The challenge in hardening an organisation against corruption is that it takes on many forms, and is capable of mutation by stealth. As a consequence, any agency discharging a law enforcement or regulatory function must be equipped not merely with the means, and the will to respond reactively to individual incidents that are discovered: more importantly, it must be in a position to foresee and foreclose emerging opportunities for corrupt conduct.

I do not pretend that this is easy. The difficulty in eradicating corruption, whether generally or within an individual organisation, is not unlike that which would be faced in dealing with the fabled *Hydra of the marshes of Lerna*, the many-headed snake whose new heads grew as quickly as the old were cut off.

The several inquiries conducted in this country and overseas into police services and other agencies, have however identified a significant commonality in the factors that can and do contribute to the emergence of corrupt conduct. It appears to me that full advantage may not have been taken advantage of these inquiries in hardening the capacity of those agencies that are likely to be targeted by corrupt influences. There is a risk that the organisations under investigation have sometimes been regarded as remote islands, without sufficient consideration having been given to whether the lessons learned can, or should be, applied by other instrumentalities to their own field of activity.
This paper then is concerned with the lessons learned, and the opportunities available for organisations delivering services to the public, and for law enforcement and integrity agencies generally, to review their own procedures so as to strengthen their business practices and corruption control strategies. It would be a step too far to suggest that corruption proofing can ever be perfect, because ingenuity personal greed and risk taking, and other influences, including those that can be brought to bear by organised crime, will always mean that there will be those who are willing to take a chance.

What must be prevented however is the development in any agency of systemic or entrenched corruption of the kind that has, from time to time, infected some police services and other agencies. What is regrettable in this respect, and what must be specifically targeted, is the cyclical nature of corruption, involving its emergence, discovery reform and return, often in a more malignant form. A prime example of this can be seen in the case of the New York Police Department, which saw an escalation in the level of corruption from that which had traditionally involved the “grass-eaters”, whose petty corruption under peer pressure involved the collection and sharing of bribes in return for turning a blind eye to criminal activities, to that of the “meat-eaters” who became actively and directly involved in committing criminal offences, particularly in the drug trade. The emergence and evolution of the more serious form of corruption was carefully explored in the Knapp Commission of Inquiry of 1970-1972\(^1\) and later in the Mollen Inquiry of 1992-1994.\(^2\)

What I wish to develop then is the need for a change in perception; the need to appreciate that matters such as complacency, protection of the reputation of an organisation at all costs, lax supervision and work practices, lack of confidence in senior management, an absence of accountability at command or senior level, the absence of a flexible but active anti-corruption plan and an inimical work culture, among others are at the heart of the problem. They are the Trojan horse through which corrupt influences can enter and re-enter an organisation.

Valuable lessons can be learned from other inquiries concerning the need for vigilance, a willingness to consider what corrupt influences may be at work, a readiness to adopt counter corruption techniques and the establishment of an ongoing and effective change management strategy that will respond to those who seek to take advantage of weaknesses of the kind mentioned.

In developing these objectives, I wish to begin with the 1994-1997 Royal Commission of Inquiry into NSW Police. Although what emerged was not unique in the history of inquiries into police, the themes developed and the responses provide something of a template for anticipating and targeting corruption in other areas of activity. For that reason I will go on to consider the challenge as it has emerged in the professional sporting context, and then to return to a different area of law enforcement, in the form of the review that has been conducted this year in relation to the Australian Customs and Border Protection Service (the ACBPS). I choose these inquiries because of their contemporaneity, but they are by no means the only areas which have attracted

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attention in this country in recent times, particularly through the activities of ICAC, from which similar lessons can be learned.

THE NSW POLICE ROYAL COMMISSION

The first significant event in the public hearings of this inquiry was the evidence given by the Commissioner and by other top level Commanders which universally was to the effect that they did not think there was any organised, systemic or entrenched corruption in the force.

I do not suggest that their evidence was untrue, since by no means were the members of the force universally engaged in corrupt activity. Nor had consideration been given previously to what might constitute systemic or entrenched corruption. Fairly quickly the covert inquiries, and the recruitment of roll-over witnesses gave a picture of what had been happening in some areas of policing, particularly drug law enforcement. This included traditional and extensive corruption in the form of regular payments to police by criminals or criminal groups to allow them to continue their illegal activities, and the theft of items found in the course of searches, but also “noble cause corruption”, that is the securing of convictions through perjury, planting of exhibits, false records of interview and so on.

It was at this point that a change in perception became necessary, accompanied by a need to explore why a situation of systemic corruption had come about, what were the vulnerabilities, and how they should be addressed.

The vulnerabilities included in no particular order:
• A pressure for convictions at all costs driven by a belief that, with a limited forensic and analytic ability, the ends justified the means involved in the use of noble cause corrupt practices, the existence of which should have been recognised by judges, so blatant was it at times, so as to even up the fight with criminals in a justice system that was seen to place a premium on fairness of process and on a presumption of innocence;

• The existence of greed in combination with the opportunity to deal with those engaged in criminal activity, in the presence of the discretionary powers that were exercisable by those on the front line;

• An internal affairs system that was reactive rather than proactive, that lacked respect and support, that tended to focus on minor misdemeanours or to close cases on a disciplinary rather than criminal basis, and that was not secure. Regularly if any inquiry was mounted, that fact was leaked leading to what became known as a “whale in the bay” alert, while commonly the response of officers under suspicion was to close ranks or to take the hurt on duty escape route;

• An inadequate and unsupervised informant management system;

• Cliques of officers moving together in high corruption risk areas of policing;

• Ill discipline in some stations, with excessive socialising with criminals and drinking on duty;

• Unacceptable secondary employment;

• An absence of a viable system for whistleblower protection and a fear of the consequences of becoming an internal informant;
• The thin blue line culture at the critical work face that prized loyalty over integrity; and
• A lack of command accountability.

