Chapter 2

Examination of the Annual Report

2.1 The 2009–10 Annual Report is the fourth Annual Report of the Integrity Commissioner and covers the third full year of operation.[1] The report details ongoing efforts by the agency as it continues to develop its practices and procedures.

2.2 The committee's concurrent inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2006* has provided an important avenue for the committee to consider, in detail, a number of legislative, administrative and broader matters of interest concerning the work of ACLEI. Issues canvassed in that inquiry have not been reiterated here. The committee's examination of the 2009–10 Annual Report focuses principally on:

- ACLEI's compliance with reporting requirements (see Appendix 1);
- changes to ACLEI's performance reporting framework; and
- certain issues arising from ACLEI's reported performance in 2009–10.

The performance reporting framework

2.3 ACLEI's outcome and output structure changed for the 2009–10 budget year, as part of the general transition of General Government Sector (GGS) agencies to a program reporting framework. The updated agency outcome statement also captures revisions made under the Operation Sunlight Outcome Statements Review.[2]

2.4 The table below, taken from the Attorney-General's Portfolio Budget Statement (PBS) for 2009–10, outlines the change to a more detailed outcome statement. The new program statement closely mirrors the previous output group statement from 2008–09.

Table 1: Changes to the outcome/reporting framework

2008–09 Budget year	2009–10 Budget year
Outcome 1: Assurance that Australian Government law enforcement agencies and their staff act with integrity	Outcome 1: Independent assurance to the Australian Government that Commonwealth law enforcement agencies and their staff act with integrity by detecting, investigating and preventing corruption.

1 The *Annual report of the Integrity Commissioner 2006–2007*, covered the first six months of ACLEI's operation from 30 December 2006 to 30 June 2007.

2 Attorney-General's Portfolio Budget Statement, 2009–10, p. 85.

Output Group 1.1: Detect, investigate and prevent corruption in prescribed Commonwealth law enforcement agencies; assist law enforcement agencies to maintain and improve the integrity of staff members	Program 1.1: Detect, investigate and prevent corruption in prescribed law enforcement agencies; assist law enforcement agencies to maintain and improve the integrity of staff members

2.5 In addition to these changes, the 2009–10 PBS also documented significant alterations to the performance reporting structure for the agency. A new set of 'program deliverables' was included under Program 1.1, as follows:

- corruption issues are promptly brought to the attention of the Integrity Commissioner for independent assessment and decision on how each issue should be dealt with (either by ACLEI, the agency to which the issue relates, or another agency);
- where appropriate, ACLEI independently investigates corruption issues, giving priority to serious or systemic corruption;
- where appropriate, the Integrity Commissioner uses statutory coercive and intrusive information-gathering powers to assist in investigations;
- ACLEI analyses and reports on patterns and trends in law enforcement corruption;
- ACLEI recommends changes to laws and to agency practices and procedures to improve integrity in law enforcement, and to detect and prevent corruption more effectively;
- ACLEI contributes to corruption prevention initiatives such as the assessment of corruption risk and raising awareness about corruption deterrence, thereby helping to build corruption-resistant work cultures; and
- staff members of law enforcement agencies are made aware that information about corruption can be referred with confidence to the Integrity Commissioner.

2.6 In addition to these program deliverables, the PBS also outlines a series of key performance indicators (KPI). These indicators, together with the measures used to assess each KPI, are reproduced below, together with a summary of performance as reported by ACLEI.

2.7 The Integrity Commissioner, Mr Phillip Moss, informed the committee that ACLEI's own measure of its performance had moved beyond quantitative measures to include more qualitative measures. According to the Integrity Commissioner, this would more successfully demonstrate the value that ACLEI brought to the corruption deterrence framework.[3]

3 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 3.

KPI One: The corruption notification system is effective

2.8 Performance against KPI One is assessed with reference to the following measures:

- law enforcement agencies notify ACLEI of corruption issues in a timely way;
- other agencies provide information about corruption issues to ACLEI; and
- ACLEI is seen as viable for reporting information about corruption.

