

Dr John Coyne



Submission to the Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services

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This submission does not reflect the Australian Strategic Policy Institute (ASPI) perspective. It is the opinion of Dr John Coyne, Strategic Policing and Law Enforcement ASPI.

Background

On 10 August 2021, the joint committee agreed to inquire into and report on the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services.

In this submission, I seek to provide evidence that addresses the following:

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

Contextualising Australia's law enforcement integrity threat

Over the last decade, the corruption threat to Australian law enforcement has broadened in scope and intensified in complexity. Corruption and fraud risk assessments traditionally assess the likelihood and consequence of a specific risk. In contrast, threat assessments are concerned with determining the intent and capability of a particular entity or entities to cause harm. This submission argues that the risk of integrity (fraud and corruption) is rising due to increased threat capability and intent.

Over the last several years, traditional barriers between previously siloed government policy have fallen away, forming a much more symbiotic policy

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ecosystem. The Prime Minister's 2020 Aspen Institute speech illustrated this by highlighting how economic and national security policies were no longer separate.

This change to Australia's policy environment is occurring at a time in Australian history when access to, and the scope of, law enforcement powers across the federal bureaucracy is increasing. Like no other time, Australia's ever more broad law enforcement community has access to increasing diversity and variety of information.

Unfortunately, at the same time, state and non-state (Australian and transnational serious and organised crime, terrorist groups, and other politically and ideologically motivated groups) have illustrated an increased willingness to use corruption and bribery for profit, to collect information, and to shape government decision making actively or passively. Australia's law enforcement community is an attractive target for infiltration and corruption for state and non-state actors alike.

An increase in intent to undertake corruption does not necessarily increase the threat or risk level on its own. Unfortunately, this increasing intent is coupled with a rising capability amongst state and non-state actors to use corruption. This change in capability includes increased access to financial means and willingness to use coercive tactics. For example, the scale and scope of emergent transnational serious and organised crime groups involved in the manufacturing and distribution. These groups have large profits at their disposal, and their ability to pay bribes is greatly enhanced.

The increased convergence of organised crime with a legitimate economic activity creates additional capabilities for groups seeking to corrupt law enforcement officials. The willingness of some nation-states to use asymmetric techniques to exert influence over Australian domestic and international affairs exacerbates this challenge. The involvement of nation-states, while arguably a concern for organisations like ASIO, brings with it an increased sophistication of corruption capabilities and methodologies. For example, the ability to leverage more sophisticated coercive human source techniques.

Policing and law enforcement

Over several decades commonwealth policing has experienced a continuous process of change: for the most part without the benefit of a clear policy white of green paper. The evolution has seen a decentralisation of law enforcement roles away from the federal government's primary law enforcement agency, the Australian Federal Police (AFP). Other developments have accompanied this trend of decentralisation. In particular, at the national level, Australia has seen the civilianisation and securitisation of law enforcement. Civilianisation has manifested as a movement of law enforcement responsibilities from sworn police officers towards public servants and now external private sector providers in some cases.

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Since its inception in the 1800s, policing focused on crime prevention and peacekeeping rather than law enforcement. After the Fitzgerald Inquiry and Woods Royal Commission in the late 1980s and mid-1990s, policing shifted towards law enforcement. That pushed police to prioritise criminal investigations, a necessary response to the complexity of the 21st-century environment.

Police executives are rightly held accountable for what they achieve and the methods used to realise these achievements. More recently, they've rapidly implemented crime prevention strategies at the state and territory level, and that's not been easy. Policing at its heart has remained a problem-solving activity undertaken in collaboration with the community. Regardless, most Western democracies, including Australia, have conflated 'policing' and 'law enforcement' without considering their differences and often use the terms interchangeably.

In developing national strategies to disrupt crime, especially corruption, the difference between police and law enforcement is crucial in terms of powers and policy. The trust earned by Australian police forces over decades has provided their social licence to operate within our communities. It allows police to exercise discretion—the power of the constable—in their duties. It has supported their right to use force in response to particular circumstances. It has also generated the kind of goodwill that allows communities to work with the police to solve problems.