These were but a few of the critical vulnerabilities that needed to be addressed urgently to turn the force around. They led to the introduction of safeguards such as the:

• Electronic recording of all interviews;
• Videorecording of searches;
• Integrity testing;
• Drug and alcohol testing;
• Enhanced availability and use of forensic tools and electronic surveillance as the primary investigative focus rather than reliance on informers and information obtained through associations with known criminals;
• Introduction of the Commissioner’s confidence powers;
• Reinforcement of the protection of internal informants through an internal witness support unit;
• Re-invigoration of the Professional Standards Command as a body capable of carrying out investigations of the same quality as those that can be deployed in regular criminal investigations, while also making a rotation within the command a desirable career move carrying enhanced prospects of promotion;
• Elevation of the standards for recruitment and for the vetting of recruits, and for training at the Police Academy;
• Introduction of a promotion system based on merit rather than seniority, employing modern approaches to the assessment process;
• Adoption of a code of ethics and reinforcement of integrity training both at the point of entry and at specialist courses, in particular imparting an adequate understanding of the danger occasioned to the reputation and authority of the service as a whole and of the danger that unaddressed exposure to corruption can have for the honest and ethical officers;
• Promotion of policing as a profession;
• Revision of the forms of permissible secondary employment;
• Establishment of the independent Police Integrity Commission that was tasked with investigating more serious corruption allegations while preserving a responsibility for the Force to police itself, as well as the position of Inspector of the Commission to hold it accountable for its work; and
• Joinder of the Police Association as a partner in addressing corruption.

This inquiry was by no means the first such inquiry into the NSW Police. The earliest one that I have traced was an 1867 inquiry into police connivance and inactivity in relation to the activities of bushrangers in the Braidwood district. Other inquiries included the 1936 Markell Inquiry into street and starting price betting which found evidence of noble cause corruption and inappropriate associations by police; the 1954 Maxwell Liquor Commission into the sly-grog trade which similarly identified police facilitation of that activity; the Moffitt Royal Commission of 1973-1974 into the unaddressed entry of the mafia into the club industry of NSW; the Lusher Inquiry of 1980-1981 into the administration and structure of the force; and the 1981-83 Royal Commission into drug trafficking, each of which had revealed the existence of corruption in various forms, and to various degrees.
Of obvious relevance to the emergence of corruption in this context has been the presence of organised crime. Without its influence corruption to any meaningful or entrenched extent is unlikely. Rather, it will tend to be confined to individual opportunistic activity which, save in the context of “shakedowns”, will usually benefit the private citizen and officer alike.

**CORRUPTION WITHIN PROFESSIONAL SPORTS**

It is because of that aspect of the involvement of organised crime that I wish to say something of two forms of corruption that have emerged in the area of professional sports. Its existence was referred to earlier this year, with considerable publicity, arising out of the work of the Australian Crime Commission (the ACC) that has been published in its Report, *Organised Crime and Drugs in Sport*.4

In fact attention had been given to this possibility, and to the resulting concerns, in the course of earlier inquiries both in this country and overseas. Again it is a multi-headed phenomenon which has seen the involvement of athletes and others in the use not only of prohibited performance enhancing drugs, but also in match fixing in support of gambling, with the inevitable potential for a crossover between the two activities.

**Gambling/match fixing**

The gambling/match fixing issue has been on the table for some time, dating back to the ancient Greek games and to the notorious single wicket contests in England in the early 19th century. Among the most egregious forms of this activity was the Chicago White Sox scandal that involved the White Sox throwing the 1919 World Series to the

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Cincinnati Reds in response to pressure from an organised crime figure (allegedly Arnold Rothstein). It generated the despairing challenge of a small boy to “shoeless” Joe Jackson as he left the Chicago Grand Jury hearing: “Say, it ain’t so Joe. Just say it ain’t so”. That response encapsulates the disgust that such activity generates among genuine sports fans and the damage that it can do to the reputation of a sport.

The emergence of this kind of corruption, in an endemic capacity, in the sporting world has been evidenced by the Hansie Cronje experience, by the events in the Cricket Test between England and Pakistan in 2010 at Lords that saw several players imprisoned or subject to bans for spot fixing and by several subsequent scandals in that sport even though it has historically been regarded as a game played by gentlemen.

The experience in cricket has been surpassed by the extraordinary number of cases involving match and contingency fixing within the sport of football in the UK, Europe and Asia particularly the sub-continent that have seen players, match officials, ground staff and others imprisoned and suspended. Possibly the most graphic event was the sting that was carried out during the 1977 English football season, involving a Malaysian gambling syndicate that had arrangements with ground staff to kill the floodlights at league matches when the score suited their bets. It only became undone when a security guard who had been rostered for duty at a match between Charlton Athletic and Liverpool at the Charlton Athletic ground, reported the arrangement to police.

Horse racing, and harness racing in particular, have also not been immune to gambling related manipulation through a variety of strategies designed to conceal the use of prohibited substances or to pre-determine a race outcome.
The NSW Law Reform Commission conducted a review of this form of corruption in 2011 and as a consequence of its Report,\(^5\) NSW introduced a new offence that is directed at criminalising arrangements reached by players, match officials, teams, support and venue staff, and players agents, to corrupt the betting outcome of sports events, either in fixing the overall result, or the outcome of an incident (contingency) during play or the spread of points, as well as the corrupt supply and use of insider information.\(^6\) Four other states and Territories\(^7\) have now introduced legislation based on this provision.