2.9 ACLEI reported that the number of notifications received from the ACC and AFP increased to 40 in 2009–10, and that the agency had no concerns with the timeliness of these notifications. In addition, two referrals were received from other government agencies. The number of referrals from whistleblowers increased substantially, from one in 2008–09 to eight in 2009–10. This last fact may indicate a growing confidence in ACLEI's ability to handle sensitive referrals.

KPI Two: ACLEI assess all notifications and referrals of corruption issues in a timely way

2.10 KPI Two is measured by reference to the following:

- upon receipt, ACLEI assesses information about corruption to determine how each issue should be dealt with. Credible information about corruption is prioritised.

2.11 ACLEI reported that all notifications and referrals were subject to initial assessment upon receipt, in order to determine their priority. ACLEI's performance in finalising assessments is dealt with below in the section on workload.

KPI Three: ACLEI's investigations are conducted professionally and efficiently, and add value to the integrity system

2.12 Measures for KPI Three include:

- investigations adhere to the Integrity Commissioner's Investigation Guidelines;
- ACLEI investigations are properly managed;
- investigation reports provided to the Minister are of high quality; and
- advice is provided to the minister in a timely way.

2.13 ACLEI reported on a variety of measures undertaken in 2009–10 aimed at improving the governance of ACLEI's investigative procedures.

2.14 Additionally, ACLEI described internal management procedures aimed at ensuring efficient deployment of investigative resources. The committee is pleased to see that the agency is developing more efficient and effective procedures as the agency matures.

2.15 Three investigation reports were completed in 2009–10 and provided to the Minister, while all requests for Minister's Office Briefings were met to appropriate standards within agreed timeframes.

KPI Four: ACLEI monitors the quality of corruption investigations conducted by law enforcement agencies

2.16 Measures for KPI Four include:

- all agency corruption investigation reports provided to ACLEI are assessed for quality and completeness; and
- ACLEI liaises regularly with the agencies' professional standards units.

2.17 ACLEI received six reports for review during 2009–10, from a total of 47 external agency investigations. This issue is addressed further below.

2.18 ACLEI reported that it met monthly with the professional standards areas of the ACC and the AFP, and more often as the case-work required.

KPI Five: ACLEI contributes to policy development and law reform in accountability and corruption prevention relating to law enforcement

2.19 Measures for KPI Five include:

- each investigation addresses corruption risk and, where warranted, makes recommendations for systemic improvement in corruption prevention or detection measures; and
- submissions that relate to corruption prevention or enhancing integrity may be made to government or in other relevant forums.

2.20 ACLEI reported that one investigation report included consideration of potential corruption risks. The ACC used this analysis to strengthen its corruption resistance strategies.

2.21 Additionally, the agency made four formal submissions to Australian Government or parliamentary inquiries, including to this committee.

KPI Six: Staff members of law enforcement agencies are made aware of ACLEI's role

2.22 Measures for KPI Six include:

- marketing and other awareness-raising activities are in place, including joint initiatives with other agencies; and
- targeted presentations about integrity are made to diverse audiences.

2.23 A substantial number of awareness-raising presentations were provided to staff members of the ACC and AFP in 2009–10, while the Integrity Commissioner and senior staff made 13 presentations to public or special interest audiences.

KPI Seven: ACLEI handles personal information appropriately

2.24 KPI Seven is measured by reference to the following:

- regular privacy audits are undertaken to ensure compliance with legal obligations and better practice policy for information-handling.

2.25 The completion of the ACLEI secure operations facility has enhanced the agency's ability to handle information securely. In addition, ACLEI's auditors, Deloitte Touche Tohmatsu Ltd, commenced an internal audit of ACLEI's information handling practices.

Direction of ACLEI

2.26 The committee commends the Integrity Commissioner and ACLEI on another year of positive development. The report demonstrates a number of improvements in the way ACLEI conducts its business, as more 'building blocks' are put in place.

