



Australian Government

**Australian Commission for
Law Enforcement Integrity**

Parliamentary Joint Committee on the Australian Crime Commission

*Inquiry into the adequacy of aviation and
maritime security measures to combat
serious and organised crime*

**Submission by the
Australian Commission for
Law Enforcement Integrity**

6 November 2009

1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on the Australian Crime Commission (the Committee) *Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime*.

As ACLEI's jurisdiction is presently limited to the Australian Crime Commission (ACC) and the Australian Federal Police (AFP) and does not include all the agencies that operate in Australia's airports and ports, ACLEI's comments are designed to address terms of reference (a) and (d) of the Inquiry.

This submission is intended to assist the Committee by providing:

- general information about ACLEI's integrity role (section 2); and
- information about ACLEI's perspective on corruption risks in the aviation and maritime security environment, and potential links to organised crime (section 3).

Suggestions are also made on certain other points for the Committee's consideration.

Attachment One describes some of the indicators of law enforcement corruption.

A copy of *Resistance to Corruption*, ACLEI's report into the anti-corruption arrangements of the ACC and the AFP is at Attachment Two.

2. Responsibilities and powers of ACLEI

Establishment

The office of the Integrity Commissioner, and ACLEI, are established by the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).

The objects of the LEIC Act (at section 3) are:

- (a) *to facilitate:*
 - (i) *the detection of corrupt conduct in law enforcement agencies; and*
 - (ii) *the investigation of corruption issues that relate to law enforcement agencies; and*
- (b) *to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations; and*
- (c) *to prevent corrupt conduct in law enforcement agencies; and*
- (d) *to maintain and improve the integrity of staff members of law enforcement agencies.*

Presently, those agencies subject to the Integrity Commissioner's jurisdiction under the LEIC Act are the ACC, the AFP and the former National Crime Authority (NCA). Other agencies with a law enforcement function may be added by regulation.

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Role

ACLEI's primary role is to investigate law enforcement-related corruption issues, giving priority to systemic and serious corruption. ACLEI also collects intelligence about corruption in support of the Integrity Commissioner's functions.

The Integrity Commissioner must consider the nature and scope of corruption revealed by investigations, and report annually on any patterns and trends concerning corruption in law enforcement agencies.

ACLEI also aims to understand corruption and prevent it. When, as a consequence of performing his or her functions, the Integrity Commissioner identifies laws of the Commonwealth or the administrative practices of government agencies that might contribute to corrupt practices or prevent their early detection, he or she may make recommendations for these laws or practices to be changed.

The Minister may also request the Integrity Commissioner to conduct a public inquiry into all or any of the following (section 71 of the LEIC Act):

- a corruption issue;
- an issue about corruption generally in law enforcement; or
- an issue or issues about the integrity of staff members of law enforcement agencies.

Independence

ACLEI is a statutory authority, and part of the Attorney-General's portfolio. The Minister for Home Affairs is responsible for ACLEI.

Impartial and independent investigations are central to the Integrity Commissioner's role. Although the Minister may request the Integrity Commissioner to conduct public inquiries, the Minister cannot direct how inquiries or investigations will be conducted.

The LEIC Act contains measures to ensure that the Integrity Commissioner and ACLEI remain free from political interference and maintain an independent relationship with government. Accordingly, the Integrity Commissioner:

- is appointed by the Governor-General and cannot be removed arbitrarily;
- is appointed for a once-only term of up to five years;
- can commence investigations on his or her own initiative; and
- can make public statements, and can release reports publicly.

Receiving information about corruption

The LEIC Act establishes a framework whereby the Integrity Commissioner and the agency heads can prevent and deal with corruption jointly and cooperatively. The arrangement recognises both the considerable work of the ACC and the AFP to introduce internal corruption controls (including detection and deterrence-focussed mechanisms) and the continuing responsibility that the law enforcement agency heads have for the integrity of their staffs.

An important feature of the LEIC Act is that it requires the head of an agency in ACLEI's jurisdiction to notify the Integrity Commissioner of any information or allegation that raises a corruption issue, irrespective of the source of that information (section 19).

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Also, the LEIC Act enables the Minister to refer corruption issues to the Integrity Commissioner (section 18), and any other person, including members of the public or other government agencies (section 23), may refer a corruption issue. In addition, the Integrity Commissioner may deal with corruption issues on his or her own initiative (s 38).

Further, ACLEI is authorised under the *Telecommunications (Interception and Access) Act 1979* to receive information about any corruption issue involving the ACC or the AFP that may be identified by other integrity agencies or police forces as a result of their telecommunications interception activities.

Special legislative arrangements make it lawful for whistleblowers to provide information about corruption direct to ACLEI. The LEIC Act provides for ACLEI to arrange protection for witnesses.

Investigation powers

A challenge facing ACLEI is that law enforcement officers subject to investigation by the Integrity Commissioner are likely to be well-versed in law enforcement methods, and may be skilled at countering them in order to avoid scrutiny. As a consequence, ACLEI has access to a range of special law enforcement powers.