The occasion of this inquiry identified a number of vulnerabilities that needed to be addressed, a process that was similar to that conducted in the Police Royal Commission. They included:

- The lack of any consistent or informed, let alone harmonious, national system, for the approval of the events or contingencies within those events, that might be the subject of lawful betting activity;

- The inconsistent response of sports controlling bodies within Australia, in relation to the promulgation of Codes of Conduct that can deal with behaviour that might facilitate the corruption of a sports event, and that impose an obligation of disclosure where any party subject to the Code receives or learns of a corrupt approach to fix a match or contingency or to disclose inside information;

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\(^6\) Now contained in the *Crimes Act 1900* (NSW) s 193N-193Q.  
\(^7\) South Australia, Victoria, Australian Capital Territory and the Northern Territory.
• The limitations because of privacy or other rules, on the exchange of information between law enforcement agencies, sports controlling bodies and betting agencies;

• The absence of any capacity in sports controlling bodies to deal with non-licensed or non-registered persons who, in various ways, can have contact with people involved in the sport, and a capacity to corruptly influence the outcome of events;

• Problems in cross border collaboration, and particularly in relation to interactive internet betting, in part due to constitutional limitations, but also due to the competing interests of individual jurisdictions in protecting their revenue streams from betting; problems that are even more acute in relation to bets placed overseas, or from overseas, which can be unregulated and difficult, if not impossible of investigation;

• The existence of a capacity to bet on a team or participant to lose an event, or to engage in hedging practices, that open up new opportunities and incentives for engaging in match fixing;

• The capacity for overseas gamblers/organised crime to recruit players on a short term basis to fix matches in Australia, particularly at a sub-elite level that may fall under the radar, in order to support bets placed overseas that are potentially outside the remit of Australian investigative/regulatory authorities; and

• The existence of a grey area concerning the fixing of an event through under performance to benefit a club in relation to the player draft and relegation systems, or in relation to its progress through a pool event, which may have a
serious impact on the integrity of the sport, particularly when it becomes a learned activity that is then applied in aid of a betting sting.

To some extent these problems were identified in the National Policy on Match-Fixing in Sport that was agreed by Australian governments in June 2011. Key elements of that policy have included the creation of a National Sports Integrity Unit, encouragement for the introduction of consistent National Code of Conduct Principles across all sports, for the establishment of an efficient information sharing network between governments, sports controlling bodies, betting operators and law enforcers, and for active participation in international efforts to combat corruption in sport.

The risk of corruption has not been entirely removed, either locally or overseas, even though some significant steps have been taken on an international basis, including for example the establishment of:

- The Early Warning System GmbH sponsored by FIFA;
- The Sports Betting Intelligence Unit attached to the UK Gambling Commission;
- The Olympic Committee Working Group on the *Fight against Irregular and Illegal Betting on Sport*;
- and the introduction of International Integrity Units in some sports, notably:
  - The Tennis Integrity Unit, and
  - The ICC Anti-Corruption Unit.

Yet to be addressed, but of importance for Australia, is the need to introduce greater control and transparency concerning the permissible forms of sports betting, including
the prescription of permitted betting events and bet types, and the level of sport at which bets can be placed.

In response to the question whether the problem in the sporting context is of sufficient size, or whether it matters whether sports events are fixed, I need do no more than refer to the published data which estimated the total annual income generated by the sports and recreation industry in Australia during the year 2006 to be in the order of A$8.82 billion;⁸ and which estimated the racing and sports betting market in 2010-2011 to have involved wagering in a sum of A$23.5 billion (of which A$3.3 billion involved sports other than racing). The sports betting market has been reported to have experienced an increase in the order of 278%⁹ between 2000-2001 and 2010-2011. These figures are of course miniscule when compared with the vast, mainly illegal, global sports betting turnover. Interpol has estimated that over US$140 billion is generated annually by fraudulent and irregular sports betting across the world.

The serious damage which this kind of activity does to the reputation and financial viability of any sport which becomes the target of match fixing is undeniable and is only compounded by the opportunities that it engenders for money-laundering by organised crime.

DRUGS IN SPORT

Closely connected with the match fixing experience has been the emergence and use of drugs, or perhaps more accurately prohibited performance enhancing substances, in

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professional sport, and the potential for an involvement of organised crime in their supply, a risk that was identified by the Australian Crime Commission in its 2013 report. Obviously of interest in this respect were the findings of the United States Anti-Doping Authority (USADA) arising out of its proactive inquiry in relation to Lance Armstrong and others involved in international cycling.\(^1\)

Similarly to other inquiries consideration was given to the extent to which the prohibited practices had become systemic or endemic, and to the vulnerabilities of that sport to corruption, including the ways in which testing and other controls had been subverted by athletes, team officials and sports scientists through:

- Avoiding testers during windows of detection;
- Using substances and methods that were, at least for a time undetectable, for example including the use of blood doping, EPO, anabolic steroids, peptides and hormones;
- Developing new substances or methods as the testers worked in endeavouring to achieve a catch-up;
- Placing pressure on new team members to accept the use of the drugs;
- Employing strategies to enforce a code of silence.

Although the Tour de France has never been entirely free of drugs, the findings of the inquiry and subsequent disclosures tend to suggest that their use, and the sophisticated approach adopted by more than one team, reached a peak in the late 1990s and early

\(^{10}\) United States Anti-Doping Agency v Armstrong, USADA, Reasoned decision of the United States anti-doping agency on disqualification and ineligibility, Report on proceedings under the world anti-doping code and the USADA Protocol, 10 October 2012.
2000s. Since that time the introduction of the whereabouts reporting regime and athlete biological passport have provided a welcome response.