> We began the 2009-10 financial year with three building blocks in place: new funding for five staff, a near completed secure operations facility and an important conceptual advance, namely, a new strategic orientation towards countering the possible relationship between corrupt law enforcement agency staff members and organised criminal groups—the so called 'corruption handshake'.[4]

2.27 The Integrity Commissioner noted that the completion of the secure operations facility, combined with additional staff had enhanced ACLEI's independent abilities. Prior to the construction of the facility, ACLEI had had to request technical assistance from agencies such as the Australian Federal Police in order to exercise certain powers. The secure operations facility has enabled ACLEI to undertake these functions itself. As a result, in 2009–10, the agency was able to independently exercise certain intrusive and covert information-gathering powers for the first time.[5]

2.28 The agency continues to develop the two-level engagement approach with the AFP and ACC, whereby information is exchanged regarding threats to integrity from organised crime groups. The Integrity Commissioner explained that:

> Although the two-level approach is still in its infancy, already ACLEI's intelligence and investigation teams are engaging with key operational areas of the ACC and AFP that deal with organised crime in relation to individual corruption issues. The introduction of this two-level approach is a marker of the flexibility of the LEIC Act framework and of the enhanced way in

4 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 2.

5 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 3.

> which ACLEI approaches the corruption risk environment and its own role in the deterrence framework.[6]

2.29 Importantly, the two-level engagement approach should help to protect law enforcement agencies from infiltration by organised criminal networks. Mr Stephen Hayward, Executive Director, informed the committee that:

> Nationally, there have been practices that other state integrity agencies have seen where there have been deliberate recruitment practices taken within law enforcement agencies to put people in those agencies from an organised criminal network to truly infiltrate. It is through investigation reporting and our ongoing liaison with the agencies that we can then feed that information in so that their preventative processes, their recruitment processes and their security processes can continue to improve to defeat that type of activity.[7]

2.30 Finally, ACLEI noted that after four years of developing investigative and detection capacity, the agency could begin to focus on prevention measures. The Integrity Commissioner was of the opinion that a greater emphasis should be given to prevention, stating:

> Prevention is about turning the information and the outcomes that we achieve through investigations and notifications back to the agencies so that they are informed by the activities we undertake in those other areas and therefore can make adjustments to their own frameworks.[8]

2.31 The committee is encouraged by the milestones reached in 2009–10, and the performance of the agency to date, while being cognisant that significant challenges remain ahead.

2.32 One such challenge is the expansion of ACLEI's jurisdiction, as a result of the government's acceptance of a recommendation made by the committee in the Interim Report for the inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2006*. The Australian Customs and Border Protection Service (Customs) came under ACLEI's jurisdiction as of January 2011. As a result, this development does not affect the agency's 2009–10 performance.

---

6 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 3.

7 Mr Stephen Hayward, ACLEI, *Committee Hansard*, 11 February 2011, p. 12.

8 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 15.

Issues

Workload

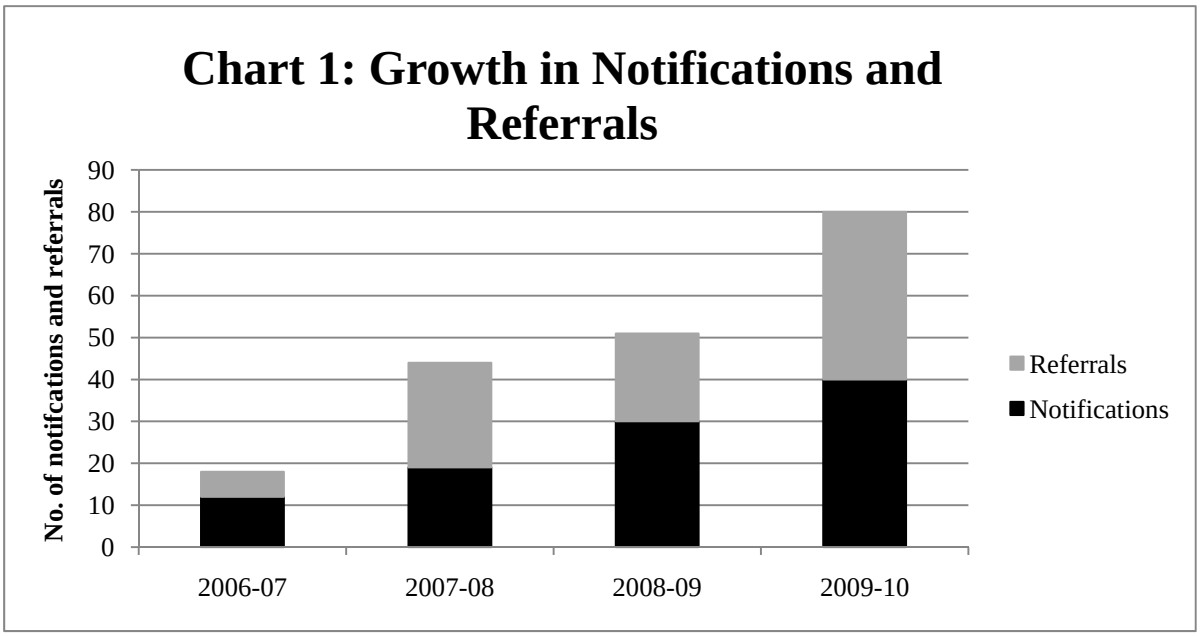
2.33 The main issue arising from ACLEI's reported performance for 2009–10 is the agency's ongoing capacity to successfully manage a growing workload. This issue has been canvassed in the committee's previous reports on ACLEI's annual performance.

