach more than one element of the code and one person could have multiple breaches as well. It could also be the case that you are using a different total employees figure, but if you would like us to provide you with how we have reached that figure we can do that for you.

Answer

As at 30 June 2011, there were 166,495 employees (ongoing and non-ongoing) of the Australian Public Service (APS). In that year, agencies investigated 796 APS employees for suspected breaches of the APS Code of Conduct (Table 3.1, *State of the Service Report 2010-11*). Of these, 576 employees (or 72%) were found to have breached the Code (Table 3.1, *State of the Service Report 2010-11*). This equates to a rate of misconduct across the APS of 0.35% (the figure has been rounded to 'less than four in every 1,000 employees' on page 69 of the *State of the Service Report 2010-11*).

The quoted figure of 1741 appears to be a total of the times that each element of the Code of Conduct was investigated for potential breach during that period multiplied by the percentage of cases where a breach was found (Table 3.2, *State of the Service Report 2010-11*). However, a single investigation may, and typically does, involve more than one element of the Code of Conduct. This may be the case even where a single action is being considered.

For example, where an APS employee inappropriately accesses confidential client information, that might be investigated as a potential breach of several elements of the Code including the obligations to:

- act with honesty and integrity
- comply with lawful and reasonable directions
- use Commonwealth resources in a proper manner, and
- behave in a way that upholds the APS Values.

Question 2

In the introduction to table 3.1 of the report, the Commission comments 'The number of Code of Conduct investigations finalised during the year represents a decline on the previous year.' Is the Commission able to give the Committee a sense of the reasons for the decline?

Answer

The number of investigations undertaken by APS agencies fluctuates year by year. For example, very large APS agencies (such as the former Centrelink and the ATO) undertake large scale systemic approaches to identify misuse of IT resources. In past years, systemic audits of this type have tended to increase the number of investigations for certain types of misconduct (improper use of internet/email and improper access to personal information) and therefore the overall number of investigations as well as the number of cases of proven breaches.

While the number of investigations conducted during 2010-11 declined compared to the previous year, the number of cases in which it was determined that the employee had breached the Code remained substantially steady (590 in 2009-10 as against 576 in 2010-11).

An analysis of the data from large agencies suggests that the outcome across the APS reflects a trend among most agencies, rather than a small number, which may suggest that agencies have become better at identifying, before any formal investigation, which matters are likely to result in a determination and which matters are better dealt with through other means, for example, by counselling or performance management.

Question 3

Also, the Commission comments in that introduction '... the percentage of cases where it is determined that a breach has occurred has increased for almost every element of the Code of Conduct, but quite markedly for inquiries dealing with suspicions that an employee has made improper use of their position to gain, or seek to gain, a benefit; and that an employee has misused Commonwealth resources.'

Does the Commission have an analysis of the two main elements identified here—the misuse of power or position to gain an improper benefit and the misuse of Commonwealth resources?

I am just wondering if it might have something to do with the ATO's program recently, which I think resulted in a spike of matters.

Answer

The agency survey conducted for the purposes of the *State of the Service Report 2010-11* asked, as in previous years, each APS agency to report on the number of employees investigated for specified types of misconduct in finalised investigations (i.e. the conduct listed in Table 3.3, page 71 of the *State of the Service Report 2010-11* and reprinted below for ease of reference).

Table 3.3: Types of misconduct in finalised investigation, 2009-10 and 2010-11

Type of misconduct	Employees investigated for this type of misconduct (no.)		Cases where a breach was found (%)	
	2009–10	2010–11	2009–10	2010–11
Improper use of internet/email	313	213	80	83
Inappropriate behaviour (other than harassment or bullying) of employees during working hours (e.g. unprofessional, offensive or disrespectful behaviour and comments to other employees, clients or stakeholders)	203	148	50	72
Improper access to personal information (e.g. browsing)	166	145	82	83
Harassment and/or bullying	119	114	44	46
Improper use of resources other than internet/email (e.g. vehicles)	60	72	67	57
Conflict of interest	59	72	61	86
Fraud other than theft (e.g. identity fraud)	54	64	61	83
Improper use of position status (e.g. abuse of power, exceeding delegations)	69	58	30	50
Private behaviour of employees (e.g. at social functions outside working hours)	24	25	29	68
Unauthorised disclosure of information (e.g. leaks)	19	24	42	71
Theft	17	11	47	64
Misuse of drugs or alcohol	6	10	0	30

Source: Agency survey

The Commission does not routinely undertake further analysis of the data beyond that reported. However, the number of determined breaches across the APS for misuse of Commonwealth resources (other than internet/email) was very low in both years, as was that for improper use of position. The small sample sizes involved make it difficult to draw useful conclusions.