Closer to home, following the release of the USADA Report and the emergence of suggestions that some Australian cyclists had used performance enhancing substances in the period mentioned, a review was undertaken of Cycling Australia (CA). As with the other inquiries, based on interviews with professional cyclists, high-performance coaches and trainers, sports scientists and administrators and others, the preliminary focus was on the vulnerabilities. What was found, in this respect, included:

- Relevantly for contemporary concerns, an ambiguity in relation to the use of supplements and performance and image enhancing drugs, particularly the new generation peptides;
- Pressure on young cyclists to win at all costs, to gain or to preserve an international career;
- Some insufficiency in the education and other programs provided by the several sports institutes that were designed to educate aspiring professional cyclists and to keep them updated on anti-doping requirements and strategies;
- Insufficient preparation of young professional cyclists for life on the world tours, including a lack of any mentoring system;
- The reliance of CA on the Australian Sports Anti-doping Authority (ASADA) to conduct drug testing and to enforce the whereabouts reporting/athletic biological profile systems;
- The absence within CA of an internal integrity unit or strategy;
• The absence of any clear system for the accreditation of those providing sports science and similar skills, or requirement for contractual compliance with the national anti-doping code; and

• Limitations on the powers of ASADA to compel the attendance of athletes for interview and the production of documents, as well as some concerns in relation to the exchange of information between it, the Australian Customs and Border Protection Service, law enforcement agencies and CA.

Although a question could be asked whether what was involved in cycling did constitute a form of corruption, with which we should be concerned, the answer, for my part, lies in the other areas of sporting endeavour such as Rugby League and the AFL where similar problems seem to have emerged. These are truly multi-million dollar industries with a very wide following, and they support, or at least provide an avenue for a substantial slice of the Australian betting turnover. Once again there is an absence of a level playing field if some teams or participants permit or encourage the use of performance enhancing substances that can affect that market, as well as the reputation and attraction of the sport for the general public.

As the Australian Crime Commission has observed, as has Jacques Rogge of the International Olympic Committee and John Coates of the Australian Olympic Committee, organised sport in whatever discipline is threatened both by drug use and by match fixing and the two have a potential to feed off each other. Moreover within each lurks the presence of organised crime, having both a national and international connection.
An attraction for organised crime is that the supply of some of the prohibited substances to an athlete does not, or has not in the past, constituted a crime, while their possession or use by the athlete can involve an anti-doping rule violation leading to a ban from competition.

As was identified by the Australian Crime Commission, to this vulnerability is added the capacity for organised crime to infiltrate the sporting environment and acquire a veneer of respectability through business relationships with sports franchises and through consultancies and other associations with clubs.\(^{11}\) Additionally there is the risk of their exploitation, for betting purposes, of inside information concerning individuals and teams who are using prohibited substances, \(^{12}\) quite apart from the establishment of routes for the supply of recreational and other illegal drugs.

The involvement of an athlete in the use of these substances, as with their participation in match fixing also opens up their exposure to blackmail with all of its potential ramifications. Moreover the long term health effects of the use of some of the substances that have become available on the internet, through anti-ageing clinics, compounding pharmacies, gymnasiums, sports scientists and others are commonly ignored. Perhaps more accurately the risks of using the more sophisticated substances, or drugs, for example those that were intended for equine or non-human use, are unknown, a matter of particular concern when athletes are used as guinea pigs.


May I conclude this brief overview of the challenge that corruption poses for the Australian sporting industry with a quote from the Australian Crime Commission Report:

“sport in Australia is only as strong as the weakest link across the broader sports industry. The lack of effective integrity management in some sporting codes creates a high level of vulnerability for the broader industry.”

The truth in that observation lies in the ready transferability of athletes, coaches, and sports scientists, between Codes particularly in a context where each has adopted different levels of integrity oversight, and where the available resources to target integrity issues may not be in equilibrium.

THE AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

Can I then return to law enforcement in the form of the work of the Australian Customs and Border Protection Service (the ACBPS), which has encountered a problem with corrupt activity involving some customs officers acting in conjunction with organised crime figures. By reason of my membership of the Customs Reform Board which has been advising the Minister and overseeing its current reform process, I will need to confine my remarks to material that is now on the public record, including the published Fraud Control and Anti-Corruption Plan 2013.

To place the challenge faced by Customs into context, it needs to be noted that it is required to deal with:

- A coastline in the order of 60,000 kms in length much of which is unoccupied and difficult to access, but which can be reached by light aircraft or small vessels;
- 60 proclaimed international sea ports;
- An offshore exclusion zone constituting 10 million square kilometres of ocean;

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• The current movement through its area of control of:
  
  o 33 million international regular passengers;
  
  o An air cargo consignment volume in the order of 42 million units;
  
  o A sea cargo volume in the order of 3 million units;

  figures that are expanding considerably each year; and

• A cohort of irregular arrivals arriving by sea and air.

Moreover, it has to work in conjunction with immigration and quarantine officials locally, as well as with its counterparts in other countries, through staff located overseas.

In establishing its operational procedures it has to balance facilitating the movement of legitimate passengers and cargo, in a timely way that does not unnecessarily disrupt air travel, tourism and trade, with protecting the country from the importation of prohibited or restricted goods and the entry of unauthorised persons.

Leaving aside border protection issues in relation to people smuggling, it is inevitable, having regard to the place of origin and value of the drugs, weapons and untaxed cigarettes that enter the market, that organised crime will seek to infiltrate the operations of the Service at various points in the arrival, clearance and delivery process.

The nature of that process does itself present a challenge since it is not only customs officers who play a part, and who have direct access to aircraft, sea vessels, airports, seaports, bond stores and so on, and as a consequence to goods coming into the country. Others who have that access include baggage handlers, stevedores, freight forwarders, customs agents, bond store and warehouse staff, and truck drivers as well
as catering and cleaning and engineering staff who are involved in servicing aircraft and vessels, and who are not employees of the ACBPS.

With that background, and by no means suggesting that corrupt activity is occurring to any significant extent across these various groupings, or that within some of those groups any of their members have been involved, it is the fact that during 2012 and 2013 it became evident that some custom officers and others had been involved in allegedly corrupt activities. This led to investigations by the Australian Federal Police (AFP) and by the Australian Commission for Law Enforcement Integrity (ACLEI) and to several prosecutions.