2.34 A diagram depicting the agency's workflow is provided at Appendix 2, which may be of assistance in following the various statistics provided below.

Increasing numbers of notifications and referrals

2.35 The number of corruption issues notified or referred to the agency has grown consistently since the establishment of the agency. ACLEI noted that the increase in both agency notifications and referrals from other sources reflects the growing profile of the agency and the success of corruption awareness raising activities conducted by the agency.[9]

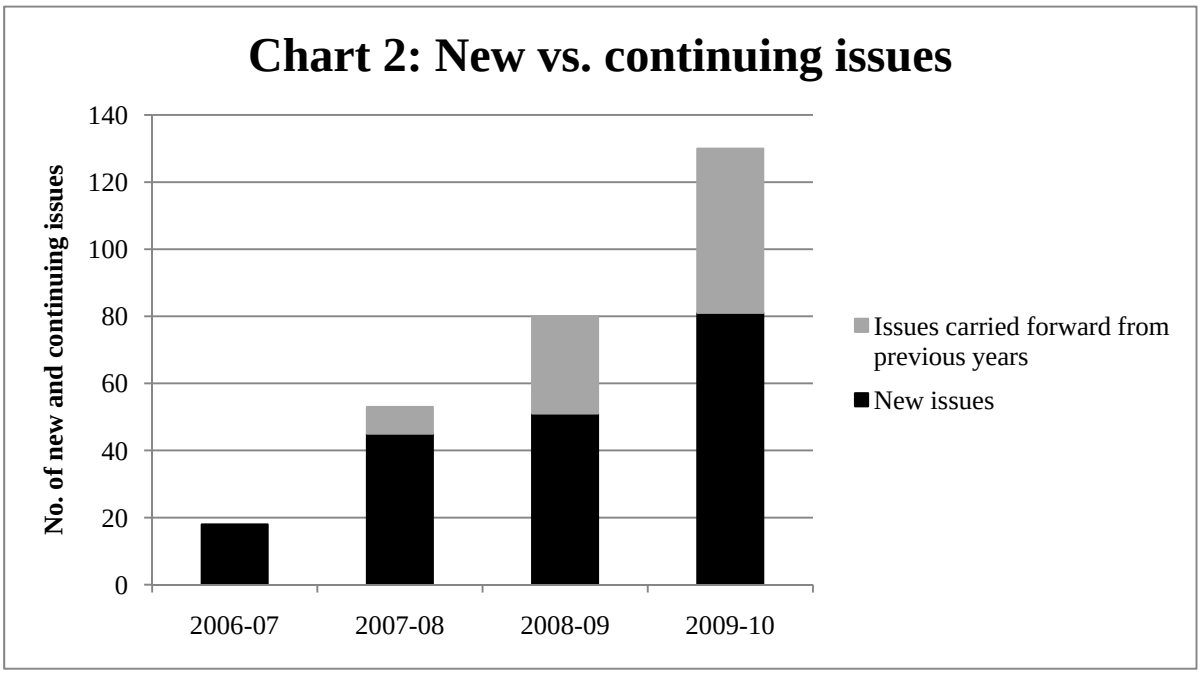
2.36 A record total of 80 notifications and referrals were received in 2009–10, representing an increase of 57 per cent from the 51 occurrences in the previous year. ACLEI also commenced an 'own initiative' investigation, with a resulting total of 81 new corruption issues in 2009–10.[10] The growth in the number of notifications and referrals is depicted in Chart 1 (please note that these figures do not include 'own initiative' investigations).



