



Integrity Testing

Procedural Instruction

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1. Purpose

Part IABA of the Crimes Act 1914 (Cth) (Crimes Act) provides for the authorisation of integrity testing operations to be conducted on a staff member of the Department. Integrity tests are operations designed to test whether a public official will respond to a simulated or controlled situation in a manner that is unlawful. Integrity testing is one method that may be used by the Department to investigate allegations and circumstances where staff members are suspected of corrupt conduct. Integrity testing operations may only be authorised if there is a reasonable suspicion that a staff member has committed, is committing, or is likely to commit an offence punishable on conviction by imprisonment of 12 months or more.

These offences include, but are not limited to:

- bribery
- abuse of public office
- possession of a controlled drug
- dealing in proceeds of crime
- associating in support of serious organised criminal activity
- fraudulent conduct
- unauthorised data access
- unauthorised disclosure of information.

Integrity testing operations are designed to ensure that the subject of a test is provided with an equal opportunity to pass or fail the test.

The Integrity Investigations Section within the Integrity and Professional Standards (I&PS) Branch is responsible for coordinating and undertaking integrity testing for the Department.

2. Scope

This document applies to:

All staff members as defined under subsections 10(2A) of the Law Enforcement Integrity Commissioner Act 2006 (Cth) (LEIC Act), which include:

- the Secretary of the Department
- the Australian Border Force Commissioner (including in the capacity of Comptroller-General of Customs)
- all Australian Public Service (APS) departmental employees
- those authorised in writing by the Secretary or Comptroller-General of Customs to perform functions as officers under the Customs Act 1901 (Cth) or the Migration Act 1958 (Cth).

3. Procedural Instruction

3.1. Integrity testing operations

An integrity testing operation may be considered as a result of one or more integrity complaints or an intelligence assessment.

Before authorisation to conduct an operation is sought, the available information should be fully assessed to determine whether an integrity test is warranted. The full range of circumstances should be taken into account including, but not limited to:

- the frequency of complaints relating to a staff member or a work area
- if a single source complaint, the level and precision of detail provided in support of the complaint
- supporting patterns revealed by historical complaint data from a range of sources
- the inherent risk relating to the duties that the staff member or work area performs, including consideration of access to sensitive information
- corroborating information from intelligence holdings or partner agencies.

Further, consideration should be given to:

- an assessment of the practical feasibility of an integrity testing operation
- any possible negative effects of an integrity test, including disproportionate intrusion into the privacy of a person
- the degree of difficulty in proving a complaint or an intelligence assessment through other investigative means.

An integrity testing operation is not applicable to all complaints and in all circumstances. The Integrity Investigations Section must consider these matters at an early stage and prior to undertaking an associated Code of Conduct inquiry or criminal investigation. This will ensure that an integrity testing operation is not compromised by investigative or inquiry action prior to its launch.

3.2. Integrity testing authorisations

3.2.1. Agencies that can authorise an integrity testing operation for staff members of the Department

The Secretary of the Department and the Australian Border Force (ABF) Commissioner are Authorising Officers for the purposes of approving integrity testing operations concerned with the integrity of a staff member of the Department. The Secretary and the ABF Commissioner may authorise in writing other Senior Executive Service (SES) employees as Authorising Officers.

If the integrity test concerns a corruption issue under the LEIC Act, the test may be authorised by:

- the Integrity Commissioner
- an Assistant Integrity Commissioner
- an authorised SES officer of the Australian Commission for Law Enforcement Integrity (ACLEI)
- an Authorising Officer of the Department being the Secretary or ABF Commissioner in consultation with the Integrity Commissioner.

The Secretary or the ABF Commissioner must approve the decision to approach ACLEI to authorise an integrity testing operation in relation to a staff member of the Department.

3.2.2. Obtaining an integrity testing authorisation

The Integrity Investigations Section is responsible for conducting and coordinating integrity testing for the Department. Business areas should refer any integrity testing issues to I&PS Branch for a determination. To maintain operational security, knowledge of the conduct of integrity tests is to be on a strict need-to-know basis at all times.

An application for an integrity test must be in writing and endorsed by the Assistant Secretary I&PS Branch before it is submitted by the Integrity Investigations Section to an Authorising Officer for approval. First Assistant Secretary Integrity, Security and Assurance (FAS, ISA) Division may also endorse an application. The applicant must provide the Authorising Officer with sufficient information to enable the Authorising Officer to decide whether or not to grant the application.