Some of those cases are current, and I do not intend to trespass into matters that are unresolved or to descend into detail as to the vulnerabilities that were identified. Security considerations preclude further detail, beyond noting, as has been the case with each of the corruption inquiries that I have mentioned, a first and essential step in the reform process has been the identification of the vulnerabilities at the airports and seaports, and in each and every aspect of the movement and tracking of a passenger, a piece of cargo or an item of mail that crosses the border.

**DEVELOPING A MORE FOCUSED AND TIGHTER ANTI-CORRUPTION PLAN**

The ACBPS Fraud Control and Anti-Corruption Plan that has now been developed had the benefit of drawing upon experience elsewhere, and it provides a more than valuable model for other agencies in developing their own response. In the remainder of this paper I wish to identify some key features of that Plan and to note parallels elsewhere,
as well as some strategies that merit a wider application. In no particular order they comprise the following:

**Driving reform**

Implementation of the work of the Royal Commission into the NSW Police Service, was secured through the creation of a Royal Commission Implementation Unit. It was accompanied by the creation of an Independent Qualitative and Strategic Audit Process (QSARP) to evaluate, over a period of 3 years, the progress of reform that focussed on ten key reform areas:

- Effective leadership and management;
- Changing culture and values;
- An honest Service which repels corruption;
- Performance management and quality;
- Effective planning;
- Focus on staff and teamwork;
- Building a new human resources (HR) system;
- Breaking down outmoded systems;
- The Local Area Command (LAC) as the service hub; and
- Implementation of effective structural change.

This process was reviewed by the Police Integrity Commission and by the Ombudsman who reported to the Parliamentary Committee for the Office of the Ombudsman and Police Integrity Commission.
The ACBPS approach was somewhat different in that the Customs Reform Board was appointed at the commencement, rather than at the end of the reform process, to advise the Minister on the Strategic Reform of the ACBPS, with terms of reference specifically concerned with:

- Improving the business operations, law enforcement and integrity culture of the ACBPS;
- Embedding an improved culture of professionalism, collaboration, innovation and adaptability within the ACBPS; and
- Identifying the operational, administrative and legislative changes that were required to support the reforms.

In the course of its first year of operation the Board took steps to familiarise itself, on the ground, with the operations of the ACBPS at Sydney International Airport and at Port Botany, to engage in briefings and consultations with ACBPS leadership, staff representatives and other stakeholders, and to review and offer advice on the Reform Plan as it was being developed.

The substantial nature of the reform process that has been developed and embodied in the ACBPS Fraud Control and Anti-Corruption Plan 2013, is such that it is to take place in two phases. The first phase which has now been carried into effect through legislation\textsuperscript{14}, focussed on immediate actions to strengthen the capacity of the ACBPS to respond to corrupt activities. These initiatives included the introduction of:

\textsuperscript{14} The Law Enforcement Integrity Legislation Amendment Act 2012 (Cth).
• Integrity testing – this provides the power to conduct targeted integrity tests on officers suspected of corruption;

• Drug and alcohol testing – the CEO and ACBPS now has the power to authorise drug and alcohol testing on all Customs workers;

• The power to make a declaration that an officer has been terminated for serious misconduct, thereby limiting the grounds for review under the *Public Service Act 1999* (Cth); and

• The power to make specific CEO Orders for the control of the Service, that have now dealt with the mandatory reporting of serious misconduct, corrupt conduct and criminal activity, and secondly with the upholding of professional standards.

This has been supported by a number of other measures directed at identifying and assessing vulnerabilities, including:

• Introducing stronger first line supervision;

• Reviewing permissible forms of secondary employment;

• Providing improved access controls and roster rotations;

• Tightening new employee screening and induction procedures;

• Enhancing the training of staff generally but specifically in relation to fraud and corruption awareness; and

• Providing an integrity support and referral network to support staff with their mandatory reporting requirements.

In turn those measures are supported by the introduction of an ACBPS specific Code of Conduct.
The second phase is directed at a more extensive service-wide reform to allow the ACBPS to keep pace with the accelerating evolution of the border environment.\textsuperscript{15}

This second phase accordingly envisages a series of discrete bodies of work concerned with modernising the business systems of the ACBPS and hardening the workforce against corruption through establishing a disciplined service culture. This will see the introduction of more efficient business systems along with streamlining the processes in facilitating the movement of passengers and cargo, as well as enhancing the Service’s capacity to develop a sophisticated intelligence capacity that will support an intelligence-led risk based approach and address any existing barriers in intelligence sharing.

Together these developments, which fall within the planned oversight role of the Customs Reform Board are designed to improve the service delivered to clients and to facilitate the detection of criminal and corrupt behaviour. They are also designed to:

- Advance the skills of ACBPS staff;
- Introduce transparency in recruitment and staff mobility;
- Ensure that a clear career progression is available and visible to staff;
- Provide ongoing merit based selection processes; and
- Establish through targeted leadership training and development opportunities, an acceptance of a high level of integrity and accountability.

These initiatives or objectives are supported, from an integrity point of view by the establishment and revitalisation of an Integrity and Professional Standards Branch, with a direct line of reporting to the CEO or Deputy CEO and a responsibility for managing

\textsuperscript{15} \textit{Customs Reform Board Report}, First Report, June 2012-2013.
fraud and corruption detection programs; by the appointment of a Special Integrity Adviser tasked with providing independent advice to the CEO on anti-corruption measures; and by the presence of an Internal Audit Committee that audits the Services’ compliance with Commonwealth Fraud Control Legislation and Guidelines.

The approach taken by the NSW Police and the ACBPS in ensuring that reform plans are carried into effect is critical for any organisation that intends to harden itself against corruption and to reduce the possibility of its return after a period of reform.