9 ACLEI Annual Report 2009–10, pp 51–52.

10 ACLEI Annual Report 2009–10, p. 51.

2.37 In addition to new issues raised during the 2009–10 financial year, 49 issues were carried over from previous years. Of these, one issue dated back to 2006–07, 16 to 2007–08 and 32 to 2008–09.[11] The number of issues being carried over each year has also grown steadily as shown in the chart below.



2.38 ACLEI's total workload for 2009–10, comprising both new and continuing issues was therefore 130 corruption issues. This represents a 62 per increase from the previous year. As is clearly demonstrated in Chart 2, the overall annual workload has grown each year through a combination of both new issues, and continuing issues from previous years.

2.39 The committee is aware that of the 130 issues considered in 2009–10, 89 will be carried over to 2010–11. While recognising that a substantial proportion of these issues are likely to have been raised towards the end of 2009–10 and that a number of the issues raised will be complex, the committee is concerned that ACLEI's workload may become less manageable if issues are not able to be finalised in a timely manner. As noted below, the committee was able to question ACLEI regarding these concerns.

Assessments

2.40 Once ACLEI has been notified of, or referred, a corruption issue, it assesses that issue to determine how to proceed. Not all issues proceed to the investigation stage, for a number of reasons. As noted in the annual report:

> All information provided to ACLEI is assessed for its reliability, that is the likelihood that the allegation or information is true. ACLEI's role is to

11 ACLEI Annual Report 2009–10, p. 53.

> obtain intelligence or evidence that may corroborate, exclude or contextualise the information provided.
>
> Once an assessment of the information is complete, the Integrity Commissioner decides whether the issue should be dealt with as an investigation under the LEIC Act framework.[12]

2.41 In order to improve the timeliness of the assessment of corruption issues, the agency applied additional staffing resources to the assessment role. In addition, some assessment related decision-making powers were delegated to the Executive Director in order to expedite the process in certain situations.[13] As a result, 60 per cent of assessments were completed within 90 days of receipt, a substantial improvement on the previous year. While this did not meet the agency's stated aim of achieving 75 per cent of assessments within 90 days, the committee is satisfied by the improvement and encourages the agency to continue to aim for the 75 per cent target.

2.42 At the end of 2009–10, 29 corruption issues were yet to be assessed. However, of these, only seven were older than 3 months.

Investigations

2.43 Seventy issues were under investigation in 2009–10, with the majority of these being conducted by the affected agencies themselves, rather than ACLEI.

2.44 ACLEI has two choices in how an investigation of a corruption issue is undertaken. ACLEI can either investigate the matter itself, or (more commonly) refer it back to the agency concerned, for investigation by that agency's own professional standards unit (described here as an external investigation).

External investigations

2.45 In total, 48 investigations were undertaken by agencies other than ACLEI, with one of these overseen by ACLEI. In these situations, ACLEI is required to receive a report from the agency conducting the investigation.

2.46 The committee is concerned that of the 48 relevant inquiries, only six reports were received by ACLEI in 2009–10. The rate at which external agencies conclude inquiries appears to contribute significantly to the large number of unresolved issues at the end of each financial year.