While the AFP and the Australian Border Force (ABF) might explain the difference between policing and law enforcement in terms of legislative powers or organisational responsibility, there's something far more fundamental involved. Policing promotes compliance with the law through approaches that include community engagement and education. Law enforcement—jailing people for breaking the law—is but one aspect of policing. The trend away from policing to law enforcement is a driver for the securitisation of policing in Australia.

Arguably, it's time to re-examine our assumptions here: especially concerning how they impact the corruption and integrity risk. This recommendation is supported by the AFP's broadening responsibilities, the increasing number of public servants across agencies identified as law enforcement officers, and the bureaucratic push for broader access to police powers for them, such as the use of listening and tracking devices. The committee ought to question whether a public servant should have the same powers as a police officer if for no other reason than that police occupy a higher position of trust in our society. Any effort to separate ACLEI's role from law enforcement and policing policy would create further integrity vulnerabilities.

Vulnerabilities

The expansion of ACLEI's jurisdiction brings with it responsibility for all new vulnerabilities within the broader commonwealth law enforcement community.

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The previous section highlights the fundamental differences between policing and law enforcement regarding individual police officers' discretion, especially concerning decisions related to criminal investigations. The dogged commitment of the police to independence and discretion in the performance of their duties is as critical to Australia's domestic security as submarines. Giving invasive police powers to public servants, primarily in organisations not dedicated solely to law enforcement agencies, brings a risk that law enforcement officials will be less accountable and more vulnerable to politicisation, especially in criminal investigations. Secondly, the discretion and independence of the constable is a crucial component of both community trust and integrity. The civilianisation and decentralisation of law enforcement have, without any serious discussion, shifted tactical and operational decisions to more senior decision-makers. And centralised law enforcement decision making creates vulnerabilities to corruption as there is arguably less transparency. It also represents a substantial shift in Australia's law enforcement methodology that has occurred without substantive policy consideration.

While ACLEI has long been responsible for managing integrity related to police and public servants, the expanded jurisdiction brings substantial changes in the professional demographics of the workforces for which it is responsible. For example, AFP and ABF officers attend lengthy initial training programs to introduce them to their responsibilities. The same observation cannot be made for many public servants employed in other commonwealth agencies with law enforcement responsibilities, many of which have access to police-like powers. This variance in training creates additional vulnerabilities, which wrongdoers will likely target given the nature of the corruption and integrity threat.

The Australian Public Service has long held a focus on improving the conduct and integrity of public servants. And this is highly commendable. However, there can be no doubt that the APS policies and practices are understandably different from an agency like the AFP. The AFP's Professional Standards framework's education, training, compliance and investigation capabilities and capacity are far more comprehensive and onerous than most other commonwealth agencies with law enforcement responsibilities. Ensuring that those who exercise law enforcement powers outside of the AFP and ABF comply with similar standards will cost and take time. Until this is achieved, the variance in standards will present threat actors with vulnerabilities to exploit. Furthermore, law enforcement agencies' contracting services or functions to external service providers represents an even more substantial integrity risk. It seems, given the current corruption and integrity threat levels, contracted services and functions that are not subject to stringent corruption prevention measures would be vulnerable to exploitation.

Conclusion

In their deliberations, the committee ought to consider three key factors.

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- Firstly, the nature of the integrity threat has dramatically increased in terms of capability and intent.
- Secondly, the two-decade war on terror and, more recently, the Covid-19 responses have placed unprecedented powers in the hands of law enforcement officers, and community trust in this environment is critical to social licence.
- Thirdly, the increasing interconnectedness domestically and internationally across government functions ensures that integrity issues impact law enforcement, social cohesion, foreign relations, national security, and economics.

The following recommendations are provided as ideas for stimulating change:

Recommendation 1. The committee should recommend that the federal government ought to commission a law enforcement white paper. A commonwealth law enforcement white paper could reduce the integrity risks of unintended consequences from incremental policy changes to Australia's commonwealth law enforcement arrangements.

Recommendation 2. The committee should consider whether the integrity threats and their associated risks are now of such magnitude as to require ACLEI to work with the agencies within its jurisdiction to establish baseline policies for professional standards.

Recommendation 3. Given the threat's changing nature, the committee ought to consider whether ACLEI should review how its work intersects with ASIO's, especially concerning integrity and corruption issues related to foreign interference and political and ideologically motivations.