External oversight

Of importance for the ACBPS has been the vesting of jurisdiction in ACLEI, since January 2011, to investigate corruption issues within the Service, to collect intelligence and to report annually on any patterns of corruption affecting the agency.

It stands in a similar position to the Police Integrity Commission (PIC) and the Independent Commission against Corruption (ICAC) in NSW, each of which is a statutory agency independent of the NSW Police and the other government instrumentalities which they oversee, and which in turn is overseen by a separate and independent Inspector.

Oversight agencies cannot be seen as an island. A role and responsibility has necessarily been preserved for the ACBPS and Police respectively to own and protect the integrity of their operations, which includes the capacity to conduct investigations into potential areas of misconduct, either alone or in partnership with the oversight agency or other law enforcement agency. So it is that ACLEI and the Australian Federal Police carried out investigations in 2012 and 2013 in relation to the allegations
of corrupt conduct involving customs officers and others, and analysed and detected the potential areas of vulnerability that needed to be addressed. This reflects the approach employed by the PIC, in that it can operate in conjunction with the NSW Police Force and/or the NSW Crime Commission, or alone, in carrying out investigations into possible serious misconduct or corrupt activity. The potential level of oversight, which in NSW is also increased by the role that is performed by the Office of the Ombudsman, is considerable in both a reactive and proactive sense.

Within the sporting context, the establishment of integrity units with an international and independent reach, of the kind that has been adopted by tennis and cricket, appears to be a positive step, particularly where they have investigative and disciplinary functions. The sport of cycling has struggled to move in this direction, including the establishment of a review process that later became stalled. Having regard to the recent history and international reach of the sport the establishment of a Cycling Integrity Unit, independent of the UCI and the World Anti-doping Authority (WADA) would seem to be a positive step in hardening its stand against corruption, both in relation to breaches of the WADA code and event fixing.

The newly formed National Integrity of Sport Unit within Australia was given functions of:

- Co-ordinating cross jurisdictional legislation, policies and administrative practices directed at maintaining integrity within the sporting environment;
- Providing national co-ordination of monitoring and reporting between regulators, sports controlling bodies and law enforcement agencies;
• Working with international betting operators and regulators in combating match fixing activities;

• Providing advice and working with individual sports to ensure the existence of a robust framework across sporting codes, that is free of soft targets that might attract criminal activity; and

• Maintaining a resource centre for key stakeholders to access up to date information in relation to the use of integrity controls, research and education.\textsuperscript{16}

It has also carried out work on developing templates for adoption by sporting organisations including an anti-match fixing policy, a code of conduct, and a model integrity agreement to be entered into by those organisations with betting agencies.

Its work has been supplemented by the commitment of the sports betting industry to adopt an industry standard for the exchange of information with sports controlling bodies and law enforcement agencies. This is a critical feature for hardening the response to match fixing since the betting agencies are likely to receive a first warning of a sting through suspicious moves in the betting market.

However it continues to be an advisory and monitoring body without the teeth that would enable it to test corruption allegations and assist law enforcement or ASADA in investigating such matters.

\textsuperscript{16} Australian Government Department of Infrastructure and Regional Development Release, 1 October 2013.
Vulnerability audit

An important component of the ACBPS response was the identification and ranking of the enterprise or vulnerability risks that are associated with the operations of the Service, accompanied by the external capability review that was carried out by the Australian Public Services Commission. The completion of an integrity risk assessment bi-annually has been a requirement of the Commonwealth Fraud Control Guidelines, but ACBPS has decided to improve on this requirement through a continuing process of review, and where necessary by ongoing revision of its Fraud Control and Anti-Corruption Plan.

The introduction of a periodic, or preferably an ongoing, review and assessment of vulnerabilities and risks, in the light of local intelligence and trends emerging in comparable agencies in other jurisdictions is, to my mind, an integral element in hardening an organisation against corruption. It is far preferable to a crisis review that is only conducted when a corrupt event or series of events comes to light.

Similar considerations arise in this respect in relation to the process mentioned earlier for maintaining the momentum for reform, the sophistication of which will vary according to the size of the organisation and the risks attaching to its area of operations.

For less sophisticated agencies a more modest approach to the ongoing assessment of vulnerabilities is possible, although the minimum response, it seems to me, must include the introduction of a dedicated internal integrity unit that has sufficient independence and resources to maintain a watch over the organisation’s operations, with a specific responsibility to report to the CEO or Board on any integrity issues or
vulnerabilities that emerge. To be effective it needs to have a capacity to receive, and to share with other agencies, information of relevance to any corrupt trends or practices affecting its area of operations. It is this kind of role that was suggested for Cycling Australia in the Report delivered this year in relation to its role in supporting the integrity of professional cycling. It is also this kind of capacity that is in place within the AFL and NRL, which would be well replicated by the other sports controlling bodies.

An additional safeguard of potential value for organisations when developing new polices, practices and IT systems is to ensure that an integrity impact assessment is carried out. This can provide a trigger for senior executives to consider the project from an integrity and anti-corruption prevention perspective, from the outset, and it was a strategy advanced by the Customs Reform Board.  

Legislative support

Critical to the capacity of the external agencies to carry out their investigatory functions, and of law enforcement to combat corruption, is the existence of appropriate legislative authority and powers and of specific corruption offences. This needs to embrace a capacity in investigative agencies to:

- Engage in the interception of telecommunications.
- Conduct other forms of electronic surveillance;
- Carry out controlled operations subject to appropriate safeguards for their approval and oversight;
- Engage in integrity testing; and

17 Customs Review Board, First Report, June 2013, 16.
• Exercise coercive powers in requiring those under supervision to answer questions and produce documents.