The key investigative powers available to the Integrity Commissioner and ACLEI are:

- coercive information-gathering;
 - notice to produce information, documents or things; and
 - summons to attend a hearing, answer questions and give sworn evidence, and/or to produce documents or things;
- intrusive information-gathering (covert);
 - telecommunications interception;
 - electronic and physical surveillance;
 - controlled operations;
 - assumed identities;
 - scrutiny of financial transactions; and
 - access to specialised information databases for law enforcement purposes;
- search warrants;
- right of entry to law enforcement premises and associated seizure powers; and
- arrest (relating to the investigation of a corruption issue).

Information and intelligence

One of the Integrity Commissioner's functions (at section 15(e) of the LEIC Act), is:

...to collect, correlate, analyse and disseminate information and intelligence in relation to corruption generally in, or the integrity of staff members of, both:
(i) law enforcement agencies; and
(ii) other Commonwealth government agencies that have law enforcement functions;

Section 208 of the LEIC Act also authorises the Integrity Commissioner to disclose information to the heads of other government agencies if the Integrity Commissioner is satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so.

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These provisions allow the Integrity Commissioner to share information or intelligence, for instance about links to organised crime, that may be collected as a result of ACLEI assessments or investigations with: Australian Government law enforcement agencies; State and Territory police forces or integrity agencies; and, if necessary, other government agencies.

3. ACLEI's perspective on corruption risk in the aviation and maritime security environment

Countering the 'corruption handshake'

Corrupt conduct can take many forms – conflicts of interest, improper associations, nepotism and cronyism, abuses of office or power, perjury, inappropriate disclosure of information, fabrication or destruction of evidence, fraud and theft, to name just a few. Some types of corrupt conduct involve the commission of criminal offences, although many do not. See *What is law enforcement corruption?* at [Attachment One](#) for further examples.

ACLEI's focus and priority is directed towards serious and systemic corruption and towards countering the possible relationship between willing or vulnerable law enforcement agency staff members, including former staff members, who may cooperate with, or facilitate, the illicit activities of organised criminal groups. ACLEI describes this potential relationship between corrupt law enforcement officials and organised crime as the 'corruption handshake'.

It would be a serious matter if such a relationship were found to exist. ACLEI's focus takes its lead from the National Security Statement,¹ made to the Parliament in December 2008, in which the Prime Minister drew attention to the threat posed to Australia by transnational and organised crime. That threat is presently estimated to cost the Australian economy – individuals, businesses and governments – between \$10-15 billion each year.

By pursuing the law enforcement end of a potential corruption handshake, ACLEI complements and supports the efforts of the ACC, the AFP and State law enforcement agencies, whose primary responsibility it is to investigate and collect intelligence about organised crime.

Organised crime and corruption at the border

The infiltration of public sector agencies and the compromise and corruption of public officials are known methods used by organised crime to hide or facilitate illicit enterprises.

Due to their role in curbing the importation of illicit goods or substances, Government agencies that regulate movement at the border operate in high corruption-risk environments.

In his evidence² to the Parliamentary Joint Committee on ACLEI on 23 October 2009, the Chief Executive Officer of the Customs and Border Protection Service, Mr Michael Carmody, acknowledged such a risk:

¹ *The First National Security Statement to the Parliament*, Address by the Prime Minister of Australia, The Hon. Kevin Rudd MP, 4 December 2008, http://www.pm.gov.au/media/speech/2008/speech_0659.cfm (Accessed 27 June 2009).

² Parliamentary Joint Committee on ACLEI, Inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2006*,

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"...Given our role at the border—particularly if you think of the significant consequences of attempts by criminal syndicates to bring illicit drugs, or other items of concern to the community, across the border—I would be surprised if there were not syndicates who felt that they would be advantaged by compromising one of my officers or otherwise, or even trying to gain employment. I am not suggesting we have any evidence of any systematic attempts in that way, but it is obviously a concern to me. My officers make decisions about what goods should be inspected and so on. That is a major concern to me."

Other than the ACC and the AFP, ACLEI's jurisdiction does not include agencies that operate in Australia's airports and ports.

Twenty-six of the 147 corruption issues that have been notified or referred to ACLEI, from its commencement in early 2007 to date, have a possible connection to serious and organised crime. Taken at face value, a number of these issues comprise information or allegations linked to regulating Australia's border.

Suggestions for consideration

During 2009, ACLEI undertook a joint pilot review of the anti-corruption arrangements of the ACC and the AFP. *Resistance to Corruption*, the product of the project, mapped the broad corruption-risk profile of the ACC and the AFP, and surveyed the arrangements in place (or planned) to address corruption risks in each agency. A copy of *Resistance to Corruption* is at Attachment Two of this submission.

In *Resistance to Corruption*, ACLEI suggested that both agencies should undertake a systematic 'stocktake' to identify areas of high corruption risk, and also to review the resources that are directed to integrity assurance measures so that they remain matched to both general and specific risks.

Given the inherent risk of corruption attempts being made by transnational and organised criminal groups, ACLEI considers that there would be benefit in developing seamless anti-corruption arrangements among the highest corruption risk agencies that operate in the aviation and maritime security environment.

Such arrangements may include a joint regular stocktake of corruption risks and measures among all Australian Government agencies that operate in Australia's airports and ports, with a realistic assessment of the effectiveness of controls and acceptance of residual risk.