In 2009-10, out of 60 employees investigated, 40 were found to have misused Commonwealth resources. Sixty percent of these investigations occurred in four agencies (Defence, Immigration and Citizenship, Centrelink, and Customs), with 37% in the Department of Defence and the Department of Immigration and Citizenship alone.

In 2010-11, out of 72 employees investigated, 41 were found to have misused Commonwealth resources. Fifty six percent of those investigations occurred in the Department of Defence and the Department of Immigration and Citizenship.

In fact the variation between the two years can be largely explained by the increase in cases investigated in DIAC (inquiries increased from 10 cases to 29, with determinations increasing from 3 to 12).

In 2009-10, out of out of 69 employees investigated, 21 were found to have misused their position. Fifty seven percent of these investigations occurred in the Department of Immigration and Citizenship (with seven employees determined to have breached the Code).

In 2010-11, out of 58 employees investigated, 29 were found to have misused their position. Fifty three percent of these investigations occurred in the Department of Immigration and Citizenship. In fact the variation between the two years can be largely explained by the increase in cases determined in DIAC (inquiries decreased from 39 cases to 31, with determinations increasing from 7 to 12), although the trend to an increased rate of determination has occurred generally across the APS.

The data does not suggest any linkage between the reported outcome and action taken within the Australian Taxation Office. In relation to the combined figure for the types of misconduct in question, that Office reported only 4 cases in 2009-10, and 5 cases in 2010-11, having a negligible result on the overall APS figures.

Question 4

[F]rom your perspective can you point to any agencies which you think are doing particularly well at managing a corruption risk? If so, what are they doing that is so different to something else?

Answer

The policy responsibility for bribery and fraud rests with the Attorney-General's Department. Policy responsibility for procurement and grants rests with the Department of Finance and Deregulation.

The rules and guidance issued by those agencies set out the framework for APS agencies to identify and manage their risks in relation to activities that may give rise to opportunities for corruption, such as bribery and/or fraud.

The *Commonwealth Fraud Control Guidelines* provide for the Australian Institute of Criminology (AIC), in consultation with the Attorney-General's Department and the Australian Federal Police, to report annually to the Minister for Home Affairs on fraud against the Commonwealth and fraud control arrangements in Australian Government agencies. Reports are to be provided to Ministers, Presiding Officers and Chief Executives. The AIC may also publish selected findings of the report with the agreement of the Minister for Home Affairs.

The Australian Public Service Commission does not collect information from agencies specifically on management of corruption risks.

The Australian Public Service Commission's annual *State of the Service Report* has not revealed any trends in APS employees' behaviour that suggests systemic issues around corruption. As noted in the Commission's submission, the evidence to date is that most misconduct is the result of individuals exercising poor judgment.

Additional information

Securrency International Pty Ltd

At the public hearing on 8 August 2012 the Committee asked the Public Service Commissioner about any involvement of Austrade employees in potentially corrupt conduct by Securrency International Pty Ltd.

In this regard the Public Service Commissioner noted that Austrade employees are covered by the *Public Service Act 1999* (the Act), the Australian Public Service (APS) Values and Code of Conduct.

Austrade has been an APS agency, and its employees bound by the Act, since 1 July 2006. Austrade officials were not bound by the APS Values and Code of Conduct before that date. They would, however, have been bound by relevant criminal law.

Transparency International submission

The Committee asked for the Australian Public Service Commission's views on Transparency International's submission to the Attorney-General's Department in relation to the discussion paper for a national anti-corruption plan.

The Australian Public Service Commission has examined the submission and makes the following comments.

Transparency International argues that the greatest integrity risk in Australia is complacency arising from a perception that things do not appear to be as bad in Australia as elsewhere, and points to some specific and some broad examples to illustrate its point. Almost none of these examples related to Australian Public Service agencies.

Transparency International repeats the call it made in an earlier submission to the inquiry of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity into the operation of the *Law Enforcement Integrity Commissioner Act 2006* for the establishment of an 'independent central agency with power to oversight the investigation of... higher risk criminal and non-criminal misconduct'.