It is in this latter respect that a current problem may have arisen in Australia, concerning the reach of the separate but overlapping common law rights of silence and privilege against self-incrimination, in the context of an investigation into corruption or criminal conduct. This arises out of two recent decisions, the first a majority decision in the High Court,\textsuperscript{18} and the second a decision of a single justice in the Supreme Court of NSW.\textsuperscript{19}

They concerned the entitlement of a person to refuse to answer questions asked of him pursuant to an available statutory power; in the first case, in the course of a compulsory ACC examination relating to the subject matter of some offences with which that person had been charged; and in the second case, in the course of a directed non-criminal departmental interview whose purpose was to ascertain the factual circumstances surrounding the discharge of a police firearm, in what was treated as a “critical incident”.

Although the full ramification of these decisions is yet to be ascertained they do have a potential impact on the exercise of coercive powers, and also on the complexity of the distinction between the direct and derivative use of any information obtained through an exercise of those powers.

What is however clear from the reasons is that although statutory or other powers for coercive examination commonly preclude the use in evidence in proceedings against the examinee, of any information or documents obtained, that fact will not necessarily provide an answer to a claim to a right of silence or privilege against self-incrimination,

\textsuperscript{18} X7 v Australian Crime Commission (2013) HCA 29.

\textsuperscript{19} Baff v New South Wales Commissioner of Police (2013) NSWSC 1205.
or to a claim that exercise of the power may deny the examinee a fair trial. Nor will the fact that any information obtained will remain secret (although available as intelligence), or that law enforcement officials will or can be excluded from a private hearing.

What is also clear is that the extent to which the powers can be used, and to which any direct or derivative use immunity is preserved, will depend on the express wording or necessary intendment of the individual statute or regulation; and also in the case of disciplined agencies such as the Police and ACBPS any contractual commitment to a Code of Ethics.

One of the recommendations of the Cycling Australia Review related to the need for an amendment of the *Australian Sports Anti-Doping Authority Act 2006* (the *ASADA Act*) to allow ASADA to require athletes and others to attend an interview and answer questions, or to provide information or documents where they are relevant to the administration of the National Anti-Doping Scheme; and also to allow the dissemination of any information obtained to other agencies and authorities, including the relevant sports controlling body and the Anti-Doping Rule Violation Panel.20

In addition to the more general purpose of strengthening the enforcement of the National Anti-Doping Scheme, this legislation can help in filling in the gaps in the case of those sports whose Code of Conduct or contractual arrangements does not impose an obligation to co-operate with investigations.

The *ASADA Act* has now been amended (effective from 1 August 2013) to include powers along these lines, and to provide a civil penalty for non-compliance.

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This legislation, although without a criminal sanction, joins that in place in relation to:

- The Independent Commission against Corruption;\textsuperscript{21}
- The Police Integrity Commission;\textsuperscript{22}
- The NSW Crime Commission 1985;\textsuperscript{23}
- The Australian Crime Commission;\textsuperscript{24} and
- The Australian Commission for Law Enforcement Integrity.\textsuperscript{25}

It may now be necessary for close consideration to be given to each of the legislative or other instruments that vest coercive powers in these bodies, on a policy and practical basis, as to whether amendment is necessary to allow them to carry out their respective intelligence gathering or anti-corruption functions.

**PURSUING AN ETHICAL CULTURE**

The objective of embedding an ethical culture within an organisation may need to involve a carrot and stick approach – encouraging on the one hand, a voluntary acceptance by staff of the desirability in securing for themselves a safe and respected work environment; and on the other hand imposing positive requirements that may lead to sanctions in the event of non-compliance.

The latter may include:

- Compulsory adherence to a comprehensive Code of Conduct;

\textsuperscript{21} Independent Commission against Corruption Act 1985 (NSW) Part 4.
\textsuperscript{22} Police Integrity Commission Act 1996 (NSW) Part 3.
\textsuperscript{24} Australian Crime Commission Act 2002 (Cth) Part 2, Div 2.
\textsuperscript{25} Law Enforcement Integrity Commissioner Act 2006 (Cth) Part 9.
• Completion of a declaration of the kind that was recommended by the Cycling Australia Review;\(^{26}\) and that has been adopted by the Australian Olympic Committee, confirming an absence of any past engagement by the athlete or coach in prohibited practices or disclosing the details of any such behaviour;
• Completion (at regular intervals) of a document reporting any potential conflicts of interest, declarable associations, financial interests and material changes in circumstances; and
• Submission to drug and alcohol testing and integrity testing.

In between the carrot and the stick are a variety of strategies including the use of forms of education and training that are adapted to meet the expectations of generation Y. These need to depart from rigid or mechanical lectures and employ practical demonstrations and role play in relation to the kind of potentially corrupting situations which might confront an employee or an athlete. They might also involve sessions in which those who have been caught out in corrupt practices can caution others of the pitfalls and consequences. For example, it has been recently reported that Mervyn Westfield an English cricketer jailed in 2012 for corruption has, in association with the Professional Cricketing Association, made an educational video explaining how he was groomed to manipulate certain contingencies in a match, and the serious personal consequences that this had for him.

Also of potential value, as was identified in the Cycling Australia Review is the establishment of a mentoring capacity within the ranks of leaders who have a strong history of ethical behaviour and earned respect. This can address, for example, in the

\(^{26}\) Cycling Australia Review 2013, 3.58-3.94, Recommendation 3.3.
sporting environment, the way in which to respond to incidents such as a “casual” meeting with a gambler or bookmaker at a hotel or sporting venue, an innocuous inquiry about a players’ state of health or pitch conditions, or the offer of a private gift or bonus for a win. Similarly of value to an organisation can be routine surveys of employees to gauge the strength of the ethical culture of the agency and to detect any vulnerabilities.