Legal advice must be sought by the Integrity Investigations Section before approaching an Authorising Officer with an application to conduct an integrity test. The legal advice should be provided to an Authorising Officer with the application.

Since an integrity test will usually involve an allegation of, or information suggesting corrupt conduct, a notification must be made to ACLEI under section 19 of the LEIC Act, if this step has not already been taken.

After considering the information provided, the Authorising Officer can either grant written authority for an integrity testing operation to proceed (either unconditionally or subject to conditions) or refuse the application.

In granting the authority, the Authorising Officer must be satisfied:

- there are reasonable grounds to suspect that a Commonwealth or State offence, punishable on conviction by imprisonment for 12 months or more, has been, is being or is likely to be committed by a staff member of the target agency, and
- it is appropriate in the circumstances to conduct the operation.

Upon an integrity test being authorised, the Department must provide a copy of the integrity testing authority to ACLEI as soon as practicable.

3.2.3. Cancelling an integrity testing operation

An Authorising Officer may cancel an integrity testing operation at any time and for any reason. The order to cancel an integrity testing operation must be given in writing to the staff member responsible for conducting the operation as soon as practicable.

Should the Integrity Investigations Section wish to cancel an integrity test, an application for cancellation must be submitted to the Authorising Officer. Any application to cancel an integrity testing operation should include comment from the staff member responsible for conducting the integrity testing operation.

Cancellation of an integrity testing authority takes effect at the time the order is made or at a later time stated in the cancellation order.

All cancellations must be advised to ACLEI as soon as practicable.

3.2.4. Varying an integrity testing operation

An Authorising Officer may vary an integrity testing authority in writing at any time at his / her own initiative, or upon the application, in writing, of the responsible officer for conducting the integrity testing operation. A variation may be made by an Authorising Officer in relation to any matter included in an integrity testing authority.

A variation to the integrity testing authority may extend, or further extend, the period of effect for up to 12 months. However, the period of effect must not exceed 24 months in total since the authority was granted. A copy of the variation must be provided to the staff member responsible for conducting the integrity testing operation as soon as practicable. All variations must be advised to ACLEI as soon as practicable.

3.3. Undertaking an integrity test

3.3.1. Area responsible

Integrity Investigations Section is the only area within the Department authorised to undertake or coordinate integrity testing. It is also responsible for liaison with law enforcement and integrity partners in relation to integrity testing operations.

Integrity Investigations Section may seek assistance from other areas within the Department, or other Commonwealth or State and Territory law enforcement partners, or integrity bodies. This assistance must be approved in writing by the Authorising Officer as part of the integrity testing authorisation.

Where an integrity testing operation requires specialist skills, or powers outside of the capability of the Department, the Integrity Investigations Section may only undertake or coordinate integrity testing operations with the assistance of other Commonwealth or State and Territory law enforcement partners, or integrity bodies, who possess the specialist skills or powers. Other Commonwealth or State and Territory law enforcement partners, or integrity bodies, may only assist if approved in accordance with the above paragraph.

3.3.2. Conducting an integrity test through a controlled operation

A 'controlled operation' is an operation that:

- involves the participation of law enforcement officers
- is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence or a serious State offence that has a federal aspect
- may involve a law enforcement officer or other person in conduct that would, apart from section 15HA of the Crimes Act, constitute a Commonwealth offence or an offence against a law of a State or Territory.

Any integrity test which is likely to involve participating officers breaching Commonwealth or State / Territory laws, must be undertaken as a controlled operation. Only ACLEI, the Australian Federal Police (AFP), or the Australian Criminal Intelligence Commission (ACIC) may authorise a controlled operation. Where the integrity test relates to a corruption matter, the controlled operation can only be authorised by ACLEI.

Under section 15GI(2)(a) of the Crimes Act, a controlled operation can only be authorised if the Authorising Officer is satisfied on reasonable grounds that either:

- i. a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed, or
- ii. an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency.

This differs from a standard controlled operation¹ in that an integrity testing authority may be issued for a matter that involves a Commonwealth or State offence punishable on conviction by imprisonment for 12 months or more.

Additionally, the Authorising Officer must be satisfied that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation.

¹ Under section 15GE(1) of the *Crimes Act 1914*, a serious Commonwealth offence and serious State offence that has a federal aspect involves a matter that is punishable on conviction by imprisonment for a period of three years or more. Section 15GE(2) provides a list of such offences.