2.47 The Integrity Commissioner informed the committee that this was an issue that ACLEI was addressing together with the agencies.[14] ACLEI noted in the annual report that it will appoint a manager of assessment and review from July 2010 in order

---

12 ACLEI Annual Report 2009–10, p. 54.

13 ACLEI Annual Report 2009–10, p. 19.

14 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 6.

to better facilitate external inquiries. The committee agrees with this course of action and will monitor developments in 2010–11.

ACLEI investigations

2.48 In addition to referring corruption issues to law enforcement agencies for investigation, ACLEI conducts its own investigations into serious corruption issues. ACLEI commenced 12 investigations into corruption issues in 2009–10, with a further 10 investigations ongoing from previous years. Of these 22 ACLEI investigations, three investigations were finalised during the year and one investigation was discontinued. This represents an annual closure rate for ACLEI investigations of approximately 20 per cent. The 18 ongoing investigations represent a significant portion of ACLEI's workload. The committee understands that many of the issues involved are complex and time-consuming.

Additional workload arising from expanded jurisdiction

2.49 As noted above, the Australian Customs and Border Protection Service has come under ACLEI's jurisdiction, as of January 2011. The Integrity Commissioner noted that the long term impact of the added jurisdiction is unclear, but that funding for five new staff members had been provided, together with an agreement to review the need for further resources to inform the 2012–13 budget.[15]

2.50 The committee was informed that ACLEI has so far been notified of ten initial corruption issues by Customs. Of these, four are being jointly investigated by ACLEI and Customs, five are being investigated by Customs itself, and one remains under assessment by ACLEI.[16]

ACLEI's response to workload concerns

2.51 The workload statistics listed above gave rise to committee concerns as to ACLEI's ability to handle the large and growing number of notifications and referrals each year. The committee therefore took the opportunity at its public hearing in February to question ACLEI about the adequacy of its resources to tackle the increasing volume of corruption issues.

2.52 In response to the committee's specific concerns about the growing number of active ACLEI investigations, Mr Nicholas Sellars, Director Strategic Support, noted that the current number was within the agency's expectation, stating:

> Many of those investigations take longer than a financial year to finalise. We would expect to see between 20 and 30 investigations going on in ACLEI at any one time. Those investigations are now getting to the point where some will be newly commenced; some will be at 30 June of the

15 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 4.

16 Mr Stephen Hayward, ACLEI, *Committee Hansard*, 11 February 2011, p. 4.

> report; some may be at a stage of needing to be reassessed as to whether they should be closed because the evidence has not disclosed corrupt conduct; some may be waiting for a report to be made to the minister and then be closed. Out of that stock of 22 or so, there are a number of corruption issues in each of those stages of development. So, while 22 sounds like a lot compared to the number of ACLEI staff, when you think of it in terms of the pipeline it is not quite as dramatic as it seems at first.[17]

2.53 The Integrity Commissioner noted that five new staff members were recruited into ACLEI's assessment, intelligence and investigation teams early in 2009–10, and that these staff had made an immediate difference to ACLEI's ability to complete assessments and investigations in a more timely way.[18] As noted above, the expansion of the jurisdiction to include Customs will bring a further five positions to ACLEI in 2011.

2.54 The committee notes that this significant increase in the number of assessment, intelligence and investigation staff is likely to deliver greater economies of scale, enabling increased specialisation and efficiency. With this increase in staff, combined with the appointment of a dedicated manager of assessment and review noted above, the committee accepts that ACLEI has sufficient resources to handle its current investigations workload.

2.55 The committee will maintain a close interest in ACLEI's investigation workload and resourcing, in particular to monitor the impact of Customs and any other new additions to ACLEI's remit, and make appropriate recommendations where appropriate.

2.56 The Committee notes further that ACLEI’s role in prevention has been of a lower priority while ACLEI has used its resources to date to focus on establishing its detection and investigation capabilities. The Committee considers prevention and education to be necessary components of building and maintaining cultures of integrity within law enforcement agencies and is concerned that ACLEI’s current resources, while adequate for the investigations workload, do not extend to fulfilling its important prevention role.