The benefits of demonstrated integrity, credible recruitment, policies that do not permit of cronyism and promotion on merit, and their visibility to staff can perform the role of the carrot, as can a truly fair and credible whistleblower system. There can be little more destructive of a positive culture than an understanding by staff that acting as an internal informant is either dangerous, or career destructive. Recent examples in the corporate and public sector, which have seen informants criticised, disbelieved and dismissed, only to have their allegations later substantiated, demonstrates the point.

Similar considerations apply to the process of internal audit and to the need for positive support of internal audit staff.

Front line command accountability and responsibility spelt out in duty statements or key performance indicators, is no less important. An aspect of this was addressed in the Police Royal Commission, which drew attention to the need for Commanders to be aware of, and to respond promptly, to the well known signs in individual officers of a vulnerability to corrupt influences, or of a likely engagement in unacceptable conduct. They included for example, inappropriate associations, drinking on duty, gambling, use of drugs, unexplained absences, excessive complaints particularly those involving the unnecessary use of force, a pattern of involvement in failed operations or prosecutions,
unauthorised access to an internal data base such as the Police Cops System, unexplained wealth or accumulation of debt, and so on.

At the heart of this process is a need to protect those aspects of the culture that allow officers to support and trust one another in the lawful exercise of their functions, but not to the point where collegiate loyalty takes priority over duty. The two are not incompatible, yet the former can be used by more experienced corrupt staff to subvert the integrity of an agency.

Integral to securing that outcome is bringing the staff and any union or association representative of the staff on board. This is an area which was addressed by the Police Commissioners who took office after the NSW Police Royal Commission and who spent a considerable amount of time speaking directly to police around the state, one of whom while referring to the process as “death by a thousand lunches” remains a very strong supporter of the process.

A similar course has been taken by the ACBPS in closely consulting with and informing staff of the reform strategy. That process can be strengthened through the use of a formal internal advisory or consultation group that can be encouraged or persuaded to “own” the relevant plan.

The challenge that must be met is the establishment of an acceptance across an agency of a set of ethical values that is directed at corruption resistance and not at corruption tolerance, and that is seen to be led from the top.
CONCLUSION

In summary what is required in strengthening an organisation against corruption are the following: first, continuing vigilance, and an understanding by that agency that the risks of its emergence and of its mutation will never go away. Secondly, what must be accepted is accountability and leadership from the top, including demonstrated acceptance of requirements such as submission to drug/alcohol testing, registration of financial and other interests, and as well as clear and precise direction as to what is permissible and what is not. This is important, for example, in setting out in unequivocal terms the rules in relation to the appropriate use of expenses, and corporate credit cards.

In the case of semi-government agencies involved in international commercial dealings such as marketing boards, this requires absolute clarity as to acceptable sales strategies and a prohibition on the offer of favours or money to facilitate a transaction (ie subject to the requirements of the *Criminal Code 1995 (Cth)*)),\(^{27}\) as well as a prompt and positive response by the Australian Securities and Investments Commission (*ASIC*) and by the AFP to whistleblowers allegations, and the provision of education and assistance to exporters by the Export Finance and Insurance Corporation (*EFIC*). In the case of government contracts, there must obviously be strict adherence to the tender and contracting rules, irrespective of ministerial direction, at pain of ICAC intervention.

In every case accountability of the individual must remain both visible and clearly understood to be enforceable. The protection of key officers and the concealment of corruption to protect the reputation of an organisation, although never acceptable, might

\(^{27}\) *Criminal Code 1995 (Cth)*, ch 4, div 70.
once have been possible. That is no longer the case in an era of investigative journalism, freedom of information legislation, and the research capacity available through the presence of inter-active media and the internet.

Maintaining a positive culture, in which trust and support of an organisation’s staff is balanced with vigilance, is important. Equally so is the existence of an effective anti-corruption strategy and capacity. Their absence sends a message that the relevant agency either does not care about corruption, or worse would prefer that it not be exposed. Such an attitude risks institutionalising the culture of preserving the reputation of the organisation at all costs. The disastrous impact of such an attitude is emerging in the course of the Cunneen Special Commission of Inquiry and the McClellan Royal Commission into paedophilia, but had already become apparent in several other inquiries in the same field of activity.

Moreover, any organisation which needs to harden itself against corruption must carefully consider the environment in which its staff work. It must stay abreast of new forms of criminality and of the opportunities they offer, and maintain a capacity for the application of strategic intelligence. This requires the availability of an intelligence database sufficient and specific to the needs of the organisation, as well as an analytical capability. Crime is continually evolving – consider the opportunities now available for credit card and online fraud through “darknets” and for money laundering, if alternatives to traditional currency in the form of virtual currencies (such as Bitcoins) become the vogue, by-passing the reach of AUSTRAC.
Finally, can I observe that the fight against corruption requires the support of governments in enacting the necessary legislative powers to support investigations as well as providing appropriate offences with penalties that will permit the use of electronic and other forms of surveillance in support of investigation. A recent example in point has been the enactment in some jurisdictions of the match-fixing/gambling offences, but no doubt new offences will be required from time to time to supplement conventional offences involving bribery and secret commissions.

Finally I note that a positive step for the new Federal Government would be to adopt and advance the National Anti-Corruption Plan. This has now been in the planning or development stage since September 2011 and it has the capacity of achieving a co-ordinated multi-jurisdictional response to corruption.  

If I may conclude with a warning from Samuel Taylor Coleridge that should not be overlooked!

“If men could learn from history, what lessons it might teach us! But passion and party blind our eyes, and the light which experience gives is a lantern on the stern, which shines only on the waves behind us!”

28 Discussion Paper, *The Commonwealth’s approach to Anti-Corruption* was released by the Attorney-General’s Department in 2012 for public discussion.
29 S T Coleridge, *Specimens of the table talk of Samuel Taylor Coleridge*, (Murray, 2nd ed, 1836) 147.