



Australian Government  
Australian Taxation Office

## ATO Submission

# Inquiry into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services

1. The Australian Taxation Office (ATO) thanks the Parliamentary Joint Committee on ACLEI for their invitation to provide a submission into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services.

The January 2021 expansion of ACLEI's jurisdiction from five to nine law enforcement agencies, including the support given to, and effectiveness of, agencies undertaking new responsibilities in working collaboratively with ACLEI in detecting, investigating, and preventing corruption.

2. Since coming under ACLEI jurisdiction on 1 January 2021, the ATO has established a good working relationship with ACLEI in our joint efforts to prevent, detect, investigate and respond to internal fraud and corruption allegations.
3. The ATO meets regularly with our ACLEI counterparts at all levels including the Commissioners, SES relationship managers and investigations staff. In addition to regular engagement for operational matters, the ATO actively participates and collaborates in the ACLEI Community of Practice for Corruption Prevention.
4. The expansion of ACLEI jurisdiction brought a significant change to the way in which the ATO assesses and manages allegations of corrupt behaviour involving ATO employees. Where we previously managed most matters in-house, the new arrangements have required the implementation of new policies and procedures to ensure adherence to the obligations of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) and *Law Enforcement Integrity Commissioner Regulations 2017* (LEIC Regulations).
5. To assist with the new arrangements, the ATO implemented a new intake and assessment process supported by the creation of our 'SpeakUp' reporting channels. SpeakUp provides a centralised front door for all employee-related integrity complaints and allegations, ensuring greater visibility of internal fraud and corruption risk and consistent assessment of employee-related complaints against ACLEI criteria.
6. All matters referred to SpeakUp, both from internal and external sources, are assessed against the three ACLEI criteria outlined in the LEIC Act:
  - is or was the subject of the allegation a staff member of the ATO?
  - is there corrupt conduct within the meaning of the LEIC Act?
  - does the person's conduct relate to 'a law enforcement function' of the agency?
7. Any matter which meets the ACLEI criteria is referred to the Commissioner of Taxation for official agency notification to the Integrity Commissioner.

8. As at 30 September 2021, the ATO has referred eight<sup>1</sup> matters directly to ACLEI. Of those, two have been assessed by ACLEI as raising a corruption issue and requiring joint investigation, four were assessed as being out of jurisdiction, and two were still under assessment.
9. The main challenge faced by the ATO has been establishing whether a person's conduct relates to a law enforcement function, a test required because the ATO comes under ACLEI's jurisdiction by amendments to the LEIC Regulations rather than being prescribed under the LEIC Act.
10. The ATO is primarily a revenue collection agency and a relatively small number of our staff are actively engaged in law enforcement functions as defined in section 5 of the LEIC Act.
11. While ACLEI have provided factsheets and other input to assist us in assessing whether a person's conduct relates to a law enforcement function, it is nevertheless a complex assessment. Thus far the ATO has taken a cautious approach and, wherever there is uncertainty, we have notified the matter to ACLEI for their assessment.
12. As ACLEI have pointed out in their submission to this inquiry, '*applying the law enforcement function test adds significantly to the time taken to assess whether the matters fall within jurisdiction*'<sup>2</sup>. Several matters we have referred to ACLEI have taken months in the ACLEI assessment process, including time taken (while we understand) ACLEI sought legal advice from the Australian Government Solicitor, resulting in a lengthy delay to the commencement and timeliness of investigations.
13. We note that the proposed establishment of a Commonwealth Integrity Commission should resolve this issue as all ATO employees would be considered in jurisdiction and the law enforcement test would no longer need to be applied.
14. The relatively low number of referrals, to date, from the ATO to ACLEI has allowed the ATO to closely monitor operational risk with corruption allegations and ensure any potential jurisdictional issues can be managed appropriately.
15. The ATO continue to work collaboratively with ACLEI to seek legal opinions from the Australian Government Solicitor on the complexities with the operation of the LEIC Act, in particular definitions, scope of law enforcement functions and cross over with other legislative obligations such as the *Public Interest Disclosure Act 2013* and *Taxation Administration Act 1953*.