The Australian Government response to the report of that inquiry noted the Committee's recommendation that the Australian Government conduct a review of the Commonwealth integrity system with particular examination of the merits of establishing a Commonwealth integrity commission with anticorruption oversight of all Commonwealth public sector agencies, taking into account the need to retain the expertise of ACLEI in the area of law enforcement.

The response stated that the Government's approach to preventing corruption is based on the premise that no single body should be responsible. Instead, a strong constitutional foundation (the separation of powers and the rule of law) is enhanced by a range of bodies and government initiatives that promote accountability and transparency. This distribution of responsibility is a great strength in Australia's approach to corruption because it creates a strong system of checks and balances.

Transparency International's submission also asserts that 'the 2011 APS data shows a dramatic increase in suspected and/or substantiated high risk conduct over the previous year.'

Transparency International included the following table in its submission, produced by editing an excerpt of Table 3.3 of the *State of the Service Report 2010-11*:

Type of misconduct	Employees investigated for this type of misconduct (no.)			Cases where a breach was found (%)		
	2009-10	2010-11	% change	2009-10	2010-11	% change
Conflict of interest	59	72	+22%	61	86	+41%
Fraud other than theft (e.g. identity fraud)	54	64	+19%	61	83	+36%
Theft	17	11	-45%	47	64	+36%
Improper use of position status (e.g. abuse of power, exceeding delegations)	69	58	-16%	30	50	+67%
Unauthorised disclosure of information (e.g. leaks)	19	24	+26%	42	71	+69%

Transparency International's arguments are misleading for two main reasons: first, the sample sizes are small; and second, the data has been compared over only two years.

For each of the areas of misconduct selected by Transparency International (conflict of interest, fraud other than theft, theft, improper use of position status and unauthorised disclosure of information), the numbers are very small, amounting to fewer than 100 in an employee population of 166, 495 employees. Such small numbers are inherently volatile.

Taken over a longer period, the data reveals no trend, let alone 'a dramatic increase in suspected and/or substantiated high risk conduct over the previous year.'

The equivalent rates for these areas of misconduct in 2006-07 through 2008-09 are below:

Type of misconduct	Employees investigated for this type of misconduct (no.)			Cases where a breach was found (%)		
	2006-07	2007-08	2008-09	2006-07	2007-08	2008-09
Conflict of interest	69	41	48	54	46	42
Fraud other than theft (e.g. identity fraud)	45	86	54	60	44	52
Theft	40	16	31	73	31	48
Improper use of position status (e.g. abuse of power, exceeding delegations)	50	74	94	52	20	28
Unauthorised disclosure of information (e.g. leaks)	25	25	10	64	40	30

Finally, Transparency International's submission implies that there is no effective integrity framework for non-APS agencies to guard against corrupt behaviour.

The Australian Public Service Commission is not expert in the integrity arrangements that apply in non-APS Commonwealth sector employment. Questions concerning detailed arrangements might, therefore, be better addressed to those agencies directly. Having said that, it is clear that this sector has its own arrangements to support internal integrity, and it might be useful for some matters to be brought to the attention of the Committee.

The non-APS sector of Commonwealth employment is dominated by a relatively small number of large employers, including:

- the Australian Defence Forces
- the Australian Postal Corporation
- the Australian Federal Police
- the Australian Broadcasting Corporation
- the Commonwealth Scientific and Industrial Research Organisation
- Medibank Private, and
- the Australian National University.

Taken together, on the data available, these organisations employed almost 130,000 people as at 30 June 2011.

It is public knowledge that most of these organisations have their own mature internal integrity arrangements. The Australian Federal Police, for example, have both internal integrity investigators and are also subject to oversight by the Australian Commission for Law Enforcement Integrity. The defence forces have their own internal systems for investigation, supported by courts martial.

In addition to being bound by relevant criminal law, employees and directors of non-APS Commonwealth bodies are subject to the requirements of their enabling legislation and of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Division 4 of the CAC Act enumerates some of the most significant duties of officers and employees of Commonwealth authorities. Commonwealth companies are regulated by the Australian Securities and Investments Commission.

State of the Service Report surveys

At the public hearing of 8 August 2012 the Committee indicated that copies of the agency survey and employee census for the *State of the Service Report 2011-12* would be useful. These are attached.