The decision to engage in a controlled operation as part of an integrity testing operation must be approved by the Authorising Officer. The integrity test authorisation must be granted prior to seeking approval to participate in a controlled operation. Additionally, where the integrity test is authorised by an Authorising Officer within the Department, notification of the test must also be provided to ACLEI prior to seeking approval for a controlled operation.

When an integrity test is to be conducted through a controlled operation, the officer applying for the integrity test may approach ACLEI to seek the authorisation of both the integrity test and controlled operation. In these circumstances, the officer applying for the integrity test should notify the Department's Authorising Officers of the decision to approach ACLEI.

While it is possible that a managed delivery² may be incorporated in an integrity test without the need for a controlled operation, this is not foreseen as a common occurrence. Early consultation should occur with the Enforcement Command if any consideration is being given to the use of a managed delivery in the design of an integrity testing operation.

Further, the Enforcement Command, as the only area within the Department that is authorised to plan and execute a managed delivery, must conduct that element of the integrity testing operation to ensure it is conducted in accordance with relevant policies.

The use of a managed delivery for an integrity testing operation will need to be approved by the Authorising Officer.

3.3.3. Use of 'Special Projects' material

Special Projects material refers to material obtained through the use of telephone intercepts, surveillance devices or listening devices. It does not include 'stored communications' or call history data held by telecommunications carriers.

The Department is not authorised under the *Crimes (Surveillance Devices) Act 2010* (Cth), *Surveillance Devices Act 2004* (Cth) or the *Telecommunications (Interception and Access) Act 1979* (Cth) to access Special Projects material.

The Department will only be able to use Special Projects material collected under the above named legislation when involved in a joint operation with ACLEI, AFP, ACIC, or another authorised agency. In these circumstances, the responsibility to apply for the appropriate warrants and manage the necessary requirements will be borne by the appropriate partner agency.

3.4. Participation in integrity testing operations

3.4.1. Departmental employees participating in the integrity testing operation must be identified on the authority.

The Department may be requested to assist other agencies in undertaking integrity tests. This may involve integrity testing of Departmental employees or members of other government agencies (either Commonwealth or State / Territory). Such requests reflect the potential for reciprocal arrangements between law enforcement partners given limited specialist resources across the community.

Before agreeing to participate in integrity testing operations conducted by another agency, authorisation must be received in writing from the Secretary or the ABF Commissioner.

² A managed delivery refers to an operation in which goods are delivered to a person or address as part of an investigation.

3.5. Integrity testing operation – post activity

3.5.1. Debriefing and post activity analysis

On completion of an integrity testing operation, the Secretary or the ABF Commissioner and the FAS, ISA Division must be advised, in writing, of the outcome of the integrity testing operation. Authorised participants involved in an integrity testing operation, who have direct contact with the subject matter of the operation, must be debriefed by suitably qualified personnel as soon as practicable and operationally appropriate after the conclusion of the test. Any other staff involved in the design or implementation of an integrity testing operation should also be given the opportunity to be debriefed by suitably qualified personnel.

At the conclusion of an integrity test, a post activity analysis must be conducted to identify any lessons learned or suggestions for further improvement. These should be documented and retained for future reference.

3.5.2. If a staff member fails an integrity test

A staff member will fail an integrity testing operation if, when faced with a situation that provides them an equal choice of actions, the staff member elects to take actions that breaches a law, the Australian Public Service Code of Conduct or the policies and procedures of the Department. In the event of a failed integrity test, subsequent administrative actions will be managed in accordance with relevant Procedural Instruction for determining breaches of the Code of Conduct.

3.6. Disclosure of information regarding an integrity test

It is an offence under section 15JQ of the Crimes Act to disclose information relating to an integrity test. This offence does not apply in certain circumstances (subsections 15JQ (2) and 15JQ (3) of the Crimes Act), including if the disclosure was:

- in connection with the administration or execution of such operations
- for seeking legal advice in relation to the operation
- for disciplinary or legal action in relation to the staff member, if related to the integrity testing operation
- in connection with the administration or execution of the LEIC Act
- in connection with the performance of functions or duties, or the exercise of powers, of the Department
- in accordance with any requirement imposed by law
- to an authority of the Commonwealth, a State or Territory, if the disclosure relates to the misconduct of an employee or officer of the authority
- to the Integrity Commissioner, concerning a corruption issue, or misconduct, in relation to an integrity testing operation.

Any unauthorised disclosure must be immediately reported to the I&PS Branch. Unauthorised disclosure of information relating to an integrity testing operation is punishable by a penalty of two years imprisonment.