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<sup>1</sup> ATO figures may vary to ACLEI data due to reports of corrupt conduct from members of the public made direct to ACLEI, in which the ATO do not have line of sight over.

<sup>2</sup> Submission by the Australian Commission for Law Enforcement Integrity to the Parliamentary Joint Committee on ACLEI Inquiry into the expansion of the Australian Commission for Law Enforcement Integrity's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services

## The additional corruption vulnerabilities that may exist from the contracting of services or functions by law enforcement agencies to external service providers.

16. The ATO, like all Commonwealth agencies, secures external providers and individuals to provide goods and services across a range of functions including information technology, legal services, property and personnel.
17. We have strong procurement and contract management controls. Our ethical business relationship statement details codes of conduct and responsibilities in business dealings between the ATO and its suppliers. This includes, but is not limited to, complying with law and ATO policy frameworks, working in accordance with Commonwealth Procurement Rules, declaration of any conflicts of interest and complying with all ATO security, privacy and system control requirements when dealing with sensitive information and material.
18. The ATO also have robust fraud and corruption control mechanisms that meet the requirements of the Commonwealth Fraud Control Framework under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This includes developing a fraud and corruption control plan, undertaking regular risk assessments and appropriate prevention, detection and investigation measures.
19. Lawful and reasonable directions under the ATO policy framework and fraud control arrangements require external service providers, along with general ATO employees, to undertake pre-engagement integrity checks, mandatory corporate training prior to access being granted to ATO systems, ongoing suitability checks and upon separation from the ATO certain administration and system access controls.
20. The ATO is committed to protecting the privacy and confidentiality of taxpayer data. We know that taxpayer information is extremely valuable to criminal elements including those in organised crime, but this has always been the case with the ATO. As well as the strong fraud and corruption controls outlined above, the ATO also undertakes a range of internal audit activities designed for early detection of unauthorised access to taxpayer data.
21. The ATO's internal fraud and corruption control framework is reviewed by independent external scrutineers on a regular basis. In 2017 the ATO commissioned an independent assessment of the ATO's corruption risk profile. The review did not highlight any systemic issues in our management of internal fraud and corruption but did provide an independent assessment of the ATO's integrity framework regarding corruption risk, including the effectiveness of existing controls, the cultural environment in which the framework operates, as well as to identify current and emerging corruption risks likely to confront the ATO and broader Commonwealth environment.
22. Our fraud control measures have also been reviewed by the Inspector General of Taxation in their 2018 *Review into the ATO's Fraud Control Management*, and by Deloitte Touche Tohmatsu in an external quality assessment commissioned by the ATO Audit and

Risk Committee in 2020 to ensure the ATO is compliant with required standards for the management of fraud control activities.

23. Our fraud and corruption controls are also regularly monitored by our independent Audit and Risk Committee, who meet quarterly to provide advice on a range of issues including the appropriateness of the ATO's process for managing fraud and ensuring it is consistent with the Commonwealth Fraud Control Framework, and to satisfy itself that the ATO has adequate processes for detecting, capturing and effectively responding to fraud and corruption risks.
24. These reviews reaffirm where the ATO needs to remain vigilant and direct our focus to prioritise risks areas, including for example, the influence of organised crime as a corruption control influencer and potential coercer of ATO employees and specific tax information which holds inherent corruption value. We consider these enduring risks regularly in normal risk review and assurance activity, which includes the external service providers population.
25. The ATO's view is that based on our corruption risk profile and the low number of external service providers in the agency who perform tax-related duties with a law enforcement aspect, our contracting of services or functions to external service providers poses a very low level of corruption risk.
26. A key driver for this assessment is the rare instances of alleged corruption matters in the ATO, which can be attributed to the well-established practices and processes for preventing and detecting potential corruption risks within the agency. We have a system of control, detection and analytics in place to ensure that internal fraud and corruption risk is systematically monitored, detected and dealt with on an ongoing basis. We also have a healthy culture of reporting suspicious behaviour and a wide range of mechanisms for both ATO employees and the community to report fraud, corruption and criminal activity.
27. Integrity is a fundamental pillar of the ATO and we have an extremely strong integrity culture. Our Integrity framework sets out the ATO's vision for the behaviours we want our staff to demonstrate. The ATO Integrity Register, managed by the ATO Integrity Unit, captures staff conflict of interest declarations, outside employment notifications and declarations of offers and receipt of gifts, hospitality or other benefits. The register ensures a consistent and robust approach to managing these declarations and maintaining a high level of integrity.