Workforce strategy

2.57 ACLEI's staff has grown in number over the agency's lifetime, with another five staff members added to deal with the new Custom's jurisdiction. The committee therefore sought information on ACLEI's ability to attract a qualified workforce over time. The Integrity Commissioner noted that despite the competition for skilled investigators and intelligence analysts, ACLEI had successfully recruited qualified new staff, stating:

---

17 Mr Nicholas Sellars, ACLEI, *Committee Hansard*, 11 February 2011, pp 5–6.

18 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 2.

> I am pleased to say, the expressions of interest in those positions was very high and we had considerable fields from which to choose the four staff—as I said, soon to be five. As to terms and conditions, I think we have to be competitive in relation to other employers who are seeking such staff and the skills that they have. In that sense, ACLEI just have to be attractive to such people, and we are.[19]

2.58 The committee was also informed that recent appointments were equally divided along gender lines, resulting in a more gender-balanced workforce overall.[20]

Freedom of Information

2.59 In 2009–10, ACLEI received two requests for access to documents under the *Freedom of Information Act 1982*.The committee sought information as to whether the recent changes to freedom of information legislation and the commencement of the Information Commissioner requests would affect ACLEI's operations. The Integrity Commissioner informed the committee that the agency had yet to understand the full implications of the changes and to test the system. As Mr Nicholas Sellars explained:

> The Information Commissioner commenced in, I think, November last year, as did amendments to the Freedom of Information Act. It has changed a lot of the rules and assumptions about freedom of information. We are yet to see in detail how those changes will look on the ground. The Information Commissioner is busy as we speak, no doubt, writing guidelines about how the various exemptions will play out. It is an area we are keeping a watching brief on, as would other law enforcement agencies.[21]

2.60 The committee is aware of the potentially conflicting ideals of transparency and investigation integrity and will monitor this situation into the future.

Review of ACLEI's administrative arrangements

2.61 In the committee's report on law enforcement integrity models, tabled in February 2009, it recommended that the government undertake a review of ACLEI's funding levels. As a result of this recommendation, a review of ACLEI's business practices and funding structure conducted by Mr Peter Hamburger is underway. The committee looks forward to the review's findings.

Conclusion

2.62 The committee is encouraged by the achievement of a number of milestones for ACLEI in 2009–10. These milestones have included the completion of the secure

---

19 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 6.

20 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 15.

21 Mr Nicholas Sellars, ACLEI, *Committee Hansard*, 11 February 2011, p. 9.

operations facility, the independent exercise of special investigative powers and the development of the two-level approach to investigation of organised crime and law enforcement integrity.

2.63 The number of notifications and referrals of corruption issues continues to grow, reflecting ACLEI's growing public profile and an ongoing engagement with the Australian Crime Commission and the Australian Federal Police. ACLEI has grown to meet this workload, although continuing effort will no doubt be required to ensure timely and effective assessment and investigation of corruption issues.

2.64 The committee is satisfied by the direction ACLEI has taken through the building-block approach. This gradual implementation of capabilities and strategic direction continues apace, including the development of the two-level approach described above.

2.65 The committee notes that the adoption of the two-level approach to law enforcement agencies is necessary to meet the potential risk of infiltration of those agencies by organised criminal networks. The committee considers that this is a useful direction for ACLEI to follow and will assess the effectiveness of this approach in subsequent years.

2.66 However, the committee is also mindful of the desirability of ACLEI focussing more closely on corruption prevention. ACLEI was established to investigate, detect and prevent corrupt conduct in law enforcement agencies. As stated by the Integrity Commissioner, after four years of developing investigative and detection abilities, it is now time to put a greater emphasis on the third element: prevention.[22] The committee agrees with this objective and will be working with ACLEI to explore how it can further develop its corruption prevention role in the future, and to ensure ACLEI's resources are appropriate for the task.

2.67 The committee commends the Integrity Commissioner and the staff of ACLEI for the publication of a comprehensive and accessible annual report. ACLEI continues to evolve and develop, in terms of both process and strategy. The committee looks forward to continuing to engage with ACLEI and to observe the performance of the agency in 2010–11.

Ms Melissa Parke MP
Chair

22 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 11 February 2011, p. 15.