3.7. Reporting requirements

Annual reports must be given to the Law Enforcement Minister as soon as practicable after 30 June, in each year regarding integrity testing operations authorised by an Authorising Officer of the Department during the previous 12 months.

The following details must be included in the report:

- the number of integrity testing authorities granted by the Department
- the nature of the suspected criminal activity in relation to the authority

- the dates of the authority, including any extension granted
- reasons for the cancellation of an integrity testing operation.

The annual report must not disclose information that identifies, or leads to the identification of, any person/s involved in an integrity testing operation.

4. Accountability and Responsibility

Role	Description
IBP workers	Have a responsibility to report any suspected breaches of integrity to Integrity and Professional Standards Branch.
Supervisors and managers	<p>Have a responsibility to read and understand this document.</p> <p>Have a responsibility to ensure IIS staff are aware of this document and use it when undertaking integrity testing.</p> <p>Have a responsibility to assist staff to understand their obligations in regards to this policy and how to apply the principles.</p>
Authorised Officer	Senior officer authorised to grant, extend or cease an integrity operation and are responsible for reading and applying the principles of this document.
Responsible Officer	<p>Responsible officer is the officer managing the application requesting the integrity test operation</p> <p>Have a responsibility to read and apply the principles of this document.</p>
Integrity and Professional Standards Branch	<p>Administers and maintains this Procedural Instruction and related documentation.</p> <p>Receive referrals and assessments about Integrity related matters that relate to serious breaches of this Procedural Instruction.</p>

5. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1	June 2015	I&PS	Final version
2	August 2020	I&PS	Refresh to new template

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Integrity Investigations Section		The internal investigations team responsible for investigating and managing allegations of serious misconduct, criminal conduct or corruption.
Integrity and Professional Standards	I&PS	All staff employed to manage the integrity framework of the department.
Immigration and Border Protection Worker	IBP Worker	<p>Defined in section 4 of the <i>Australian Border Force Act 2015</i> and the Secretary's Determination of Immigration and Border Protection Workers, includes but is not limited to:</p> <ul style="list-style-type: none"> • all APS employees in the Department • persons employed by an Agency under the <i>Public Service Act 1999</i> whose services are made available to the Department (often referred to as 'secondees') • persons engaged as consultants or contractors to perform services for the Department in-house in the Department <p>Persons engaged as consultants or contractors to performing services for the Department that require non-public access to Departmental Assets.</p>
Australian Commission for Law Enforcement Integrity	ACLEI	The role of the Australian Commission for Law Enforcement Integrity (ACLEI) is to support the Integrity Commissioner to provide independent assurance to government about the integrity of prescribed law enforcement agencies and their staff members. The office of the <u>Integrity Commissioner</u> and ACLEI are established by the <u>Law Enforcement Integrity Commissioner Act 2006</u> (the LEIC Act).
Australian Federal Police	AFP	National Policing agency dealing with Australian law enforcement and national security
Australian Criminal Intelligence Commission	ACIC	Is the Australian national criminal intelligence agency
Authorising Officer		Senior officer authorised to grant, extend vary or cancel an integrity testing operation
Responsible Officer		Responsible officer is the officer named in the integrity testing authorisation as managing the request/operation
Integrity Commissioner		Head of the Australian Commission for Law Enforcement Integrity (ACLEI).

Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Crimes Act 1914</i> (Cth) (Crimes Act)	IABA	Division 2-Integrity Testing Operations Authority	No	n/a

1.2. Controls and Assurance

Related Policy	NIL
Procedures/ Supporting Materials	Crimes Act 1914 Parts IABA Divisions 1 through to Division 6
Training/Certification or Accreditation	nil
Other required job role requirements	nil
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Integrity Strategy and Policy integrityawareness@homeaffairs.gov.au
Escalation arrangements	Director, Integrity Strategy and Policy Integrity & Professional Standards Branch
Recordkeeping (eg system based facilities to record decisions)	TRIM
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	Integrity Framework Crimes Act 1914 Parts IABA Divisions 1 through to Division 6
Job Vocational Framework Role	Integrity Assurance and Protective Security

Attachment C – Consultation

1.1. Internal Consultation

- Integrity, Security and Assurance Division
- Legal Group
- all staff through Department-wide consultation.

1.2. External Consultation

- Community and Public Sector Union through the National Staff Consultative Forum
- Australian Commission for Law Enforcement Integrity.