## What systems or processes are in place within law enforcement agencies to identify, report and investigate potential corruption within external service providers.

28. The ATO's management of fraud and corruption is driven by a risk-based approach in consultation with stakeholders and the development of the ATO's Fraud and Corruption

Control Plan. The plan outlines at a high level our approach and strategies to managing risk, both internal and external to the ATO, and informs our broader assurance activities.

29. The plan also outlines a suite of corruption controls consistent with Commonwealth requirements, details at a high level the range of fraud control strategies in place and communicates the critical roles and responsibilities all employees play in identifying and responding to fraud and corruption risks.
30. The plan is underpinned by an Audit and Risk Committee approved forward work program that includes regular risk assessments, health checks, direct engagement and assurance activities to provide more real time detection and support. We regularly monitor and adapt our program of work to the broader risk landscape and priority focus areas for the ATO, including inherent or emerging risk with external service providers.
31. The Plan also details mechanisms for reporting suspected fraud and/or corruption including a dedicated 'SpeakUp' email address, 24-hour hotline, an anonymous intranet fraud alert form and a number of reporting channels available to the public. The ATO regularly communicates with employees via emails, news articles, log-on screens and face-to-face awareness sessions to raise awareness of what and how they can report.
32. Regular scans of the ATO demographic, including target groups such as outsourced providers or higher risk positions, are undertaken to identify whether unauthorised accesses or other suspicious behaviours on ATO systems are occurring. We continually work to enhance our capability to be more intelligence led and data driven. Importantly this is not just to have more sources of data and intelligence, but also about analysing this information to refine risks, examine where trends are presenting, better understand and predict counterproductive behaviour, and actively respond to the drivers of behaviour.
33. The ATO has skilled investigators who hold the minimum level of qualifications (or higher) as prescribed by the Australian Government Investigation Standards (AGIS) to assess, respond and investigate fraud or corruption incidents. Investigative responses are consistent with the requirements of AGIS and subsequent action, whether under criminal, civil, disciplinary or administrative sanctions is pursued. This includes undertaking joint investigations with law enforcement bodies and other agencies, referral to the AFP when necessary on serious crime or complex investigation matters, and preparing briefs of evidence for assessment by the Commonwealth Director of Public Prosecutions for criminal matters.
34. The ATO considers that the risk of systemic internal fraud and corruption with external service providers remains low. As with all large organisations with multifaceted systems there are instances of relatively low level opportunistic or minor internal fraud (such as unauthorised access and misuse of Commonwealth assets) but these are considered within tolerance, actively managed and considered not to be systemic in nature.

## Whether there are similar corruption vulnerabilities in partnerships between law enforcement agencies and other government agencies who are not subject to ACLEI's powers for investigation.

35. The ATO has close working relationships with a range of law enforcement and other government agencies.
36. While the ATO's relationship with these agencies are underpinned by memoranda of understanding and other legal arrangements, we recognise that individual agencies will have their own unique and inherent corruption risk.
37. We seek formal opportunities to work and share learnings across government agencies and actively participate in Commonwealth fraud and corruption liaison forums and cross agency working groups to discuss insights, challenges, identify emerging risk and engage in prevention activities.
38. Further to these actions, we maintain strong relationships and work collaboratively with law enforcement and intelligence agencies to share information early and address issues as they arise in our investigation activity.

